TWENTY-THIRD REGULAR COMMON COUNCIL MEETING AGENDA

March 06, 2023 at 6:00 PM

City Hall, 3rd Floor - Council Chambers, 828 Center Avenue, Sheboygan, WI

"Every accomplishment starts with the decision to try." - John F. Kennedy

This meeting may be viewed LIVE on Charter Spectrum Channel 990, AT&T U-Verse Channel 99 and: www.wscssheboygan.com/vod.

Notice of the 23rd Regular Meeting of the 2022-2023 Common Council at 6:00 PM, MONDAY, March 06, 2023 in City Hall, 3rd Floor - Council Chambers, 828 Center Avenue, Sheboygan, WI. Persons with disabilities who need accommodations to attend the meeting should contact Meredith DeBruin at the City Clerk's Office, 828 Center Avenue, (920) 459-3361.

Members of the public who wish to participate in public forum remotely shall provide notice to the City Clerk at (920) 459-3361 at least 24 hours before the meeting so that the person may be provided a remote link for that purpose.

OPENING OF MEETING

1. **Roll Call**
   Alderpersons Ackley, Dekker, Felde, Filicky-Peneski, Heidemann, Mitchell, Perrella, Ramey, Rust, and Salazar may attend the meeting remotely.

2. **Pledge of Allegiance**

3. **Approval of Minutes**
   Twenty-Second Regular Council Meeting held on February 20, 2023

4. **Public Forum**
   Limit of five people having five minutes each with comments limited to items on this agenda.

5. **Mayor's Announcements**
   Upcoming Community Events, Proclamations, Employee Recognitions

CONSENT

6. **Motion to Receive and File all R.O.'s, Receive all R.C.'s and Adopt all Resolutions and Ordinances**

7. R. C. No. 172-22-23 by Finance and Personnel Committee to whom was referred Res. No. 133-22-23 by Alderpersons Mitchell and Filicky-Peneski authorizing the purchase of 1214 South 11th Street to assist in infrastructure development for the City; recommends adopting the Resolution.

8. R. C. No. 173-22-23 by Finance and Personnel Committee to whom was referred Res. No. 137-22-23 by Alderpersons Mitchell and Filicky-Peneski terminating the City of Sheboygan Tax Incremental District (TID) No. 6 (South Pier/Lakefront District) and authorizing the Finance Director to distribute excess increment to overlying taxing districts; recommends adopting the Resolution.

9. R. C. No. 174-22-23 by Finance and Personnel Committee to whom was referred Res. No. 138-22-23 by Alderpersons Mitchell and Filicky-Peneski terminating the City of Sheboygan Tax Incremental District (TID) No. 10 (Water Street Neighborhood) and authorizing the Finance Director to distribute excess increment to overlying taxing districts; recommends adopting the Resolution.

10. R. C. No. 175-22-23 by Finance and Personnel Committee to whom was referred Res. No. 139-22-23 by Alderpersons Mitchell and Filicky-Peneski terminating the City of Sheboygan Tax Incremental District (TID) No. 12 (Niagara Avenue) and authorizing the Finance Director to distribute excess increment to overlying taxing districts; recommends adopting the Resolution.

11. R. C. No. 176-22-23 by Finance and Personnel Committee to whom was referred Res. No. 140-22-23 by Alderpersons Mitchell and Filicky-Peneski terminating the City of Sheboygan Tax Incremental District (TID) No. 13 (Landmark Square/Founders Club) and authorizing the Finance Director to distribute excess increment to overlying taxing districts; recommends adopting the Resolution.

12. R. C. No. 177-22-23 by Finance and Personnel Committee to whom was referred Res. No. 141-22-23 by Alderpersons Mitchell and Filicky-Peneski terminating the City of Sheboygan Tax Incremental District (TID) No. 14 (Taylor Drive) and authorizing the Finance Director to distribute excess increment to overlying taxing districts; recommends adopting the Resolution.

13. R. C. No. 178-22-23 by Finance and Personnel Committee to whom was referred Res. No. 142-22-23 by Alderpersons Mitchell and Filicky-Peneski terminating the City of Sheboygan Tax Incremental District (TID) No. 15 (Pick N Save-Southside) and authorizing the Finance Director to distribute excess increment to overlying taxing districts; recommends adopting the Resolution.

14. R. C. No. 179-22-23 by Finance and Personnel Committee to whom was referred Gen. Ord. No. 28-22-23 by Alderpersons Mitchell and Filicky-Peneski amending the process for preparation and approval of the City's Executive Budget contained in Sections 2-903 and 2-905 of the Municipal Code; recommends adopting the Ordinance.

15. R. C. No. 180-22-23 by Committee of the Whole to whom was referred Res. No. 136-22-23 by Alderperson Dekker adopting the City of Sheboygan 2023-2028 Strategic Plan; recommends filing the document and request Baker Tilly work with elected and appointed city management and administration to create an updated document for the 2023-2024 Common Council with the intention of the 2023-2024 Common Council bringing a Resolution back to the Committee of the Whole at a bare minimum for discussion regarding future strategic plan.

16. R. C. No. 181-22-23 by Licensing, Hearings, and Public Safety Committee to whom was referred R. O. No. 110-22-23 by City Clerk submitting various license applications; recommends granting the applications.

REPORT OF OFFICERS

17. R. O. No. 115-22-23 by City Plan Commission to whom was referred Gen. Ord. No. 21-22-23 by Alderperson Felde amending the City's Future Land Use Map of the Sheboygan Comprehensive Plan to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue – Parcel #59281631481 (Lot 1) from Public Parks and Open Space to Multi-Family Residential Classification; recommends adopting the Ordinance. LAYS OVER

18. R. O. No. 116-22-23 by City Plan Commission to whom was referred Gen. Ord. No. 22-22-23 by Alderperson Felde amending the City's Future Land Use Map of the Sheboygan Comprehensive Plan to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue – Parcel #59281631481 (Lot 2) from Public Parks and Open Space to Institutional and Community Facilities Classification; recommends adopting the Ordinance. LAYS OVER

19. R. O. No. 117-22-23 by City Plan Commission to whom was referred Gen. Ord. No. 23-22-23 by Alderperson Felde amending the City's Future Land Use Map of the Sheboygan Comprehensive Plan to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue – Parcel #59281631481 (Lot 3) from Public Parks and Open Space to Multi-Family Residential Classification; recommends adopting the Ordinance. LAYS OVER

20. R. O. No. 111-22-23 by City Plan Commission to whom was referred Gen. Ord. No. 24-22-23 by Alderperson Felde and R. O. No. 107-22-23 by City Clerk submitting an application from Froedtert Health, Inc. to amend the City of Sheboygan Official Zoning Map of the Sheboygan Zoning Ordinance to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue – Parcel #59281631481 (Lot 1) from Suburban Residential (SR-5) to Urban Residential (UR-12) Classification; recommends filing the R. O. and adopting the Ordinance. LAYS OVER

21. R. O. No. 112-22-23 by City Plan Commission to whom was referred Gen. Ord. No. 25-22-23 by Alderperson Felde and R. O. No. 108-22-23 by City Clerk submitting an application from Froedtert Health, Inc. to amend the City of Sheboygan Official Zoning Map of the Sheboygan Zoning Ordinance to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue – Parcel #59281631481 (Lot 2) from Suburban Residential (SR-5) to Suburban Office (SO) Classification; recommends filing the R. O. and adopting the Ordinance. LAYS OVER

22. R. O. No. 113-22-23 by City Plan Commission to whom was referred Gen. Ord. No. 26-22-23 by Alderperson Felde and R. O. No. 109-22-23 by City Clerk submitting an application from Froedtert Health, Inc. to amend the City of Sheboygan Official Zoning Map of the Sheboygan Zoning Ordinance to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue – Parcel #59281631481 (Lot 3) from Suburban Residential (SR-5) to Urban Residential (UR-12) Classification.; recommends filing the R. O. and adopting the Ordinance. LAYS OVER

23. R. O. No. 114-22-23 to whom was referred Gen. Ord. No. 27-22-23 by Alderperson Mitchell amending Section 15.207 of the City of Sheboygan Zoning Ordinance, Nonconforming Use Regulations, and Section 15.934, Zoning Board of Appeals, so as to streamline and expedite the process of reviewing nonconforming use applications; recommends adopting the Ordinance. LAYS OVER

24. R. O. No. 118-22-23 by City Clerk submitting an encroachment request from JB Site Design and Engineering, LLC pursuant to the request of the owner (Sheboygan Self Storage, LLC) of South 13th Street and Kentucky Avenue right of way for the purpose of addressing the existing building structure, emergency egress, and adding a sun shade. REFER TO CITY PLAN COMMISSION

25. R. O. No. 120-22-23 by City Clerk submitting a notice of claim and claim on behalf of Jamie Haack, by her attorneys, Diane M. Welsh and Eduardo E. Castro of Pines Bach LLP, for alleged damages. REFER TO FINANCE AND PERSONNEL COMMITTEE

26. R. O. No. 119-22-23 by City Clerk submitting a notice of claim and claim on behalf of Alexandra Guevara, by her attorneys, Diane M. Welsh and Eduardo E. Castro of Pines Bach LLP, for alleged damages. REFER TO FINANCE AND PERSONNEL COMMITTEE

27. R. O. No. 121-22-23 by City Clerk submitting various license applications. REFER TO LICENSING, HEARINGS, AND PUBLIC SAFETY COMMITTEE

RESOLUTIONS

28. Res. No. 148-22-23 by Alderpersons Felde and Filicky-Peneski authorizing the appropriate City officials to execute a License Agreement and Addendum with the Sheboygan County Register of Deeds regarding

online access to real estate records maintained in the Register of Deeds office. SUSPEND THE RULES AND ADOPT THE RESOLUTION

29. Res. No. 152-22-23 by alderpersons Felde and Filicky-Peneski ordering a hearing on the vacation and discontinuance of the east-west alley between South 10th Street and the former South Commerce Street, located in Block 243 of the Original Plat. SUSPEND THE RULES AND ADOPT THE RESOLUTION

30. Res. No. 154-22-23 by Alderpersons Felde and Filicky-Peneski vacating the east-west alley between South 10th Street and the former South Commerce Street, located in Block 243 of the Original Plat. REFER TO CITY PLAN COMMISSION

31. Res. No. 149-22-33 by Alderpersons Mitchell and Filicky-Peneski authorizing the Director of Public Works to issue purchase orders for the purchase of six mobile column hoists at the Municipal Services Building and authorizing an adjustment to the 2023 budget to fund the unanticipated purchase. REFER TO FINANCE AND PERSONNEL COMMITTEEE

32. Res. No. 143-22-23 by Alderpersons Mitchell and Filicky-Peneski confirming the exercise of police power in making an assessment for the benefited properties against which assessments are proposed for Parking Assessment District No. 1. REFER TO FINANCE AND PERSONNEL COMMITTEE

33. Res. No. 144-22-23 by Alderpersons Mitchell and Filicky-Peneski confirming the exercise of police power in making an assessment for the benefited properties against which assessments are proposed for Parking Assessment District No. 2. REFER TO FINANCE AND PERSONNEL COMMITTEE

34. Res. No. 145-22-23 by Alderpersons Mitchell and Filicky-Peneski confirming the exercise of police power in making an assessment for the benefited properties against which assessments are proposed for Parking Assessment District No. 4. REFER TO FINANCE AND PERSONNEL COMMITTEE

35. Res. No. 146-22-23 by Alderpersons Mitchell and Filicky-Peneski confirming the exercise of police power in making an assessment for the benefited properties against which assessments are proposed for Parking Assessment District No. 5. REFER TO FINANCE AND PERSONNEL COMMITTEE

36. Res. No. 147-22-23 by Alderpersons Dekker and Rust authorizing executing a one-year lease for the agricultural property in the City of Sheboygan formerly owned by John Poth, Jr. REFER TO PUBLIC WORKS COMMITTEE

37. Res. No. 150-22-23 by Alderpersons Dekker and Rust authorizing the appropriate City officials to enter into a contract with Klunck Masonry LLC for the 2023 Sidewalk Program. REFER TO PUBLIC WORKS COMMITTEE

38. Res. No. 151-22-23 by Alderpersons Dekker and Rust authorizing the appropriate City officials to enter into a contract with Buteyn-Peterson Construction Company for miscellaneous sewer repairs. REFER TO PUBLIC WORKS COMMITTEE

39. Res. No. 153-22-23 by Alderpersons Mitchell and Filicky-Peneski appointing the chairperson of the Finance and Personnel Committee to take certain actions and exercise certain authority of the common council as has been delegated to the city administrator during the current vacancy in the position of city administrator. REFER TO FINANCE AND PERSONNEL COMMITTEE

REPORT OF COMMITTEES

GENERAL ORDINANCES

40. Gen. Ord. No. 29-22-23 by Alderperson Perrella granting Sheboygan Self Storage, LLC, its successors and assigns, the privilege of encroaching upon described portions of South 13th Street and Kentucky Avenue right of way in the City of Sheboygan for the purpose of addressing the existing building structure, emergency egress, and adding a sun shade feature. REFER TO CITY PLAN COMMISSION

OTHER MATTERS AUTHORIZED BY LAW

41. Res. No. 155-22-23 by Alderpersons Dekker and Rust authorizing the appropriate City officials to enter into a contract with Vinton Construction Company for the construction of the Calumet Drive Pavement Repair. REFER TO PUBLIC WORKS COMMITTEE

ADJOURN MEETING

42. Motion to Adjourn

In compliance with Wisconsin's Open Meetings Law, this agenda was posted in the following locations more than 24 hours prior to the time of the meeting:

City Hall • Mead Public Library
Sheboygan County Administration Building • City's website

CITY OF SHEBOYGAN

TWENTY-SECOND REGULAR COMMON COUNCIL MEETING MINUTES

Monday, February 20, 2023

OPENING OF MEETING

1. **Roll Call**
   Alderpersons Present: Ackley, Dekker, Felde, Filicky-Peneski, Heidemann, Mitchell, Perrella, Ramey, Rust, and Salazar – 10.

2. **Approval of Minutes**
   Twenty-First Regular Council Meeting held on February 6, 2023

   MOTION TO APPROVE MINUTES FROM THE TWENTY-FIRST REGULAR COUNCIL MEETING
   Motion made by Felde, Seconded by Filicky-Peneski.
   Voting Yea: Ackley, Dekker, Felde, Filicky-Peneski, Heidemann, Mitchell, Perrella, Ramey, Rust, Salazar – 10.

3. **Pledge of Allegiance**

4. **Resignations**
   William Campos from the Sheboygan Sustainability Task Force
   Travis Gross from the Historic Preservation Commission
   Carolynn Lee from the Historic Preservation Commission

   MOTION TO ACCEPT AND FILE
   Motion made by Felde, Seconded by Filicky-Peneski.
   Voting Yea: Ackley, Dekker, Felde, Filicky-Peneski, Heidemann, Mitchell, Perrella, Ramey, Rust, Salazar – 10.

5. **Public Forum**
   Limit of five people having five minutes each with comments limited to items on this agenda.
   Russ Otten, Aaron Guenther, and Josh Fick spoke.

6. **Presentation**
   State of the City by Mayor Ryan Sorenson

7. **Mayor's Announcements**
   Upcoming Community Events, Proclamations, Employee Recognitions – No announcements.

HEARINGS

8. Hearing No. 2-22-23 pursuant to a notice published and personal notices sent by the City Clerk, the hearing scheduled this evening is to amend the City's Future Land Use Map of the Sheboygan Comprehensive Plan to change the Land Use Classification of property located off of

N. 15th Street and Martin Avenue from Class Neighborhood Preservation to Class Multi-Fam Residential Classification.

Janel Kunert, Scott Schaefer, and Traci Maertz all spoke.
MOTION TO CLOSE HEARING
Motion made by Felde, Seconded by Filicky-Peneski.
Voting Yea: Ackley, Dekker, Felde, Filicky-Peneski, Heidemann, Mitchell, Perrella, Ramey, Rust, Salazar – 10.

9. Hearing No. 3-22-23 pursuant to a notice published and personal notices sent by the City Clerk, the hearing scheduled this evening is to amend the City of Sheboygan Official Zoning Map to change the Use Classification of property located off of N. 15th Street and Martin Avenue from Class Urban Commercial (UC) to Class Urban Residential (UR-12) Classification.

MOTION TO CLOSE HEARING
Motion made by Felde, Seconded by Filicky-Peneski.
Voting Yea: Ackley, Dekker, Felde, Filicky-Peneski, Heidemann, Mitchell, Perrella, Ramey, Rust, Salazar – 10.

CONSENT

10. Motion to Receive and File all R.O.'s, Receive all R.C.'s and Adopt all Resolutions and Ordinances

Motion made by Felde, Seconded by Filicky-Peneski.
Voting Yea: Ackley, Dekker, Felde, Filicky-Peneski, Heidemann, Mitchell, Perrella, Ramey, Rust, Salazar – 10.

11. R. O. No. 105-22-23 by Board of License Examiners submitting applications for Building Contractor Licenses already granted.

MOTION TO ACCEPT AND FILE
Motion made by Felde, Seconded by Filicky-Peneski.
Voting Yea: Ackley, Dekker, Felde, Filicky-Peneski, Heidemann, Mitchell, Perrella, Ramey, Rust, Salazar – 10.

12. R. C. No. 170-22-23 by Public Works Committee to whom was referred Res. No. 132-22-23 by Alderpersons Dekker and Rust authorizing the appropriate City officials to enter into a contract with JT Engineering, Inc. for design services related to the Taylor Drive and Wilgus Avenue intersection; recommends adopting the Resolution.

MOTION TO RECEIVE THE R. C. AND ADOPT THE RESOLUTION
Motion made by Felde, Seconded by Filicky-Peneski.
Voting Yea: Ackley, Dekker, Felde, Filicky-Peneski, Heidemann, Mitchell, Perrella, Ramey, Rust, Salazar – 10.

13. R. C. No. 171-22-23 by Licensing, Hearings, and Public Safety Committee to whom was referr R. O. No. 103-22-23 by City Clerk submitting various license applications; recommends granting the application contingent on correcting the premises description.

    MOTION TO RECEIVE THE R. C. AND GRANT THE APPLICATION CONTINGENT ON CORRECTING THE PREMISES DESCRIPTION
    Motion made by Felde, Seconded by Filicky-Peneski.
    Voting Yea: Ackley, Dekker, Felde, Filicky-Peneski, Heidemann, Mitchell, Perrella, Ramey, Rust, Salazar – 10.

REPORT OF OFFICERS

14. R. O. No. 104-22-23 by City Clerk submitting a Summons and Complaint in the matter of Todd Wolf v. City of Sheboygan et al. REFER TO FINANCE AND PERSONNEL COMMITTEE

15. R. O. No. 107-22-23 by City Clerk submitting an application from Froedtert Health, Inc. for a change in zoning classification for property off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel No. 59281631481 (Lot 1) from Suburban Residential (SR-5) to Urban Residential (UR-12) Classification. REFER TO CITY PLAN COMMISSION

16. R. O. No. 108-22-23 by City Clerk submitting an application from Froedtert Health, Inc. for a change in zoning classification for property off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel No. 59281631481 (Lot 2) from Suburban Residential (SR-5) to Suburban Office (SO) Classification. REFER TO CITY PLAN COMMISSION

17. R. O. No. 109-22-23 by City Clerk submitting an application from Froedtert Health, Inc. for a change in zoning classification for property off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel No. 59281631481 (Lot 3) from Suburban Residential (SR-5) to Urban Residential (UR-12) Classification. REFER TO CITY PLAN COMMISSION

18. R. O. No. 106-22-23 by City Clerk submitting a claim from Mary Goebel for alleged injuries that occurred when she tripped over a pipe sticking out of the ground on S. 21st Street. REFER TO FINANCE AND PERSONNEL COMMITTEE

19. R. O. No. 110-22-23 by City Clerk submitting various license applications. REFER TO LICENSING, HEARINGS, AND PUBLIC SAFETY

RESOLUTIONS

20. Res. No. 134-22-23 by Alderpersons Felde and Filicky-Peneski authorizing retaining outside legal counsel in the matter of Todd Wolf v. City of Sheboygan, et al., and authorizing payment for said services.

    REQUEST TO SUSPEND THE RULES AND MOTION TO ADOPT THE RESOLUTION
    Motion made by Felde, Seconded by Dekker.
    Voting Yea: Ackley, Dekker, Felde, Filicky-Peneski, Heidemann, Mitchell, Perrella, Ramey, Rust, Salazar – 10.

21. Res. No. 135-22-23 by Alderpersons Felde and Filicky-Peneski authorizing entering into an Amendment to the Development Agreement between Cardinal Capital Development, LLC, CCM-Press Owner, LLC, Sheboygan Press, LLC, and the City of Sheboygan regarding redevelopment of the former Sheboygan Press Building at 632 Center Avenue.

    REQUEST TO SUSPEND THE RULES
    Request made by Felde, objected to by Filicky-Peneski.
    Voting Yea to suspend: Ackley, Dekker, Felde, Heidemann, Mitchell, Perrella, Ramey, Rust, Salazar – 9.
    Voting Nay: Filicky-Peneski – 1.
    MOTION TO ADOPT THE RESOLUTION
    Motion made by Felde, Seconded by Filicky-Peneski.
    Voting Yea: Ackley, Dekker, Felde, Filicky-Peneski, Heidemann, Mitchell, Perrella, Ramey, Rust, Salazar – 10.

22. Res. No. 133-22-23 by Alderpersons Mitchell and Filicky-Peneski authorizing the purchase of 1214 South 11th Street to assist in infrastructure development for the City. REFER TO FINANCE AND PERSONNEL COMMITTEE

23. Res. No. 136-22-23 by Alderperson Dekker adopting the City of Sheboygan 2023-2028 Strategic Plan. REFER TO COMMITTEE OF THE WHOLE

24. Res. No. 142-22-23 by Alderpersons Mitchell and Filicky-Peneski terminating the City of Sheboygan Tax Incremental District (TID) No. 15 (Pick N Save-Southside) and authorizing the Finance Director to distribute excess increment to overlying taxing districts. REFER TO FINANCE AND PERSONNEL COMMITTEE

25. Res. No. 141-22-23 by Alderpersons Mitchell and Filicky-Peneski terminating the City of Sheboygan Tax Incremental District (TID) No. 14 (Taylor Drive) and authorizing the Finance Director to distribute excess increment to overlying taxing districts. REFER TO FINANCE AND PERSONNEL COMMITTEE

26. Res. No. 140-22-23 by Alderpersons Mitchell and Filicky-Peneski terminating the City of Sheboygan Tax Incremental District (TID) No. 13 (Landmark Square/Founders Club) and authorizing the Finance Director to distribute excess increment to overlying taxing districts. REFER TO FINANCE AND PERSONNEL COMMITTEE

27. Res. No. 139-22-23 by Alderpersons Mitchell and Filicky-Peneski terminating the City of Sheboygan Tax Incremental District (TID) No. 12 (Niagara Avenue) and authorizing the Finance Director to distribute excess increment to overlying taxing districts. REFER TO FINANCE AND PERSONNEL COMMITTEE

28. Res. No. 138-22-23 by Alderpersons Mitchell and Filicky-Peneski terminating the City of Sheboygan Tax Incremental District (TID) No. 10 (Water Street Neighborhood) and authorizing the Finance Director to distribute excess increment to overlying taxing districts. REFER TO FINANCE AND PERSONNEL COMMITTEE

29. Res. No. 137-22-23 by Alderpersons Mitchell and Filicky-Peneski terminating the City of Sheboygan Tax Incremental District (TID) No. 6 (South Pier/Lakefront District) and authorizing the Finance Director to distribute excess increment to overlying taxing districts. REFER TO FINANCE AND PERSONNEL COMMITTEE

REPORT OF COMMITTEES

30. R. C. No. 169-22-23 by Finance and Personnel Committee to whom was referred Gen. Ord. No. 20-22-23 by Alderpersons Mitchell and Felde re-establishing the salaries of Election Officials; recommends adopting the Ordinance.

    MOTION TO RECEIVE THE R. C. AND ADOPT THE ORDINANCE
    Motion by Mitchell, Seconded by Filicky-Peneski.
    Voting Yea: Ackley, Dekker, Felde, Filicky-Peneski, Heidemann, Mitchell, Perrella, Ramey, Rust, Salazar – 10.

GENERAL ORDINANCES

31. Gen. Ord. No. 21-22-23 by Alderperson Felde amending the City's Future Land Use Map of the Sheboygan Comprehensive Plan to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue – Parcel #59281631481 (Lot 1) from Public Parks and Open Space to Multi-Family Residential Classification. REFER TO CITY PLAN COMMISSION

32. Gen. Ord. No. 22-22-23 by Alderperson Felde amending the City's Future Land Use Map of the Sheboygan Comprehensive Plan to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue – Parcel #59281631481 (Lot 2) from Public Parks and Open Space to Institutional and Community Facilities Classification. REFER TO CITY PLAN COMMISSION

33. Gen. Ord. No. 23-22-23 by Alderperson Felde amending the City's Future Land Use Map of the Sheboygan Comprehensive Plan to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue – Parcel #59281631481 (Lot 3) from Public Parks and Open Space to Multi-Family Residential Classification. REFER TO CITY PLAN COMMISSION

34. Gen. Ord. No. 24-22-23 by Alderperson Felde amending the City of Sheboygan Official Zoning Map of the Sheboygan Zoning Ordinance to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue – Parcel #59281631481 (Lot 1) from Suburban Residential (SR-5) to Urban Residential (UR-12) Classification. REFER TO CITY PLAN COMMISSION

35. Gen. Ord. No. 25-22-23 by Alderperson Felde amending the City of Sheboygan Official Zoning Map of the Sheboygan Zoning Ordinance to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue – Parcel #59281631481 (Lot 2) from Suburban Residential (SR-5) to Suburban Office (SO) Classification. REFER TO CITY PLAN COMMISSION

36. Gen. Ord. No. 26-22-23 by Alderperson Felde amending the City of Sheboygan Official Zoning Map of the Sheboygan Zoning Ordinance to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue – Parcel #59281631481 (Lot 3) from Suburban Residential (SR-5) to Urban Residential (UR-12) Classification. REFER TO CITY PLAN COMMISSION

37. Gen. Ord. No. 27-22-23 by Alderperson Mitchell amending Section 15.207 of the City of Sheboygan Zoning Ordinance, Nonconforming Use Regulations, and Section 15.934, Zoning Board of Appeals, so as to streamline and expedite the process of reviewing nonconforming use applications. REFER TO CITY PLAN COMMISSION

38. Gen. Ord. No. 28-22-23 by Alderpersons Mitchell and Filicky-Peneski amending the process for preparation and approval of the City's Executive Budget contained in Sections 2-903 and 2-905 of the Municipal Code. REFER TO FINANCE AND PERSONNEL COMMITTEE

MATTERS LAID OVER

39. R. O. No. 100-22-23 by City Plan Commission to whom was referred Gen. Ord. No. 17-22-23 by Alderperson Filicky-Peneski amending the City's Future Land Use Map of the Sheboygan Comprehensive Plan to change the Use District Classification for property located off of N. 15th Street and Martin Avenue – Parcel #59281718350, Parcel #59281712950 and Parcel #59281712930 from Class Neighborhood Preservation to Multi-Family Residential; recommends adopting the Ordinance.

    MOTION TO RECEIVE AND FILE THE R. O. AND ADOPT THE ORDINANCE
    Motion by Filicky-Peneski, Seconded by Mitchell.
    Voting Yea: Ackley, Dekker, Felde, Filicky-Peneski, Heidemann, Mitchell, Perrella, Ramey, Rust, Salazar – 10.

40. R. O. No. 99-22-23 by City Plan Commission to whom was referred Gen. Ord. No. 18-22-23 by Alderperson Filicky-Peneski and R. O. No. 95-22-23 by City Clerk submitting an application from the City of Sheboygan to amend the City of Sheboygan Official Zoning Map of the Sheboygan Zoning Ordinance to change the Use District Classification for property located off of N. 15th Street and Martin Avenue – Parcel #59281718350, Parcel #59281712950 and Parcel #59281712930 from Class Urban Commercial (UC) to Urban Residential (UR-12) Classification; recommends filing the R. O. and adopting the Ordinance.

    MOTION TO RECEIVE AND FILE THE R. O. AND ADOPT THE ORDINANCE
    Motion by Filicky-Peneski, Seconded by Mitchell.
    Voting Yea: Ackley, Dekker, Felde, Filicky-Peneski, Heidemann, Mitchell, Perrella, Ramey, Rust, Salazar – 10.

OTHER MATTERS AUTHORIZED BY LAW – none.

ADJOURN MEETING

41. Motion to Adjourn

MOTION TO ADJOURN AT 6:59 PM
Motion by Felde, Seconded by Filicky-Peneski
Voting Yea: Ackley, Dekker, Felde, Filicky-Peneski, Heidemann, Mitchell, Perrella, Ramey, Rust, Salazar – 10.

VIII

R. C. No. 172 - 22 - 23. By FINANCE AND PERSONNEL COMMITTEE. March 6, 2023.

Your Committee to whom was referred Res. No. 133-22-23 by Alderpersons Mitchell and Filicky-Peneski authorizing the purchase of 1214 South 11th Street to assist in infrastructure development for the City; recommends adopting the Resolution.

_____ _____

_____ _____

_____ _____

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated_____ 20____. _____, City Clerk

Approved_____ 20____. _____, Mayor

III

32

Res. No. 133 - 22 - 23. By Alderpersons Mitchell and Filicky-Peneski.
February 20, 2023.

A RESOLUTION authorizing the purchase of 1214 South 11th Street to assist in infrastructure development for the City.

RESOLVED: That the City of Sheboygan hereby approves the terms and conditions of the attached Residential Offer to Purchase between the City of Sheboygan and Brian Scheele, thereby authorizing the purchase of the property and removing the contingency for Common Council approval found at line 545 of the Residential Offer to Purchase.

BE IT FURTHER RESOLVED: That the Mayor and City Clerk are hereby authorized to sign all necessary documents on behalf of the City of Sheboygan to purchase the property.

FHP

R Filicky-Peneski

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

WB-11 RESIDENTIAL OFFER TO PURCHASE

LICENSEE DRAFTING THIS OFFER ON February 2, 2023 [DATE] IS (AGENT OF BUYER) ~~(AGENT OF SELLER/LISTING FIRM) (AGENT OF BUYER AND SELLER)~~ ~~STRIKE THOSE NOT APPLICABLE~~

The Buyer, City of Sheboygan,
offers to purchase the Property known as [Street Address] 1214 South 11th Street
_____
in the City of Sheboygan, County
of Sheboygan Wisconsin (insert additional description, if any, at lines 543-551 or
in an addendum per line 573), on the following terms:

PURCHASE PRICE The purchase price is One Hundred Sixty-seven Thousand Six Hundred Thirty and 00/100
_____ Dollars ($ 167,630.00).

INCLUDED IN PURCHASE PRICE Included in purchase price is the Property, all Fixtures on the Property as of the date stated on line 1 of this Offer (unless excluded at lines 20-23), and the following additional items: N/A
_____
_____
_____
_____.

NOTE: The terms of this Offer, not the listing contract or marketing materials, determine what items are included or not included.

NOT INCLUDED IN PURCHASE PRICE Not included in purchase price is Seller's personal property (unless included at lines 12-16) and the following: N/A
_____
_____
_____.

CAUTION: Identify Fixtures that are on the Property (see lines 26-36) to be excluded by Seller or that are rented (e.g., water softeners or other water treatment systems, LP tanks, etc.) and will continue to be owned by the lessor.
"Fixture" is defined as an item of property which is physically attached to or so closely associated with land, buildings or improvements so as to be treated as part of the real estate, including, without limitation, physically attached items not easily removable without damage to the premises, items specifically adapted to the premises and items customarily treated as fixtures, including, but not limited to, all: garden bulbs; plants; shrubs and trees; screen and storm doors and windows; electric lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central heating and cooling units and attached equipment; water heaters, water softeners and treatment systems; sump pumps; attached or fitted floor coverings; awnings; attached antennas and satellite dishes (but not the component parts); audio/visual wall mounting brackets (but not the audio/visual equipment); garage door openers and remote controls; installed security systems; central vacuum systems and accessories; in-ground sprinkler systems and component parts; built-in appliances; ceiling fans; fences; in-ground pet containment systems, including receiver components; storage buildings on permanent foundations and docks/piers on permanent foundations.
CAUTION: Exclude any Fixtures to be retained by Seller or that are rented (e.g., water softeners or other water treatment systems, LP tanks, etc.) on lines 20-23 or at lines 543-551 or in an addendum per line 573).

BINDING ACCEPTANCE This Offer is binding upon both Parties only if a copy of the accepted Offer is delivered to Buyer on or before February 16, 2023. Seller may keep the Property on the market and accept secondary offers after binding acceptance of this Offer.
CAUTION: This Offer may be withdrawn prior to delivery of the accepted Offer.

ACCEPTANCE Acceptance occurs when all Buyers and Sellers have signed one copy of the Offer, or separate but identical copies of the Offer.
CAUTION: Deadlines in the Offer are commonly calculated from acceptance. Consider whether short term Deadlines running from acceptance provide adequate time for both binding acceptance and performance.

CLOSING This transaction is to be closed on no later than July 1, 2023
_____ at the place selected by Seller, unless otherwise agreed by the Parties in writing. If the date for closing falls on Saturday, Sunday, or a federal or a state holiday, the closing date shall be the next Business Day.
CAUTION: To reduce the risk of wire transfer fraud, any wiring instructions received should be independently verified by phone or in person with the title company, financial institution, or entity directing the transfer. The real estate licensees in this transaction are not responsible for the transmission or forwarding of any wiring or money transfer instructions.

EARNEST MONEY

■ EARNEST MONEY of $ _____ accompanies this Offer.
If Offer was drafted by a licensee, receipt of the earnest money accompanying this Offer is acknowledged.
■ EARNEST MONEY of $ _____ will be mailed, or commercially, electronically or personally delivered within _____ days ("5" if left blank) after acceptance.
All earnest money shall be delivered to and held by (listing Firm) (drafting Firm) (other identified as _____ Seller _____) STRIKE THOSE NOT APPLICABLE (listing Firm if none chosen; if no listing Firm, then drafting Firm; if no Firm then Seller).
CAUTION: If a Firm does not hold earnest money, an escrow agreement should be drafted by the Parties or an attorney as lines 67-87 do not apply. If someone other than Buyer pays earnest money, consider a special disbursement agreement.
■ THE BALANCE OF PURCHASE PRICE will be paid in cash or equivalent at closing unless otherwise agreed in writing.
■ DISBURSEMENT IF EARNEST MONEY HELD BY A FIRM: If negotiations do not result in an accepted offer and the earnest money is held by a Firm, the earnest money shall be promptly disbursed (after clearance from payer's depository institution if earnest money is paid by check) to the person(s) who paid the earnest money. At closing, earnest money shall be disbursed according to the closing statement. If this Offer does not close, the earnest money shall be disbursed according to a written disbursement agreement signed by all Parties to this Offer. If said disbursement agreement has not been delivered to the Firm holding the earnest money within 60 days after the date set for closing, that Firm may disburse the earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer or Seller; (2) into a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order; (4) upon authorization granted within this Offer; or (5) any other disbursement required or allowed by law. The Firm may retain legal services to direct disbursement per (1) or to file an interpleader action per (2) and the Firm may deduct from the earnest money any costs and reasonable attorneys' fees, not to exceed $250, prior to disbursement.
■ LEGAL RIGHTS/ACTION: The Firm's disbursement of earnest money does not determine the legal rights of the Parties in relation to this Offer. Buyer's or Seller's legal right to earnest money cannot be determined by the Firm holding the earnest money. At least 30 days prior to disbursement per (1), (4) or (5) above, where the Firm has knowledge that either Party disagrees with the disbursement, the Firm shall send Buyer and Seller written notice of the intent to disburse by certified mail. If Buyer or Seller disagrees with the Firm's proposed disbursement, a lawsuit may be filed to obtain a court order regarding disbursement. Small Claims Court has jurisdiction over all earnest money disputes arising out of the sale of residential property with one-to-four dwelling units. Buyer and Seller should consider consulting attorneys regarding their legal rights under this Offer in case of a dispute. Both Parties agree to hold the Firm harmless from any liability for good faith disbursement of earnest money in accordance with this Offer or applicable Department of Safety and Professional Services regulations concerning earnest money. See Wis. Admin. Code Ch. REEB 18.

TIME IS OF THE ESSENCE "Time is of the Essence" as to: (1) earnest money payment(s); (2) binding acceptance; (3) occupancy; (4) date of closing; (5) contingency Deadlines STRIKE AS APPLICABLE and all other dates and Deadlines in this Offer except: _____ _____. If "Time is of the Essence" applies to a date or Deadline, failure to perform by the exact date or Deadline is a breach of contract. If "Time is of the Essence" does not apply to a date or Deadline, then performance within a reasonable time of the date or Deadline is allowed before a breach occurs.

REAL ESTATE CONDITION REPORT Wisconsin law requires owners of property that includes one-to-four dwelling units to provide Buyers with a Real Estate Condition Report. Excluded from this requirement are sales of property that has never been inhabited, sales exempt from the real estate transfer fee, and sales by certain court-appointed fiduciaries, (for example, personal representatives who have never occupied the Property). The form of the Report is found in Wis. Stat. § 709.03. The law provides: "§ 709.02 Disclosure . . . the owner of the property shall furnish, not later than 10 days after acceptance of the contract of sale . . ., to the prospective Buyer of the property a completed copy of the report . . . A prospective Buyer who does not receive a report within the 10 days may, within two business days after the end of that 10-day period, rescind the contract of sale . . . by delivering a written notice of rescission to the owner or the owner's agent." Buyer may also have certain rescission rights if a Real Estate Condition Report disclosing defects is furnished before expiration of the 10 days, but after the Offer is submitted to Seller. Buyer should review the report form or consult with an attorney for additional information regarding rescission rights.

PROPERTY CONDITION REPRESENTATIONS Seller represents to Buyer that as of the date of acceptance Seller has no notice or knowledge of Conditions Affecting the Property or Transaction (lines 112-177) other than those identified in Seller's Real Estate Condition Report dated _____, which was received by Buyer prior to Buyer signing this Offer and which is made a part of this Offer by reference COMPLETE DATE OR STRIKE AS APPLICABLE and _____ _____ _____ INSERT CONDITIONS NOT ALREADY INCLUDED IN THE CONDITION REPORT
"Conditions Affecting the Property or Transaction" are defined to include:
a. Defects in the roof, basement or foundation (including cracks, seepage and bulges), electrical system, or part of the plumbing system (including the water heater, water softener and swimming pool); or basement, window, or plumbing leaks;

~~overflow from sinks, bathtubs, or sewers; or other water or moisture intrusions or conditions.~~

b. Defects in heating and air conditioning system (including the air filters and humidifiers); in a wood burning stove or fireplace; or caused by a fire in a stove or fireplace or elsewhere on the Property.

c. Defects related to smoke detectors or carbon monoxide detectors, or a violation of applicable state or local smoke detector or carbon monoxide detector laws.

d. Defects in any structure, or mechanical equipment included as Fixtures or personal property.

e. Rented items located on the Property such as a water softener or other water conditioner system.

f. Defects caused by unsafe concentrations of, or unsafe conditions on the Property relating to radon, radium in water supplies, lead in paint, soil or water supplies, unsafe levels of mold, asbestos or asbestos-containing materials or other potentially hazardous or toxic substances on the Property; manufacture of methamphetamine or other hazardous or toxic substances on the Property; or high voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the Property.

NOTE: Specific federal lead paint disclosure requirements must be complied with in the sale of most residential properties built before 1978.

g. Defects caused by unsafe concentrations of, unsafe conditions relating to, or the storage of, hazardous or toxic substances on neighboring properties.

h. The Property is served by a joint well; Defects related to a joint well serving the Property; or Defects in a well on the Property or in a well that serves the Property, including unsafe well water.

i. A septic system or other private sanitary disposal system serves the Property; Defects in the septic system or other sanitary disposal system on the Property; or any out-of-service septic system serving the Property not closed or abandoned according to applicable regulations.

j. Underground or aboveground fuel storage tanks on or previously located on the Property; or Defects in the underground or aboveground fuel storage tanks on or previously located on the Property. (The owner, by law, may have to register the tanks with the Department of Agriculture, Trade and Consumer Protection at P.O. Box 8911, Madison, Wisconsin, 53708, whether the tanks are in use or not. Department regulations may require closure or removal of unused tanks.)

k. "LP" tank on the Property (specify in the additional information whether the tank is owned or leased); or Defects in an "LP" tank on the Property.

l. Notice of property tax increases, other than normal annual increases, or pending Property reassessment; remodeling that may increase the Property's assessed value; pending special assessments; or Property is within a special purpose district, such as a drainage district, that has authority to impose assessments.

m. Proposed construction of a public project that may affect use of the Property; Property additions or remodeling affecting Property structure or mechanical systems during Seller's ownership without required permits; or any land division involving the Property without required state or local permits.

n. The Property is part of or subject to a subdivision homeowners' association; or the Property is not a condominium unit and there are common areas associated with the Property that are co-owned with others.

o. Any zoning code violations with respect to the Property; the Property or any portion thereof is located in a floodplain, wetland or shoreland zoning area; or the Property is subject to a shoreland mitigation plan required by Wisconsin Department of Natural Resources (DNR) rules that obligates the Property owner to establish or maintain certain measures related to shoreland conditions, enforceable by the county.

p. Nonconforming uses of the Property; conservation easements, restrictive covenants or deed restrictions on the Property; or, other than public rights of way, nonowners having rights to use part of the Property, including, but not limited to, private rights-of-way and easements other than recorded utility easements.

q. All or part of the Property has been assessed as agricultural land; has been assessed a use-value assessment conversion charge; or payment of a use-value assessment conversion charge has been deferred.

r. All or part of the Property is subject to, enrolled in, or in violation of a farmland preservation agreement, Forest Crop Law, Managed Forest Law, the Conservation Reserve Program, or a comparable program.

s. A dam is totally or partially located on the Property; or an ownership interest in a dam not located on the Property will be transferred with the Property because the dam is owned by a homeowners' association, lake district, or similar group of which the Property owner is a member.

t. No legal access to the Property; or boundary or lot line disputes, encroachments or encumbrances (including a joint driveway) affecting the Property.

u. Federal, state, or local regulations requiring repairs, alterations or corrections of an existing condition; or any insurance claims relating to damage to the Property within the last five years.

v. A pier attached to the Property not in compliance with state or local pier regulations; a written agreement affecting riparian rights related to the Property; or the bed of the abutting navigable waterway is owned by a hydroelectric operator.

w. Current or previous termite, powder-post beetle or carpenter ant infestations or Defects caused by animal, reptile, or other insect infestations.

x. Structure on the Property designated as an historic building; all or any part of the Property in an historic district; or one or more burial sites on the Property.

y. Agreements binding subsequent owners such as a lease agreement or extension of credit from an electric cooperative.

~~z. Owner is a foreign person as defined in the Foreign Investment in Real Property Tax Act in 26 IRC § 1445(f).~~

~~aa. Other Defects affecting the Property, including, without limitation, drainage easement or grading problems; or~~ excessive sliding, settling, earth movement or upheavals.

INSPECTIONS AND TESTING Buyer may only conduct inspections or tests if specific contingencies are included as a part of this Offer. An "inspection" is defined as an observation of the Property, which does not include an appraisal or testing of the Property, other than testing for leaking carbon monoxide, or testing for leaking LP gas or natural gas used as a fuel source, which are hereby authorized. A "test" is defined as the taking of samples of materials such as soils, water, air or building materials from the Property for laboratory or other analysis of these materials. Seller agrees to allow Buyer's inspectors, testers and appraisers reasonable access to the Property upon advance notice, if necessary, to satisfy the contingencies in this Offer. Buyer or licensees or both may be present at all inspections and testing. Except as otherwise provided, Seller's authorization for inspections does not authorize Buyer to conduct testing of the Property.

NOTE: Any contingency authorizing testing should specify the areas of the Property to be tested, the purpose of the test (e.g., to determine if environmental contamination is present), any limitations on Buyer's testing and any other material terms of the contingency.

Buyer agrees to promptly restore the Property to its original condition after Buyer's inspections and testing are completed unless otherwise agreed to with Seller. Buyer agrees to promptly provide copies of all inspection and testing reports to Seller. Seller acknowledges that certain inspections or tests may detect environmental pollution which may be required to ~~be reported to the Wisconsin Department of Natural Resources.~~

☐ ~~**INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines 178-192).~~

(1) This Offer is contingent upon a Wisconsin registered or Wisconsin licensed home inspector performing a home inspection of the Property after the date on line 1 of this Offer that discloses no Defects.

(2) This Offer is further contingent upon a qualified independent inspector or independent qualified third party performing an inspection of _____ _____ (list any Property component(s) to be separately inspected, e.g., swimming pool, roof, foundation, chimney, etc.) which discloses no Defects.

(3) Buyer may have follow-up inspections recommended in a written report resulting from an authorized inspection, provided they occur prior to the Deadline specified at line 206. Inspection(s) shall be performed by a qualified independent inspector or independent qualified third party.

Buyer shall order the inspection(s) and be responsible for all costs of inspection(s).

CAUTION: Buyer should provide sufficient time for the home inspection and/or any specialized inspection(s), as well as any follow-up inspection(s).

This contingency shall be deemed satisfied unless Buyer, within _____ days ("15" if left blank) after acceptance, delivers to Seller a copy of the written inspection report(s) dated after the date on line 1 of this Offer and a written notice listing the Defect(s) identified in those report(s) to which Buyer objects (Notice of Defects).

CAUTION: A proposed amendment is not a Notice of Defects and will not satisfy this notice requirement.

For the purposes of this contingency, Defects do not include structural, mechanical or other conditions the nature and extent of which Buyer had actual knowledge or written notice before signing this Offer.

NOTE: "Defect" as defined on lines 445-447 means a condition that would have a significant adverse effect on the value of the Property; that would significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life of the premises.

■ **RIGHT TO CURE:** Seller (shall)(shall not) **STRIKE ONE** ("shall" if neither is stricken) have the right to cure the Defects. If Seller has the right to cure, Seller may satisfy this contingency by:

(1) delivering written notice to Buyer within _____ ("10" if left blank) days after Buyer's delivery of the Notice of Defects stating Seller's election to cure Defects;

(2) curing the Defects in a good and workmanlike manner; and

(3) delivering to Buyer a written report detailing the work done no later than three days prior to closing.

This Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s) and:

(1) Seller does not have the right to cure; or

(2) Seller has the right to cure but:

(a) Seller delivers written notice that Seller will not cure; or

(b) Seller does not timely deliver the written notice of election to cure.

☐ **RADON TESTING CONTINGENCY:** This Offer is contingent upon Buyer obtaining a current written report of the results of a radon test at the Property performed by a qualified third party in a manner consistent with applicable Environmental Protection Agency (EPA) and Wisconsin Department of Health Services (DHS) protocols and standards indicating an EPA average radon level of less than 4.0 picoCuries per liter (pCi/L), at (Buyer's) (Seller's) **STRIKE ONE** ("Buyer's" if neither is stricken) expense.

This contingency shall be deemed satisfied unless Buyer, within _____ days ("20" if left blank) after acceptance delivers ~~to Seller a written copy of the radon test results indicating a radon level of 4.0 pCi or higher and written notice objecting to the radon level in the report.~~

■ ~~**RIGHT TO CURE:** Seller (shall)(shall not) **STRIKE ONE** ("shall" if neither is stricken) have the right to cure.~~
If Seller has the right to cure, Seller may satisfy this contingency by:
(1) delivering a written notice of Seller's election to cure within 10 days after delivery of Buyer's notice; and,
(2) installing a radon mitigation system in conformance with EPA standards in a good and workmanlike manner and by giving Buyer a report of the work done and a post remediation test report indicating a radon level of less than 4.0 pCi/L no later than three days prior to closing.
This Offer shall be null and void if Buyer timely delivers the above written notice and report to Seller and:
(1) Seller does not have the right to cure; or
(2) Seller has the right to cure but:
(a) Seller delivers written notice that Seller will not cure; or
(b) Seller does not timely deliver the notice of election to cure.
NOTE: For radon information refer to the EPA at epa.gov/radon or the DHS at dhs.wisconsin.gov/radon.

IF LINE 248 IS NOT MARKED OR IS MARKED N/A LINES 296-307 APPLY.

☐ **FINANCING COMMITMENT CONTINGENCY:** This Offer is contingent upon Buyer being able to obtain a written _____ [loan type or specific lender, if any] first mortgage loan commitment as described below, within _____ days after acceptance of this Offer. The financing selected shall be in an amount of not less than $ _____ for a term of not less than _____ years, amortized over not less than _____ years. Initial monthly payments of principal and interest shall not exceed $ _____. Buyer acknowledges that lender's required monthly payments may also include 1/12th of the estimated net annual real estate taxes, hazard insurance premiums, and private mortgage insurance premiums. The mortgage shall not include a prepayment premium. Buyer agrees to pay discount points in an amount not to exceed _____% ("0" if left blank) of the loan. If Buyer is using multiple loan sources or obtaining a construction loan or land contract financing, describe at lines 543-551 or in an addendum attached per line 573. Buyer agrees to pay all customary loan and closing costs, wire fees, and loan origination fees, to promptly apply for a mortgage loan, and to provide evidence of application promptly upon request of Seller. Seller agrees to allow lender's appraiser access to the Property.
■ LOAN AMOUNT ADJUSTMENT: If the purchase price under this Offer is modified, any financed amount, unless otherwise provided, shall be adjusted to the same percentage of the purchase price as in this contingency and the monthly payments shall be adjusted as necessary to maintain the term and amortization stated above.
CHECK AND COMPLETE APPLICABLE FINANCING PROVISION AT LINE 264 or 265.
☐ **FIXED RATE FINANCING:** The annual rate of interest shall not exceed _____%.
☐ **ADJUSTABLE RATE FINANCING:** The initial interest rate shall not exceed _____%. The initial interest rate shall be fixed for _____ months, at which time the interest rate may be increased not more than _____% ("2" if left blank) at the first adjustment and by not more than _____% ("1" if left blank) at each subsequent adjustment. The maximum interest rate during the mortgage term shall not exceed the initial interest rate plus _____% ("6" if left blank). Monthly payments of principal and interest may be adjusted to reflect interest changes.
■ SATISFACTION OF FINANCING COMMITMENT CONTINGENCY: If Buyer qualifies for the loan described in this Offer or another loan acceptable to Buyer, Buyer agrees to deliver to Seller a copy of a written loan commitment.
This contingency shall be satisfied if, after Buyer's review, Buyer delivers to Seller a copy of a written loan commitment (even if subject to conditions) that is:
(1) signed by Buyer; or
(2) accompanied by Buyer's written direction for delivery.
Delivery of a loan commitment by Buyer's lender or delivery accompanied by a notice of unacceptability shall not satisfy this contingency.
CAUTION: The delivered loan commitment may contain conditions Buyer must yet satisfy to obligate the lender to provide the loan. Buyer understands delivery of a loan commitment removes the Financing Commitment Contingency from the Offer and shifts the risk to Buyer if the loan is not funded.
■ SELLER TERMINATION RIGHTS: If Buyer does not deliver a loan commitment on or before the Deadline on line 250. Seller may terminate this Offer if Seller delivers a written notice of termination to Buyer prior to Seller's Actual Receipt of written loan commitment from Buyer.
■ FINANCING COMMITMENT UNAVAILABILITY: If a financing commitment is not available on the terms stated in this Offer (and Buyer has not already delivered an acceptable loan commitment for other financing to Seller), Buyer shall promptly deliver written notice to Seller of same including copies of lender(s)' rejection letter(s) or other evidence of unavailability.
☐ **SELLER FINANCING:** Seller shall have 10 days after the earlier of:
(1) Buyer delivery of written notice of evidence of unavailability as noted in lines 284-287; or
(2) the Deadline for delivery of the loan commitment set on line 250
to deliver to Buyer written notice of Seller's decision to finance this transaction with a note and mortgage under the same terms set forth in this Offer, and this Offer shall remain in full force and effect, with the time for closing extended accordingly. If Seller's notice is not timely given, the option for Seller to provide financing shall be considered waived. Buyer agrees to ~~cooperate with and authorizes Seller to obtain any credit information reasonably appropriate to determine Buyer's credit-worthiness for Seller financing.~~

Item 7.

~~IF THIS OFFER IS NOT CONTINGENT ON FINANCING COMMITMENT~~ ~~Within _____ days ("7" if left blank) after~~ acceptance, Buyer shall deliver to Seller either:

(1) reasonable written verification from a financial institution or third party in control of Buyer's funds that Buyer has, at the time of verification, sufficient funds to close; or

(2) _____ [Specify documentation Buyer agrees to deliver to Seller].

If such written verification or documentation is not delivered, Seller has the right to terminate this Offer by delivering written notice to Buyer prior to Seller's Actual Receipt of a copy of Buyer's written verification. Buyer may or may not obtain mortgage financing but does not need the protection of a financing commitment contingency. Seller agrees to allow Buyer's appraiser access to the Property for purposes of an appraisal. Buyer understands and agrees that this Offer is not subject to the appraisal meeting any particular value, unless this Offer is subject to an appraisal contingency, nor does the right of access for an appraisal constitute a financing commitment contingency.

☐ **APPRAISAL CONTINGENCY:** This Offer is contingent upon Buyer or Buyer's lender having the Property appraised at Buyer's expense by a Wisconsin licensed or certified independent appraiser who issues an appraisal report dated subsequent to the date stated on line 1 of this Offer, indicating an appraised value for the Property equal to or greater than the agreed upon purchase price.

This contingency shall be deemed satisfied unless Buyer, within _____ days after acceptance, delivers to Seller a copy of the appraisal report indicating an appraised value less than the agreed upon purchase price, and a written notice objecting to the appraised value.

■ **RIGHT TO CURE:** Seller (shall) (shall not) **STRIKE ONE** ("shall" if neither is stricken) have the right to cure.

If Seller has the right to cure, Seller may satisfy this contingency by delivering written notice to Buyer adjusting the purchase price to the value shown on the appraisal report within _____ days ("5" if left blank) after Buyer's delivery of the appraisal report and the notice objecting to the appraised value. Seller and Buyer agree to promptly execute an amendment initiated by either Party after delivery of Seller's notice, solely to reflect the adjusted purchase price.

This Offer shall be null and void if Buyer makes timely delivery of the notice objecting to appraised value and the written appraisal report and:

(1) Seller does not have the right to cure; or

(2) Seller has the right to cure but:

(a) Seller delivers written notice that Seller will not adjust the purchase price; or

(b) Seller does not timely deliver the written notice adjusting the purchase price to the value shown on the appraisal report.

NOTE: An executed FHA, VA or USDA Amendatory clause may supersede this contingency.

☐ **CLOSING OF BUYER'S PROPERTY CONTINGENCY:** This Offer is contingent upon the closing of the sale of Buyer's property located at _____ no later than _____ (the Deadline). If closing does not occur by the Deadline, this Offer shall become null and void unless Buyer delivers to Seller, on or before the Deadline, reasonable written verification from a financial institution or third party in control of Buyer's funds that Buyer has, at the time of verification, sufficient funds to close or proof of bridge loan financing, along with a written notice waiving this contingency. Delivery of verification or proof of bridge loan shall not extend the closing date for this Offer.

☐ **BUMP CLAUSE:** If Seller accepts a bona fide secondary offer, Seller may give written notice to Buyer that another offer has been accepted. If Buyer does not deliver to Seller the documentation listed below within _____hours ("72" if left blank) after Buyer's Actual Receipt of said notice, this Offer shall be null and void. Buyer must deliver the following:

(1) Written waiver of the Closing of Buyer's Property Contingency if line 328 is marked;

(2) Written waiver of _____ (name other contingencies, if any); and

(3) Any of the following checked below:

☐ Proof of bridge loan financing.

☐ Proof of ability to close from a financial institution or third party in control of Buyer's funds which shall provide Seller with reasonable written verification that Buyer has, at the time of verification, sufficient funds to close.

Other:_____

_____

[insert other requirements, if any (e.g., payment of additional earnest money, etc.)]

☐ **SECONDARY OFFER:** This Offer is secondary to a prior accepted offer. This Offer shall become primary upon delivery of written notice to Buyer that this Offer is primary. Unless otherwise provided, Seller is not obligated to give Buyer notice prior to any Deadline, nor is any particular secondary buyer given the right to be made primary ahead of other secondary buyers. Buyer may declare this Offer null and void by delivering written notice of withdrawal to Seller prior to delivery of Seller's notice that this Offer is primary. Buyer may not deliver notice of withdrawal earlier than _____ days ("7" if left blank) after acceptance of this Offer. All other Offer Deadlines that run from acceptance shall run from the time this Offer becomes primary.

HOMEOWNERS ASSOCIATION If this Property is subject to a homeowners association, Buyer is aware the Property may ~~be subject to periodic association fees after closing and one-time fees resulting from transfer of the Property. Any one-time~~

~~fees resulting from transfer of the Property shall be paid at closing by (Seller) (Buyer) STRIKE ONE ("Buyer" if neither is stricken).~~

CLOSING PRORATIONS The following items, if applicable, shall be prorated at closing, based upon date of closing values: real estate taxes, rents, prepaid insurance (if assumed), private and municipal charges, property owners or homeowners association assessments, fuel and none .

CAUTION: Provide basis for utility charges, fuel or other prorations if date of closing value will not be used.

Any income, taxes or expenses shall accrue to Seller, and be prorated at closing, through the day prior to closing.

Real estate taxes shall be prorated at closing based on CHECK BOX FOR APPLICABLE PRORATION FORMULA:

[X] The net general real estate taxes for the preceding year, or the current year if available (Net general real estate taxes are defined as general property taxes after state tax credits and lottery credits are deducted). NOTE: THIS CHOICE APPLIES IF NO BOX IS CHECKED.

[ ] Current assessment times current mill rate (current means as of the date of closing).

[ ] Sale price, multiplied by the municipality area-wide percent of fair market value used by the assessor in the prior year, or current year if known, multiplied by current mill rate (current means as of the date of closing).

[ ] _____.

CAUTION: Buyer is informed that the actual real estate taxes for the year of closing and subsequent years may be substantially different than the amount used for proration especially in transactions involving new construction, extensive rehabilitation, remodeling or area-wide re-assessment. Buyer is encouraged to contact the local assessor regarding possible tax changes.

[ ] Buyer and Seller agree to re-prorate the real estate taxes, through the day prior to closing based upon the taxes on the actual tax bill for the year of closing, with Buyer and Seller each owing his or her pro-rata share. Buyer shall, within 5 days of receipt, forward a copy of the bill to the forwarding address Seller agrees to provide at closing. The Parties shall re-prorate within 30 days of Buyer's receipt of the actual tax bill. Buyer and Seller agree this is a post-closing obligation and is the responsibility of the Parties to complete, not the responsibility of the real estate Firms in this transaction.

TITLE EVIDENCE

■ CONVEYANCE OF TITLE: **Upon payment of the purchase price, Seller shall convey the Property by warranty deed (trustee's deed if Seller is a trust, personal representative's deed if Seller is an estate or other conveyance as provided herein),** free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, present uses of the Property in violation of the foregoing disclosed in Seller's Real Estate Condition Report and in this Offer, general taxes levied in the year of closing and none

_____ (insert other allowable exceptions from title, if any) that constitutes merchantable title for purposes of this transaction. Seller, at Seller's cost, shall complete and execute the documents necessary to record the conveyance and pay the Wisconsin Real Estate Transfer Fee.

WARNING: Municipal and zoning ordinances, recorded building and use restrictions, covenants and easements may prohibit certain improvements or uses and therefore should be reviewed, particularly if Buyer contemplates making improvements to Property or a use other than the current use.

■ TITLE EVIDENCE: Seller shall give evidence of title in the form of an owner's policy of title insurance in the amount of the purchase price on a current ALTA form issued by an insurer licensed to write title insurance in Wisconsin. Seller shall pay all costs of providing title evidence to Buyer. Buyer shall pay the costs of providing the title evidence required by Buyer's lender and recording the deed or other conveyance.

■ GAP ENDORSEMENT: Seller shall provide a "gap" endorsement or equivalent gap coverage at (Seller's)(Buyer's) STRIKE ONE ("Seller's" if neither stricken) cost to provide coverage for any liens or encumbrances first filed or recorded after the commitment date of the title insurance commitment and before the deed is recorded, subject to the title insurance policy conditions, exclusions and exceptions, provided the title company will issue the coverage. If a gap endorsement or equivalent gap coverage is not available, Buyer may give written notice that title is not acceptable for closing (see lines 410-415).

■ DELIVERY OF MERCHANTABLE TITLE: The required title insurance commitment shall be delivered to Buyer's attorney or Buyer not less than 5 business days before closing, showing title to the Property as of a date no more than 15 days before delivery of such title evidence to be merchantable per lines 383-391, subject only to liens that will be paid out of the proceeds of closing and standard title insurance requirements and exceptions.

■ TITLE NOT ACCEPTABLE FOR CLOSING: If title is not acceptable for closing, Buyer shall notify Seller in writing of objections to title by the time set for closing. Seller shall have a reasonable time, but not exceeding 15 days, to remove the objections, and the time for closing shall be extended as necessary for this purpose. If Seller is unable to remove said objections, Buyer shall have five days from receipt of notice thereof, to deliver written notice waiving the objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, this Offer shall be null and void. Providing title evidence acceptable for closing does not extinguish Seller's obligations to give merchantable title to Buyer.

■ SPECIAL ASSESSMENTS/OTHER EXPENSES: Special assessments, if any, levied or for work actually commenced prior to the date stated on line 1 of this Offer shall be paid by Seller no later than closing. All other special assessments

shall be paid by Buyer. "Levied" means the local municipal governing body has adopted and published a final resolution describing the planned improvements and the assessment of benefits.

CAUTION: Consider a special agreement if area assessments, property owners association assessments, special charges for current services under Wis. Stat. § 66.0627 or other expenses are contemplated. "Other expenses" are one-time charges or ongoing use fees for public improvements (other than those resulting in special assessments) relating to curb, gutter, street, sidewalk, municipal water, sanitary and storm water and storm sewer (including all sewer mains and hook-up/connection and interceptor charges), parks, street lighting and street trees, and impact fees for other public facilities, as defined in Wis. Stat. § 66.0617(1)(f).

LEASED PROPERTY ~~If Property is currently leased and lease(s) extend beyond closing, Seller shall assign Seller's rights~~ under said lease(s) and transfer all security deposits and prepaid rents ~~thereunder to Buyer at closing~~. The terms of the (written) (oral) **STRIKE ONE** lease(s), if any, are

_____

_____ ~~. Insert additional terms, if any, at lines 543-551 or attach as an addendum per line 573.~~

DEFINITIONS

■ ACTUAL RECEIPT: "Actual Receipt" means that a Party, not the Party's recipient for delivery, if any, has the document or written notice physically in the Party's possession, regardless of the method of delivery. If the document or written notice is electronically delivered, Actual Receipt shall occur when the Party opens the electronic transmission.

■ BUSINESS DAY: "Business Day" means a calendar day other than Saturday, Sunday, any legal public holiday under Wisconsin or Federal law, and any other day designated by the President such that the postal service does not receive registered mail or make regular deliveries on that day.

■ DEADLINES: "Deadlines" expressed as a number of "days" from an event, such as acceptance, are calculated by excluding the day the event occurred and by counting subsequent calendar days. The Deadline expires at Midnight on the last day. Additionally, Deadlines expressed as a specific number of Business Days are calculated in the same manner except that only Business Days are counted while other days are excluded. Deadlines expressed as a specific number of "hours" from the occurrence of an event, such as receipt of a notice, are calculated from the exact time of the event, and by counting 24 hours per calendar day. Deadlines expressed as a specific day of the calendar year or as the day of a specific event, such as closing, expire at Midnight of that day. "Midnight" is defined as 11:59 p.m. Central Time.

■ DEFECT: "Defect" means a condition that would have a significant adverse effect on the value of the Property; that would significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life of the premises.

■ FIRM: "Firm" means a licensed sole proprietor broker or a licensed broker business entity.

■ PARTY: "Party" means the Buyer or the Seller; "Parties" refers to both Buyer and Seller.

■ PROPERTY: Unless otherwise stated, "Property" means the real estate described at lines 4-8.

INCLUSION OF OPTIONAL PROVISIONS Terms of this Offer that are preceded by an OPEN BOX (☐) are part of this Offer ONLY if the box is marked such as with an "X". They are not part of this offer if marked "N/A" or are left blank.

PROPERTY DIMENSIONS AND SURVEYS Buyer acknowledges that any land, building or room dimensions, or total acreage or building square footage figures, provided to Buyer by Seller or by a Firm or its agents, may be approximate because of rounding, formulas used or other reasons, unless verified by survey or other means.

CAUTION: Buyer should verify total square footage formula, total square footage/acreage figures, and land, building or room dimensions, if material.

DISTRIBUTION OF INFORMATION Buyer and Seller authorize the agents of Buyer and Seller to: (i) distribute copies of the Offer to Buyer's lender, appraisers, title insurance companies and any other settlement service providers for the transaction as defined by the Real Estate Settlement Procedures Act (RESPA); (ii) report sales and financing concession data to multiple listing service sold databases; (iii) provide active listing, pending sale, closed sale and financing concession information and data, and related information regarding seller contributions, incentives or assistance, and third party gifts, to appraisers researching comparable sales, market conditions and listings, upon inquiry; and (iv) distribute copies of this Offer to the seller, or seller's agent, of another property that Seller intends on purchasing.

MAINTENANCE Seller shall maintain the Property and all personal property included in the purchase price until the earlier of closing or Buyer's occupancy, in materially the same condition it was in as of the date on line 1 of this Offer, except for ordinary wear and tear and changes agreed upon by Parties.

PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING If, prior to closing, the Property is damaged in an amount not more than five percent of the purchase price, other than normal wear and tear, Seller shall promptly notify Buyer in writing, and will be obligated to restore the Property to materially the same condition it was in as of the date on line 1 of this Offer. Seller shall provide Buyer with copies of all required permits and lien waivers for the lienable repairs no later than closing. If the amount of damage exceeds five percent of the purchase price, Seller shall promptly notify Buyer in writing of the damage and this Offer may be terminated at option of Buyer. Should Buyer elect to carry out this Offer despite such damage, Buyer shall be entitled to the insurance proceeds, if any, relating to the damage to the Property, plus a credit towards the purchase price equal to the amount of Seller's deductible on such policy, if any. However, if this sale is financed by a land contract or a mortgage to Seller, any insurance proceeds shall be held in trust for the sole purpose of restoring

the Property.

BUYER'S PRE-CLOSING WALK-THROUGH Within three days prior to closing, at a reasonable time pre-approved by Seller or Seller's agent, Buyer shall have the right to walk through the Property to determine that there has been no significant change in the condition of the Property, except for ordinary wear and tear and changes agreed upon by Parties, and that any defects Seller has agreed to cure have been repaired in the manner agreed to by the Parties.

OCCUPANCY Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in this Offer at lines 543-551 or in an addendum attached per line 573, or lines 426-430 if the Property is leased. At time of Buyer's occupancy, Property shall be in broom swept condition and free of all debris, refuse, and personal property except for personal property belonging to current tenants, or sold to Buyer or left with Buyer's consent. Occupancy shall be given subject to tenant's rights, if any.

DEFAULT Seller and Buyer each have the legal duty to use good faith and due diligence in completing the terms and conditions of this Offer. A material failure to perform any obligation under this Offer is a default that may subject the defaulting party to liability for damages or other legal remedies.

If Buyer defaults, Seller may:

(1) sue for specific performance and request the earnest money as partial payment of the purchase price; or

(2) terminate the Offer and have the option to: (a) request the earnest money as liquidated damages; or (b) sue for actual damages.

If Seller defaults, Buyer may:

(1) sue for specific performance; or

(2) terminate the Offer and request the return of the earnest money, sue for actual damages, or both.

In addition, the Parties may seek any other remedies available in law or equity. The Parties understand that the availability of any judicial remedy will depend upon the circumstances of the situation and the discretion of the courts. If either Party defaults, the Parties may renegotiate the Offer or seek nonjudicial dispute resolution instead of the remedies outlined above. By agreeing to binding arbitration, the Parties may lose the right to litigate in a court of law those disputes covered by the arbitration agreement.

NOTE: IF ACCEPTED, THIS OFFER CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BOTH PARTIES SHOULD READ THIS DOCUMENT CAREFULLY. THE FIRM AND ITS AGENTS MAY PROVIDE A GENERAL EXPLANATION OF THE PROVISIONS OF THE OFFER BUT ARE PROHIBITED BY LAW FROM GIVING ADVICE OR OPINIONS CONCERNING YOUR LEGAL RIGHTS UNDER THIS OFFER OR HOW TITLE SHOULD BE TAKEN AT CLOSING. AN ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS NEEDED.

ENTIRE CONTRACT This Offer, including any amendments to it, contains the entire agreement of the Buyer and Seller regarding the transaction. All prior negotiations and discussions have been merged into this Offer. This agreement binds and inures to the benefit of the Parties to this Offer and their successors in interest.

NOTICE ABOUT SEX OFFENDER REGISTRY You may obtain information about the sex offender registry and persons registered with the registry by contacting the Wisconsin Department of Corrections on the Internet at http://doc.wi.gov or by telephone at (608) 240-5830.

FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA) Section 1445 of the Internal Revenue Code (IRC) provides that a transferee (Buyer) of a United States real property interest must pay or withhold as a tax up to 15% of the total "Amount Realized" in the sale if the transferor (Seller) is a "Foreign Person" and no exception from FIRPTA withholding applies. A "Foreign Person" is a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign estate. The "Amount Realized" is the sum of the cash paid, the fair market value of other property transferred, and the amount of any liability assumed by Buyer.

CAUTION: Under this law if Seller is a Foreign Person, and Buyer does not pay or withhold the tax amount, Buyer may be held directly liable by the U.S. Internal Revenue Service for the unpaid tax and a tax lien may be placed upon the Property.

Seller hereby represents that Seller is a non-Foreign Person, unless (1) Seller represents Seller is a Foreign Person in a condition report incorporated in this Offer per lines 105-108, or (2) no later than 10 days after acceptance, Seller delivers notice to Buyer that Seller is a Foreign Person, in which cases the provisions on lines 530-532 apply.

IF SELLER IS A NON-FOREIGN PERSON. Seller shall, no later than closing, execute and deliver to Buyer, or a qualified substitute (attorney or title company as stated in IRC § 1445), a sworn certification under penalties of perjury of Seller's non-foreign status in accordance with IRC § 1445. If Seller fails to timely deliver certification of Seller's non-foreign status, Buyer shall: (1) withhold the amount required to be withheld pursuant to IRC § 1445; or, (2) declare Seller in default of this Offer and proceed under lines 494-501.

IF SELLER IS A FOREIGN PERSON. If Seller has represented that Seller is a Foreign Person, Buyer shall withhold the amount required to be withheld pursuant to IRC § 1445 at closing unless the Parties have amended this Offer regarding amounts to be withheld, any withholding exemption to be applied, or other resolution of this provision.

COMPLIANCE WITH FIRPTA. Buyer and Seller shall complete, execute, and deliver, on or before closing, any instrument, affidavit, or statement needed to comply with FIRPTA, including withholding forms. If withholding is required under IRC § 1445, and the net proceeds due Seller are not sufficient to satisfy the withholding required in this transaction, Seller shall

deliver to Buyer, at closing, the additional funds necessary to satisfy the applicable withholding requirement. Seller also shall pay to Buyer an amount not to exceed $1,000 for actual costs associated with the filing and administration of forms, affidavits, and certificates necessary for FIRPTA withholding and any withholding agent fees.

Any representations made by Seller with respect to FIRPTA shall survive the closing and delivery of the deed.

Firms, Agents, and Title Companies are not responsible for determining FIRPTA status or whether any FIRPTA exemption applies. The Parties are advised to consult with their respective independent legal counsel and tax advisors regarding FIRPTA.

ADDITIONAL PROVISIONS/CONTINGENCIES

Offer is contingent upon Common Council approval.

Offer is contingent upon an inspection of the Property conducted by City of Sheboygan personnel.

City shall pay Buyer's mortgage payments due until the date of closing. All such mortgage payments made by City shall be offset from the final purchase price.

DELIVERY OF DOCUMENTS AND WRITTEN NOTICES Unless otherwise stated in this Offer, delivery of documents and written notices to a Party shall be effective only when accomplished by one of the authorized methods specified at lines 555-570.

(1) Personal: giving the document or written notice personally to the Party, or the Party's recipient for delivery if named at line 557 or 558.

Name of Seller's recipient for delivery, if any:

Name of Buyer's recipient for delivery, if any:

[ ] (2) Fax: fax transmission of the document or written notice to the following number:

Seller: (_____) _____ Buyer: (_____) _____

[ ] (3) Commercial: depositing the document or written notice, fees prepaid or charged to an account, with a commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery, for delivery to the Party's address at line 566 or 567.

[X] (4) U.S. Mail: depositing the document or written notice, postage prepaid, in the U.S. Mail, addressed either to the Party, or to the Party's recipient for delivery, for delivery to the Party's address.

Address for Seller: 1214 South 11th Street, Sheboygan, WI 53081

Address for Buyer: 828 Center Ave., Suite 208, Sheboygan, WI 53081

[X] (5) Email: electronically transmitting the document or written notice to the email address.

Email Address for Seller: bjscheele1@gmail.com

Email Address for Buyer: chad.pelishek@sheboyganwi.gov

PERSONAL DELIVERY/ACTUAL RECEIPT Personal delivery to, or Actual Receipt by, any named Buyer or Seller constitutes personal delivery to, or Actual Receipt by, all Buyers or Sellers.

[ ] **ADDENDA:** The attached _____ is/are made part of this Offer.

This Offer was drafted by [Licensee and Firm] Assistant City Attorney Elizabeth Majerus

(x) _____

Buyer's Signature▲ Print Name Here► Date▲

(x) _____

Buyer's Signature▲ Print Name Here► Date▲

SELLER ACCEPTS THIS OFFER. THE WARRANTIES, REPRESENTATIONS AND COVENANTS MADE IN THIS OFFER SURVIVE CLOSING AND THE CONVEYANCE OF THE PROPERTY. SELLER AGREES TO CONVEY THE PROPERTY ON THE TERMS AND CONDITIONS AS SET FORTH HEREIN AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS OFFER.

(x) Brian Scheele 2-13-2022

Seller's Signature▲ Print Name Here► Brian Scheele Date▲

(x) _____

Seller's Signature▲ Print Name Here► Date▲

This Offer was presented to Seller by [Licensee and Firm] _____

_____ on _____ at _____ a.m./p.m.

This Offer is rejected _____ _____ This Offer is countered [See attached counter] _____ _____

Seller Initials▲ Date▲ Seller Initials▲ Date▲

WB-11 RESIDENTIAL OFFER TO PURCHASE

LICENSEE DRAFTING THIS OFFER ON February 2, 2023 [DATE] IS (AGENT OF BUYER) ~~(AGENT OF SELLER/LISTING FIRM) (AGENT OF BUYER AND SELLER)~~ ~~STRIKE THOSE NOT APPLICABLE~~

The Buyer, City of Sheboygan,
offers to purchase the Property known as [Street Address] 1214 South 11th Street
_____
in the City of Sheboygan, County
of Sheboygan Wisconsin (insert additional description, if any, at lines 543-551 or
in an addendum per line 573), on the following terms:

PURCHASE PRICE The purchase price is One Hundred Sixty-seven Thousand Six Hundred Thirty and 00/100
_____ Dollars ($ 167,630.00).

INCLUDED IN PURCHASE PRICE Included in purchase price is the Property, all Fixtures on the Property as of the date stated on line 1 of this Offer (unless excluded at lines 20-23), and the following additional items: N/A
_____
_____
_____
_____.

NOTE: The terms of this Offer, not the listing contract or marketing materials, determine what items are included or not included.

NOT INCLUDED IN PURCHASE PRICE Not included in purchase price is Seller's personal property (unless included at lines 12-16) and the following: N/A
_____
_____
_____.

CAUTION: Identify Fixtures that are on the Property (see lines 26-36) to be excluded by Seller or that are rented (e.g., water softeners or other water treatment systems, LP tanks, etc.) and will continue to be owned by the lessor.

"Fixture" is defined as an item of property which is physically attached to or so closely associated with land, buildings or improvements so as to be treated as part of the real estate, including, without limitation, physically attached items not easily removable without damage to the premises, items specifically adapted to the premises and items customarily treated as fixtures, including, but not limited to, all: garden bulbs; plants; shrubs and trees; screen and storm doors and windows; electric lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central heating and cooling units and attached equipment; water heaters, water softeners and treatment systems; sump pumps; attached or fitted floor coverings; awnings; attached antennas and satellite dishes (but not the component parts); audio/visual wall mounting brackets (but not the audio/visual equipment); garage door openers and remote controls; installed security systems; central vacuum systems and accessories; in-ground sprinkler systems and component parts; built-in appliances; ceiling fans; fences; in-ground pet containment systems, including receiver components; storage buildings on permanent foundations and docks/piers on permanent foundations.

CAUTION: Exclude any Fixtures to be retained by Seller or that are rented (e.g., water softeners or other water treatment systems, LP tanks, etc.) on lines 20-23 or at lines 543-551 or in an addendum per line 573).

BINDING ACCEPTANCE This Offer is binding upon both Parties only if a copy of the accepted Offer is delivered to Buyer on or before February 16, 2023. Seller may keep the Property on the market and accept secondary offers after binding acceptance of this Offer.

CAUTION: This Offer may be withdrawn prior to delivery of the accepted Offer.

ACCEPTANCE Acceptance occurs when all Buyers and Sellers have signed one copy of the Offer, or separate but identical copies of the Offer.

CAUTION: Deadlines in the Offer are commonly calculated from acceptance. Consider whether short term Deadlines running from acceptance provide adequate time for both binding acceptance and performance.

CLOSING This transaction is to be closed on no later than July 1, 2023
_____ at the place selected by Seller, unless otherwise agreed by the Parties in writing. If the date for closing falls on Saturday, Sunday, or a federal or a state holiday, the closing date shall be the next Business Day.

CAUTION: To reduce the risk of wire transfer fraud, any wiring instructions received should be independently verified by phone or in person with the title company, financial institution, or entity directing the transfer. The real estate licensees in this transaction are not responsible for the transmission or forwarding of any wiring or money transfer instructions.

EARNEST MONEY

■ EARNEST MONEY of $ _____ accompanies this Offer.
If Offer was drafted by a licensee, receipt of the earnest money accompanying this Offer is acknowledged.
■ EARNEST MONEY of $ _____ will be mailed, or commercially, electronically or personally delivered within _____ days ("5" if left blank) after acceptance.
All earnest money shall be delivered to and held by (listing Firm) (drafting Firm) (other identified as _____ Seller _____) STRIKE THOSE NOT APPLICABLE (listing Firm if none chosen; if no listing Firm, then drafting Firm; if no Firm then Seller).
CAUTION: If a Firm does not hold earnest money, an escrow agreement should be drafted by the Parties or an attorney as lines 67-87 do not apply. If someone other than Buyer pays earnest money, consider a special disbursement agreement.
■ THE BALANCE OF PURCHASE PRICE will be paid in cash or equivalent at closing unless otherwise agreed in writing.
■ DISBURSEMENT IF EARNEST MONEY HELD BY A FIRM: If negotiations do not result in an accepted offer and the earnest money is held by a Firm, the earnest money shall be promptly disbursed (after clearance from payer's depository institution if earnest money is paid by check) to the person(s) who paid the earnest money. At closing, earnest money shall be disbursed according to the closing statement. If this Offer does not close, the earnest money shall be disbursed according to a written disbursement agreement signed by all Parties to this Offer. If said disbursement agreement has not been delivered to the Firm holding the earnest money within 60 days after the date set for closing, that Firm may disburse the earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer or Seller; (2) into a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order; (4) upon authorization granted within this Offer; or (5) any other disbursement required or allowed by law. The Firm may retain legal services to direct disbursement per (1) or to file an interpleader action per (2) and the Firm may deduct from the earnest money any costs and reasonable attorneys' fees, not to exceed $250, prior to disbursement.
■ LEGAL RIGHTS/ACTION: The Firm's disbursement of earnest money does not determine the legal rights of the Parties in relation to this Offer. Buyer's or Seller's legal right to earnest money cannot be determined by the Firm holding the earnest money. At least 30 days prior to disbursement per (1), (4) or (5) above, where the Firm has knowledge that either Party disagrees with the disbursement, the Firm shall send Buyer and Seller written notice of the intent to disburse by certified mail. If Buyer or Seller disagrees with the Firm's proposed disbursement, a lawsuit may be filed to obtain a court order regarding disbursement. Small Claims Court has jurisdiction over all earnest money disputes arising out of the sale of residential property with one-to-four dwelling units. Buyer and Seller should consider consulting attorneys regarding their legal rights under this Offer in case of a dispute. Both Parties agree to hold the Firm harmless from any liability for good faith disbursement of earnest money in accordance with this Offer or applicable Department of Safety and Professional Services regulations concerning earnest money. See Wis. Admin. Code Ch. REEB 18.

TIME IS OF THE ESSENCE "Time is of the Essence" as to: (1) earnest money payment(s); (2) binding acceptance; (3) occupancy; (4) date of closing; (5) contingency Deadlines STRIKE AS APPLICABLE and all other dates and Deadlines in this Offer except: _____ _____. If "Time is of the Essence" applies to a date or Deadline, failure to perform by the exact date or Deadline is a breach of contract. If "Time is of the Essence" does not apply to a date or Deadline, then performance within a reasonable time of the date or Deadline is allowed before a breach occurs.

REAL ESTATE CONDITION REPORT Wisconsin law requires owners of property that includes one to four dwelling units to provide Buyers with a Real Estate Condition Report. Excluded from this requirement are sales of property that has never been inhabited, sales exempt from the real estate transfer fee, and sales by certain court-appointed fiduciaries, (for example, personal representatives who have never occupied the Property). The form of the Report is found in Wis. Stat. § 709.03. The law provides: "§ 709.02 Disclosure . . . the owner of the property shall furnish, not later than 10 days after acceptance of the contract of sale . . ., to the prospective Buyer of the property a completed copy of the report . . . A prospective Buyer who does not receive a report within the 10 days may, within two business days after the end of that 10-day period, rescind the contract of sale . . . by delivering a written notice of rescission to the owner or the owner's agent." Buyer may also have certain rescission rights if a Real Estate Condition Report disclosing defects is furnished before expiration of the 10 days, but after the Offer is submitted to Seller. Buyer should review the report form or consult with an attorney for additional information regarding rescission rights.

PROPERTY CONDITION REPRESENTATIONS Seller represents to Buyer that as of the date of acceptance Seller has no notice or knowledge of Conditions Affecting the Property or Transaction (lines 112-177) other than those identified in Seller's Real Estate Condition Report dated _____, which was received by Buyer prior to Buyer signing this Offer and which is made a part of this Offer by reference COMPLETE DATE OR STRIKE AS APPLICABLE and _____ _____ _____ INSERT CONDITIONS NOT ALREADY INCLUDED IN THE CONDITION REPORT
"Conditions Affecting the Property or Transaction" are defined to include:
a. Defects in the roof, basement or foundation (including cracks, seepage and bulges), electrical system, or part of the plumbing system (including the water heater, water softener and swimming pool); or basement, window, or plumbing leaks;

~~overflow from sinks, bathtubs, or sewers; or other water or moisture intrusions or conditions.~~

b. Defects in heating and air conditioning system (including the air filters and humidifiers); in a wood burning stove or fireplace; or caused by a fire in a stove or fireplace or elsewhere on the Property.

c. Defects related to smoke detectors or carbon monoxide detectors, or a violation of applicable state or local smoke detector or carbon monoxide detector laws.

d. Defects in any structure, or mechanical equipment included as Fixtures or personal property.

e. Rented items located on the Property such as a water softener or other water conditioner system.

f. Defects caused by unsafe concentrations of, or unsafe conditions on the Property relating to radon, radium in water supplies, lead in paint, soil or water supplies, unsafe levels of mold, asbestos or asbestos-containing materials or other potentially hazardous or toxic substances on the Property; manufacture of methamphetamine or other hazardous or toxic substances on the Property; or high voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the Property.

NOTE: Specific federal lead paint disclosure requirements must be complied with in the sale of most residential properties built before 1978.

g. Defects caused by unsafe concentrations of, unsafe conditions relating to, or the storage of, hazardous or toxic substances on neighboring properties.

h. The Property is served by a joint well; Defects related to a joint well serving the Property; or Defects in a well on the Property or in a well that serves the Property, including unsafe well water.

i. A septic system or other private sanitary disposal system serves the Property; Defects in the septic system or other sanitary disposal system on the Property; or any out-of-service septic system serving the Property not closed or abandoned according to applicable regulations.

j. Underground or aboveground fuel storage tanks on or previously located on the Property; or Defects in the underground or aboveground fuel storage tanks on or previously located on the Property. (The owner, by law, may have to register the tanks with the Department of Agriculture, Trade and Consumer Protection at P.O. Box 8911, Madison, Wisconsin, 53708, whether the tanks are in use or not. Department regulations may require closure or removal of unused tanks.)

k. "LP" tank on the Property (specify in the additional information whether the tank is owned or leased); or Defects in an "LP" tank on the Property.

l. Notice of property tax increases, other than normal annual increases, or pending Property reassessment; remodeling that may increase the Property's assessed value; pending special assessments; or Property is within a special purpose district, such as a drainage district, that has authority to impose assessments.

m. Proposed construction of a public project that may affect use of the Property; Property additions or remodeling affecting Property structure or mechanical systems during Seller's ownership without required permits; or any land division involving the Property without required state or local permits.

n. The Property is part of or subject to a subdivision homeowners' association; or the Property is not a condominium unit and there are common areas associated with the Property that are co-owned with others.

o. Any zoning code violations with respect to the Property; the Property or any portion thereof is located in a floodplain, wetland or shoreland zoning area; or the Property is subject to a shoreland mitigation plan required by Wisconsin Department of Natural Resources (DNR) rules that obligates the Property owner to establish or maintain certain measures related to shoreland conditions, enforceable by the county.

p. Nonconforming uses of the Property; conservation easements, restrictive covenants or deed restrictions on the Property; or, other than public rights of way, nonowners having rights to use part of the Property, including, but not limited to, private rights-of-way and easements other than recorded utility easements.

q. All or part of the Property has been assessed as agricultural land; has been assessed a use-value assessment conversion charge; or payment of a use-value assessment conversion charge has been deferred.

r. All or part of the Property is subject to, enrolled in, or in violation of a farmland preservation agreement, Forest Crop Law, Managed Forest Law, the Conservation Reserve Program, or a comparable program.

s. A dam is totally or partially located on the Property; or an ownership interest in a dam not located on the Property will be transferred with the Property because the dam is owned by a homeowners' association, lake district, or similar group of which the Property owner is a member.

t. No legal access to the Property; or boundary or lot line disputes, encroachments or encumbrances (including a joint driveway) affecting the Property.

u. Federal, state, or local regulations requiring repairs, alterations or corrections of an existing condition; or any insurance claims relating to damage to the Property within the last five years.

v. A pier attached to the Property not in compliance with state or local pier regulations; a written agreement affecting riparian rights related to the Property; or the bed of the abutting navigable waterway is owned by a hydroelectric operator.

w. Current or previous termite, powder-post beetle or carpenter ant infestations or Defects caused by animal, reptile, or other insect infestations.

x. Structure on the Property designated as an historic building; all or any part of the Property in an historic district; or one or more burial sites on the Property.

y. Agreements binding subsequent owners such as a lease agreement or extension of credit from an electric cooperative.

~~z. Owner is a foreign person as defined in the Foreign Investment in Real Property Tax Act in 26 IRC § 1445(f).~~

~~aa. Other Defects affecting the Property, including, without limitation, drainage easement or grading problems; or~~ excessive sliding, settling, earth movement or upheavals.

INSPECTIONS AND TESTING Buyer may only conduct inspections or tests if specific contingencies are included as a part of this Offer. An "inspection" is defined as an observation of the Property, which does not include an appraisal or testing of the Property, other than testing for leaking carbon monoxide, or testing for leaking LP gas or natural gas used as a fuel source, which are hereby authorized. A "test" is defined as the taking of samples of materials such as soils, water, air or building materials from the Property for laboratory or other analysis of these materials. Seller agrees to allow Buyer's inspectors, testers and appraisers reasonable access to the Property upon advance notice, if necessary, to satisfy the contingencies in this Offer. Buyer or licensees or both may be present at all inspections and testing. Except as otherwise provided, Seller's authorization for inspections does not authorize Buyer to conduct testing of the Property.

NOTE: Any contingency authorizing testing should specify the areas of the Property to be tested, the purpose of the test (e.g., to determine if environmental contamination is present), any limitations on Buyer's testing and any other material terms of the contingency.

Buyer agrees to promptly restore the Property to its original condition after Buyer's inspections and testing are completed unless otherwise agreed to with Seller. Buyer agrees to promptly provide copies of all inspection and testing reports to Seller. Seller acknowledges that certain inspections or tests may detect environmental pollution which may be required to ~~be reported to the Wisconsin Department of Natural Resources.~~

[ ] ~~**INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines 178-192).~~

(1) This Offer is contingent upon a Wisconsin registered or Wisconsin licensed home inspector performing a home inspection of the Property after the date on line 1 of this Offer that discloses no Defects.

(2) This Offer is further contingent upon a qualified independent inspector or independent qualified third party performing an inspection of _____ _____ (list any Property component(s) to be separately inspected, e.g., swimming pool, roof, foundation, chimney, etc.) which discloses no Defects.

(3) Buyer may have follow-up inspections recommended in a written report resulting from an authorized inspection, provided they occur prior to the Deadline specified at line 206. Inspection(s) shall be performed by a qualified independent inspector or independent qualified third party.

Buyer shall order the inspection(s) and be responsible for all costs of inspection(s).

CAUTION: Buyer should provide sufficient time for the home inspection and/or any specialized inspection(s), as well as any follow-up inspection(s).

This contingency shall be deemed satisfied unless Buyer, within _____ days ("15" if left blank) after acceptance, delivers to Seller a copy of the written inspection report(s) dated after the date on line 1 of this Offer and a written notice listing the Defect(s) identified in those report(s) to which Buyer objects (Notice of Defects).

CAUTION: A proposed amendment is not a Notice of Defects and will not satisfy this notice requirement.

For the purposes of this contingency, Defects do not include structural, mechanical or other conditions the nature and extent of which Buyer had actual knowledge or written notice before signing this Offer.

NOTE: "Defect" as defined on lines 445-447 means a condition that would have a significant adverse effect on the value of the Property; that would significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life of the premises.

■ **RIGHT TO CURE:** Seller (shall)(shall not) STRIKE ONE ("shall" if neither is stricken) have the right to cure the Defects. If Seller has the right to cure, Seller may satisfy this contingency by:

(1) delivering written notice to Buyer within _____ ("10" if left blank) days after Buyer's delivery of the Notice of Defects stating Seller's election to cure Defects;

(2) curing the Defects in a good and workmanlike manner; and

(3) delivering to Buyer a written report detailing the work done no later than three days prior to closing.

This Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s) and:

(1) Seller does not have the right to cure; or

(2) Seller has the right to cure but:

(a) Seller delivers written notice that Seller will not cure; or

(b) Seller does not timely deliver the written notice of election to cure.

[ ] **RADON TESTING CONTINGENCY:** This Offer is contingent upon Buyer obtaining a current written report of the results of a radon test at the Property performed by a qualified third party in a manner consistent with applicable Environmental Protection Agency (EPA) and Wisconsin Department of Health Services (DHS) protocols and standards indicating an EPA average radon level of less than 4.0 picoCuries per liter (pCi/L), at (Buyer's) (Seller's) STRIKE ONE ("Buyer's" if neither is stricken) expense.

This contingency shall be deemed satisfied unless Buyer, within _____ days ("20" if left blank) after acceptance delivers ~~to Seller a written copy of the radon test results indicating a radon level of 4.0 pCi or higher and written notice objecting to the radon level in the report.~~

■ ~~**RIGHT TO CURE:** Seller (shall)(shall not) **STRIKE ONE** ("shall" if neither is stricken) have the right to cure.~~
If Seller has the right to cure, Seller may satisfy this contingency by:
(1) delivering a written notice of Seller's election to cure within 10 days after delivery of Buyer's notice; and,
(2) installing a radon mitigation system in conformance with EPA standards in a good and workmanlike manner and by giving Buyer a report of the work done and a post remediation test report indicating a radon level of less than 4.0 pCi/L no later than three days prior to closing.
This Offer shall be null and void if Buyer timely delivers the above written notice and report to Seller and:
(1) Seller does not have the right to cure; or
(2) Seller has the right to cure but:
(a) Seller delivers written notice that Seller will not cure; or
(b) Seller does not timely deliver the notice of election to cure.
NOTE: For radon information refer to the EPA at epa.gov/radon or the DHS at dhs.wisconsin.gov/radon.

IF LINE 248 IS NOT MARKED OR IS MARKED N/A LINES 296-307 APPLY

☐ **FINANCING COMMITMENT CONTINGENCY:** This Offer is contingent upon Buyer being able to obtain a written _____ [loan type or specific lender, if any] first mortgage loan commitment as described below, within _____ days after acceptance of this Offer. The financing selected shall be in an amount of not less than $ _____ for a term of not less than _____ years, amortized over not less than _____ years. Initial monthly payments of principal and interest shall not exceed $ _____. Buyer acknowledges that lender's required monthly payments may also include 1/12th of the estimated net annual real estate taxes, hazard insurance premiums, and private mortgage insurance premiums. The mortgage shall not include a prepayment premium. Buyer agrees to pay discount points in an amount not to exceed _____% ("0" if left blank) of the loan. If Buyer is using multiple loan sources or obtaining a construction loan or land contract financing, describe at lines 543-551 or in an addendum attached per line 573. Buyer agrees to pay all customary loan and closing costs, wire fees, and loan origination fees, to promptly apply for a mortgage loan, and to provide evidence of application promptly upon request of Seller. Seller agrees to allow lender's appraiser access to the Property.
■ LOAN AMOUNT ADJUSTMENT: If the purchase price under this Offer is modified, any financed amount, unless otherwise provided, shall be adjusted to the same percentage of the purchase price as in this contingency and the monthly payments shall be adjusted as necessary to maintain the term and amortization stated above.
CHECK AND COMPLETE APPLICABLE FINANCING PROVISION AT LINE 264 or 265.
☐ **FIXED RATE FINANCING:** The annual rate of interest shall not exceed _____%.
☐ **ADJUSTABLE RATE FINANCING:** The initial interest rate shall not exceed _____%. The initial interest rate shall be fixed for _____ months, at which time the interest rate may be increased not more than _____% ("2" if left blank) at the first adjustment and by not more than _____% ("1" if left blank) at each subsequent adjustment. The maximum interest rate during the mortgage term shall not exceed the initial interest rate plus _____% ("6" if left blank). Monthly payments of principal and interest may be adjusted to reflect interest changes.
■ SATISFACTION OF FINANCING COMMITMENT CONTINGENCY: If Buyer qualifies for the loan described in this Offer or another loan acceptable to Buyer, Buyer agrees to deliver to Seller a copy of a written loan commitment. This contingency shall be satisfied if, after Buyer's review, Buyer delivers to Seller a copy of a written loan commitment (even if subject to conditions) that is:
(1) signed by Buyer; or
(2) accompanied by Buyer's written direction for delivery.
Delivery of a loan commitment by Buyer's lender or delivery accompanied by a notice of unacceptability shall not satisfy this contingency.
CAUTION: The delivered loan commitment may contain conditions Buyer must yet satisfy to obligate the lender to provide the loan. Buyer understands delivery of a loan commitment removes the Financing Commitment Contingency from the Offer and shifts the risk to Buyer if the loan is not funded.
■ SELLER TERMINATION RIGHTS: If Buyer does not deliver a loan commitment on or before the Deadline on line 250. Seller may terminate this Offer if Seller delivers a written notice of termination to Buyer prior to Seller's Actual Receipt of written loan commitment from Buyer.
■ FINANCING COMMITMENT UNAVAILABILITY: If a financing commitment is not available on the terms stated in this Offer (and Buyer has not already delivered an acceptable loan commitment for other financing to Seller), Buyer shall promptly deliver written notice to Seller of same including copies of lender(s)' rejection letter(s) or other evidence of unavailability.
☐ **SELLER FINANCING:** Seller shall have 10 days after the earlier of:
(1) Buyer delivery of written notice of evidence of unavailability as noted in lines 284-287; or
(2) the Deadline for delivery of the loan commitment set on line 250
to deliver to Buyer written notice of Seller's decision to finance this transaction with a note and mortgage under the same terms set forth in this Offer, and this Offer shall remain in full force and effect, with the time for closing extended accordingly. If Seller's notice is not timely given, the option for Seller to provide financing shall be considered waived. Buyer agrees to ~~cooperate with and authorizes Seller to obtain any credit information reasonably appropriate to determine Buyer's credit-worthiness for Seller financing.~~

Item 7.

~~IF THIS OFFER IS NOT CONTINGENT ON FINANCING COMMITMENT~~ Within _____ days ("7" if left blank) after acceptance, Buyer shall deliver to Seller either:

(1) reasonable written verification from a financial institution or third party in control of Buyer's funds that Buyer has, at the time of verification, sufficient funds to close; or

(2) _____ [Specify documentation Buyer agrees to deliver to Seller].

If such written verification or documentation is not delivered, Seller has the right to terminate this Offer by delivering written notice to Buyer prior to Seller's Actual Receipt of a copy of Buyer's written verification. Buyer may or may not obtain mortgage financing but does not need the protection of a financing commitment contingency. Seller agrees to allow Buyer's appraiser access to the Property for purposes of an appraisal. Buyer understands and agrees that this Offer is not subject to the appraisal meeting any particular value, unless this Offer is subject to an appraisal contingency, nor does the right of access for an appraisal constitute a financing commitment contingency.

☐ **APPRAISAL CONTINGENCY:** This Offer is contingent upon Buyer or Buyer's lender having the Property appraised at Buyer's expense by a Wisconsin licensed or certified independent appraiser who issues an appraisal report dated subsequent to the date stated on line 1 of this Offer, indicating an appraised value for the Property equal to or greater than the agreed upon purchase price.

This contingency shall be deemed satisfied unless Buyer, within _____ days after acceptance, delivers to Seller a copy of the appraisal report indicating an appraised value less than the agreed upon purchase price, and a written notice objecting to the appraised value.

■ **RIGHT TO CURE:** Seller (shall) (shall not) **STRIKE ONE** ("shall" if neither is stricken) have the right to cure.

If Seller has the right to cure, Seller may satisfy this contingency by delivering written notice to Buyer adjusting the purchase price to the value shown on the appraisal report within _____ days ("5" if left blank) after Buyer's delivery of the appraisal report and the notice objecting to the appraised value. Seller and Buyer agree to promptly execute an amendment initiated by either Party after delivery of Seller's notice, solely to reflect the adjusted purchase price.

This Offer shall be null and void if Buyer makes timely delivery of the notice objecting to appraised value and the written appraisal report and:

(1) Seller does not have the right to cure; or

(2) Seller has the right to cure but:

(a) Seller delivers written notice that Seller will not adjust the purchase price; or

(b) Seller does not timely deliver the written notice adjusting the purchase price to the value shown on the appraisal report.

NOTE: An executed FHA, VA or USDA Amendatory clause may supersede this contingency.

☐ **CLOSING OF BUYER'S PROPERTY CONTINGENCY:** This Offer is contingent upon the closing of the sale of Buyer's property located at _____ no later than _____ (the Deadline). If closing does not occur by the Deadline, this Offer shall become null and void unless Buyer delivers to Seller, on or before the Deadline, reasonable written verification from a financial institution or third party in control of Buyer's funds that Buyer has, at the time of verification, sufficient funds to close or proof of bridge loan financing, along with a written notice waiving this contingency. Delivery of verification or proof of bridge loan shall not extend the closing date for this Offer.

☐ **BUMP CLAUSE:** If Seller accepts a bona fide secondary offer, Seller may give written notice to Buyer that another offer has been accepted. If Buyer does not deliver to Seller the documentation listed below within _____ hours ("72" if left blank) after Buyer's Actual Receipt of said notice, this Offer shall be null and void. Buyer must deliver the following:

(1) Written waiver of the Closing of Buyer's Property Contingency if line 328 is marked;

(2) Written waiver of _____ (name other contingencies, if any); and

(3) Any of the following checked below:

☐ Proof of bridge loan financing.

☐ Proof of ability to close from a financial institution or third party in control of Buyer's funds which shall provide Seller with reasonable written verification that Buyer has, at the time of verification, sufficient funds to close.

Other: _____

_____

[insert other requirements, if any (e.g., payment of additional earnest money, etc.)]

☐ **SECONDARY OFFER:** This Offer is secondary to a prior accepted offer. This Offer shall become primary upon delivery of written notice to Buyer that this Offer is primary. Unless otherwise provided, Seller is not obligated to give Buyer notice prior to any Deadline, nor is any particular secondary buyer given the right to be made primary ahead of other secondary buyers. Buyer may declare this Offer null and void by delivering written notice of withdrawal to Seller prior to delivery of Seller's notice that this Offer is primary. Buyer may not deliver notice of withdrawal earlier than _____ days ("7" if left blank) after acceptance of this Offer. All other Offer Deadlines that run from acceptance shall run from the time this Offer becomes primary.

HOMEOWNERS ASSOCIATION If this Property is subject to a homeowners association, Buyer is aware the Property may ~~be subject to periodic association fees after closing and one-time fees resulting from transfer of the Property. Any one-time~~

~~fees resulting from transfer of the Property shall be paid at closing by (Seller) (Buyer) STRIKE ONE ("Buyer" if neither is stricken).~~

CLOSING PRORATIONS The following items, if applicable, shall be prorated at closing, based upon date of closing values: real estate taxes, rents, prepaid insurance (if assumed), private and municipal charges, property owners or homeowners association assessments, fuel and none .

CAUTION: Provide basis for utility charges, fuel or other prorations if date of closing value will not be used.
Any income, taxes or expenses shall accrue to Seller, and be prorated at closing, through the day prior to closing.
Real estate taxes shall be prorated at closing based on CHECK BOX FOR APPLICABLE PRORATION FORMULA:

[X] The net general real estate taxes for the preceding year, or the current year if available (Net general real estate taxes are defined as general property taxes after state tax credits and lottery credits are deducted). NOTE: THIS CHOICE APPLIES IF NO BOX IS CHECKED.

[ ] Current assessment times current mill rate (current means as of the date of closing).

[ ] Sale price, multiplied by the municipality area-wide percent of fair market value used by the assessor in the prior year, or current year if known, multiplied by current mill rate (current means as of the date of closing).

[ ] _____.

CAUTION: Buyer is informed that the actual real estate taxes for the year of closing and subsequent years may be substantially different than the amount used for proration especially in transactions involving new construction, extensive rehabilitation, remodeling or area-wide re-assessment. Buyer is encouraged to contact the local assessor regarding possible tax changes.

[ ] Buyer and Seller agree to re-prorate the real estate taxes, through the day prior to closing based upon the taxes on the actual tax bill for the year of closing, with Buyer and Seller each owing his or her pro-rata share. Buyer shall, within 5 days of receipt, forward a copy of the bill to the forwarding address Seller agrees to provide at closing. The Parties shall re-prorate within 30 days of Buyer's receipt of the actual tax bill. Buyer and Seller agree this is a post-closing obligation and is the responsibility of the Parties to complete, not the responsibility of the real estate Firms in this transaction.

TITLE EVIDENCE

■ CONVEYANCE OF TITLE: **Upon payment of the purchase price, Seller shall convey the Property by warranty deed (trustee's deed if Seller is a trust, personal representative's deed if Seller is an estate or other conveyance as provided herein),** free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use restrictions and covenants, present uses of the Property in violation of the foregoing disclosed in Seller's Real Estate Condition Report and in this Offer, general taxes levied in the year of closing and none

_____ (insert other allowable exceptions from title, if any) that constitutes merchantable title for purposes of this transaction. Seller, at Seller's cost, shall complete and execute the documents necessary to record the conveyance and pay the Wisconsin Real Estate Transfer Fee.

WARNING: Municipal and zoning ordinances, recorded building and use restrictions, covenants and easements may prohibit certain improvements or uses and therefore should be reviewed, particularly if Buyer contemplates making improvements to Property or a use other than the current use.

■ TITLE EVIDENCE: Seller shall give evidence of title in the form of an owner's policy of title insurance in the amount of the purchase price on a current ALTA form issued by an insurer licensed to write title insurance in Wisconsin. Seller shall pay all costs of providing title evidence to Buyer. Buyer shall pay the costs of providing the title evidence required by Buyer's lender and recording the deed or other conveyance.

■ GAP ENDORSEMENT: Seller shall provide a "gap" endorsement or equivalent gap coverage at (Seller's)(Buyer's) STRIKE ONE ("Seller's" if neither stricken) cost to provide coverage for any liens or encumbrances first filed or recorded after the commitment date of the title insurance commitment and before the deed is recorded, subject to the title insurance policy conditions, exclusions and exceptions, provided the title company will issue the coverage. If a gap endorsement or equivalent gap coverage is not available, Buyer may give written notice that title is not acceptable for closing (see lines 410-415).

■ DELIVERY OF MERCHANTABLE TITLE: The required title insurance commitment shall be delivered to Buyer's attorney or Buyer not less than 5 business days before closing, showing title to the Property as of a date no more than 15 days before delivery of such title evidence to be merchantable per lines 383-391, subject only to liens that will be paid out of the proceeds of closing and standard title insurance requirements and exceptions.

■ TITLE NOT ACCEPTABLE FOR CLOSING: If title is not acceptable for closing, Buyer shall notify Seller in writing of objections to title by the time set for closing. Seller shall have a reasonable time, but not exceeding 15 days, to remove the objections, and the time for closing shall be extended as necessary for this purpose. If Seller is unable to remove said objections, Buyer shall have five days from receipt of notice thereof, to deliver written notice waiving the objections, and the time for closing shall be extended accordingly. If Buyer does not waive the objections, this Offer shall be null and void. Providing title evidence acceptable for closing does not extinguish Seller's obligations to give merchantable title to Buyer.

■ SPECIAL ASSESSMENTS/OTHER EXPENSES: Special assessments, if any, levied or for work actually commenced prior to the date stated on line 1 of this Offer shall be paid by Seller no later than closing. All other special assessments

shall be paid by Buyer. "Levied" means the local municipal governing body has adopted and published a final resolution describing the planned improvements and the assessment of benefits.

CAUTION: Consider a special agreement if area assessments, property owners association assessments, special charges for current services under Wis. Stat. § 66.0627 or other expenses are contemplated. "Other expenses" are one-time charges or ongoing use fees for public improvements (other than those resulting in special assessments) relating to curb, gutter, street, sidewalk, municipal water, sanitary and storm water and storm sewer (including all sewer mains and hook-up/connection and interceptor charges), parks, street lighting and street trees, and impact fees for other public facilities, as defined in Wis. Stat. § 66.0617(1)(f).

~~LEASED PROPERTY~~ ~~If Property is currently leased and lease(s) extend beyond closing, Seller shall assign Seller's rights~~ under said lease(s) and transfer all security deposits and prepaid rents ~~thereunder to Buyer at closing~~. The terms of the (written) (oral) STRIKE ONE lease(s), if any, are

_____

_____ ~~. Insert additional terms, if any, at lines 543-551 or attach as an addendum per line 573.~~

DEFINITIONS

■ ACTUAL RECEIPT: "Actual Receipt" means that a Party, not the Party's recipient for delivery, if any, has the document or written notice physically in the Party's possession, regardless of the method of delivery. If the document or written notice is electronically delivered, Actual Receipt shall occur when the Party opens the electronic transmission.

■ BUSINESS DAY: "Business Day" means a calendar day other than Saturday, Sunday, any legal public holiday under Wisconsin or Federal law, and any other day designated by the President such that the postal service does not receive registered mail or make regular deliveries on that day.

■ DEADLINES: "Deadlines" expressed as a number of "days" from an event, such as acceptance, are calculated by excluding the day the event occurred and by counting subsequent calendar days. The Deadline expires at Midnight on the last day. Additionally, Deadlines expressed as a specific number of Business Days are calculated in the same manner except that only Business Days are counted while other days are excluded. Deadlines expressed as a specific number of "hours" from the occurrence of an event, such as receipt of a notice, are calculated from the exact time of the event, and by counting 24 hours per calendar day. Deadlines expressed as a specific day of the calendar year or as the day of a specific event, such as closing, expire at Midnight of that day. "Midnight" is defined as 11:59 p.m. Central Time.

■ DEFECT: "Defect" means a condition that would have a significant adverse effect on the value of the Property; that would significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life of the premises.

■ FIRM: "Firm" means a licensed sole proprietor broker or a licensed broker business entity.

■ PARTY: "Party" means the Buyer or the Seller; "Parties" refers to both Buyer and Seller.

■ PROPERTY: Unless otherwise stated, "Property" means the real estate described at lines 4-8.

INCLUSION OF OPTIONAL PROVISIONS Terms of this Offer that are preceded by an OPEN BOX (☐) are part of this Offer ONLY if the box is marked such as with an "X". They are not part of this offer if marked "N/A" or are left blank.

PROPERTY DIMENSIONS AND SURVEYS Buyer acknowledges that any land, building or room dimensions, or total acreage or building square footage figures, provided to Buyer by Seller or by a Firm or its agents, may be approximate because of rounding, formulas used or other reasons, unless verified by survey or other means.

CAUTION: Buyer should verify total square footage formula, total square footage/acreage figures, and land, building or room dimensions, if material.

DISTRIBUTION OF INFORMATION Buyer and Seller authorize the agents of Buyer and Seller to: (i) distribute copies of the Offer to Buyer's lender, appraisers, title insurance companies and any other settlement service providers for the transaction as defined by the Real Estate Settlement Procedures Act (RESPA); (ii) report sales and financing concession data to multiple listing service sold databases; (iii) provide active listing, pending sale, closed sale and financing concession information and data, and related information regarding seller contributions, incentives or assistance, and third party gifts, to appraisers researching comparable sales, market conditions and listings, upon inquiry; and (iv) distribute copies of this Offer to the seller, or seller's agent, of another property that Seller intends on purchasing.

MAINTENANCE Seller shall maintain the Property and all personal property included in the purchase price until the earlier of closing or Buyer's occupancy, in materially the same condition it was in as of the date on line 1 of this Offer, except for ordinary wear and tear and changes agreed upon by Parties.

PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING If, prior to closing, the Property is damaged in an amount not more than five percent of the purchase price, other than normal wear and tear, Seller shall promptly notify Buyer in writing, and will be obligated to restore the Property to materially the same condition it was in as of the date on line 1 of this Offer. Seller shall provide Buyer with copies of all required permits and lien waivers for the lienable repairs no later than closing. If the amount of damage exceeds five percent of the purchase price, Seller shall promptly notify Buyer in writing of the damage and this Offer may be terminated at option of Buyer. Should Buyer elect to carry out this Offer despite such damage, Buyer shall be entitled to the insurance proceeds, if any, relating to the damage to the Property, plus a credit towards the purchase price equal to the amount of Seller's deductible on such policy, if any. However, if this sale is financed by a land contract or a mortgage to Seller, any insurance proceeds shall be held in trust for the sole purpose of restoring

the Property.

BUYER'S PRE-CLOSING WALK-THROUGH Within three days prior to closing, at a reasonable time pre-approved by Seller or Seller's agent, Buyer shall have the right to walk through the Property to determine that there has been no significant change in the condition of the Property, except for ordinary wear and tear and changes agreed upon by Parties, and that any defects Seller has agreed to cure have been repaired in the manner agreed to by the Parties.

OCCUPANCY Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in this Offer at lines 543-551 or in an addendum attached per line 573, or lines 426-430 if the Property is leased. At time of Buyer's occupancy, Property shall be in broom swept condition and free of all debris, refuse, and personal property except for personal property belonging to current tenants, or sold to Buyer or left with Buyer's consent. Occupancy shall be given subject to tenant's rights, if any.

DEFAULT Seller and Buyer each have the legal duty to use good faith and due diligence in completing the terms and conditions of this Offer. A material failure to perform any obligation under this Offer is a default that may subject the defaulting party to liability for damages or other legal remedies.

If Buyer defaults, Seller may:

(1) sue for specific performance and request the earnest money as partial payment of the purchase price; or

(2) terminate the Offer and have the option to: (a) request the earnest money as liquidated damages; or (b) sue for actual damages.

If Seller defaults, Buyer may:

(1) sue for specific performance; or

(2) terminate the Offer and request the return of the earnest money, sue for actual damages, or both.

In addition, the Parties may seek any other remedies available in law or equity. The Parties understand that the availability of any judicial remedy will depend upon the circumstances of the situation and the discretion of the courts. If either Party defaults, the Parties may renegotiate the Offer or seek nonjudicial dispute resolution instead of the remedies outlined above. By agreeing to binding arbitration, the Parties may lose the right to litigate in a court of law those disputes covered by the arbitration agreement.

NOTE: IF ACCEPTED, THIS OFFER CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BOTH PARTIES SHOULD READ THIS DOCUMENT CAREFULLY. THE FIRM AND ITS AGENTS MAY PROVIDE A GENERAL EXPLANATION OF THE PROVISIONS OF THE OFFER BUT ARE PROHIBITED BY LAW FROM GIVING ADVICE OR OPINIONS CONCERNING YOUR LEGAL RIGHTS UNDER THIS OFFER OR HOW TITLE SHOULD BE TAKEN AT CLOSING. AN ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS NEEDED.

ENTIRE CONTRACT This Offer, including any amendments to it, contains the entire agreement of the Buyer and Seller regarding the transaction. All prior negotiations and discussions have been merged into this Offer. This agreement binds and inures to the benefit of the Parties to this Offer and their successors in interest.

NOTICE ABOUT SEX OFFENDER REGISTRY You may obtain information about the sex offender registry and persons registered with the registry by contacting the Wisconsin Department of Corrections on the Internet at http://doc.wi.gov or by telephone at (608) 240-5830.

FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA) Section 1445 of the Internal Revenue Code (IRC) provides that a transferee (Buyer) of a United States real property interest must pay or withhold as a tax up to 15% of the total "Amount Realized" in the sale if the transferor (Seller) is a "Foreign Person" and no exception from FIRPTA withholding applies. A "Foreign Person" is a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign estate. The "Amount Realized" is the sum of the cash paid, the fair market value of other property transferred, and the amount of any liability assumed by Buyer.

CAUTION: Under this law if Seller is a Foreign Person, and Buyer does not pay or withhold the tax amount, Buyer may be held directly liable by the U.S. Internal Revenue Service for the unpaid tax and a tax lien may be placed upon the Property.

Seller hereby represents that Seller is a non-Foreign Person, unless (1) Seller represents Seller is a Foreign Person in a condition report incorporated in this Offer per lines 105-108, or (2) no later than 10 days after acceptance, Seller delivers notice to Buyer that Seller is a Foreign Person, in which cases the provisions on lines 530-532 apply.

IF SELLER IS A NON-FOREIGN PERSON. Seller shall, no later than closing, execute and deliver to Buyer, or a qualified substitute (attorney or title company as stated in IRC § 1445), a sworn certification under penalties of perjury of Seller's non-foreign status in accordance with IRC § 1445. If Seller fails to timely deliver certification of Seller's non-foreign status, Buyer shall: (1) withhold the amount required to be withheld pursuant to IRC § 1445; or, (2) declare Seller in default of this Offer and proceed under lines 494-501.

IF SELLER IS A FOREIGN PERSON. If Seller has represented that Seller is a Foreign Person, Buyer shall withhold the amount required to be withheld pursuant to IRC § 1445 at closing unless the Parties have amended this Offer regarding amounts to be withheld, any withholding exemption to be applied, or other resolution of this provision.

COMPLIANCE WITH FIRPTA. Buyer and Seller shall complete, execute, and deliver, on or before closing, any instrument, affidavit, or statement needed to comply with FIRPTA, including withholding forms. If withholding is required under IRC § 1445, and the net proceeds due Seller are not sufficient to satisfy the withholding required in this transaction, Seller shall

Item 7.

deliver to Buyer, at closing, the additional funds necessary to satisfy the applicable withholding requirement. Seller also shall pay to Buyer an amount not to exceed $1,000 for actual costs associated with the filing and administration of forms, affidavits, and certificates necessary for FIRPTA withholding and any withholding agent fees.
Any representations made by Seller with respect to FIRPTA shall survive the closing and delivery of the deed.
Firms, Agents, and Title Companies are not responsible for determining FIRPTA status or whether any FIRPTA exemption applies. The Parties are advised to consult with their respective independent legal counsel and tax advisors regarding FIRPTA.

ADDITIONAL PROVISIONS/CONTINGENCIES

Offer is contingent upon Common Council approval.
Offer is contingent upon an inspection of the Property conducted by City of Sheboygan personnel.
City shall pay Buyer's mortgage payments due until the date of closing. All such mortgage payments made by City shall be offset from the final purchase price.

DELIVERY OF DOCUMENTS AND WRITTEN NOTICES Unless otherwise stated in this Offer, delivery of documents and written notices to a Party shall be effective only when accomplished by one of the authorized methods specified at lines 555-570.
(1) Personal: giving the document or written notice personally to the Party, or the Party's recipient for delivery if named at line 557 or 558.
Name of Seller's recipient for delivery, if any:
Name of Buyer's recipient for delivery, if any:
[ ] (2) Fax: fax transmission of the document or written notice to the following number:
Seller: ( ) Buyer: ( )
[ ] (3) Commercial: depositing the document or written notice, fees prepaid or charged to an account, with a commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery, for delivery to the Party's address at line 566 or 567.
[X] (4) U.S. Mail: depositing the document or written notice, postage prepaid, in the U.S. Mail, addressed either to the Party, or to the Party's recipient for delivery, for delivery to the Party's address.
Address for Seller: 1214 South 11th Street, Sheboygan, WI 53081
Address for Buyer: 828 Center Ave., Suite 208, Sheboygan, WI 53081
[X] (5) Email: electronically transmitting the document or written notice to the email address.
Email Address for Seller: bischeele1@gmail.com
Email Address for Buyer: chad.pelishek@sheboyganwi.gov

PERSONAL DELIVERY/ACTUAL RECEIPT Personal delivery to, or Actual Receipt by, any named Buyer or Seller constitutes personal delivery to, or Actual Receipt by, all Buyers or Sellers.

[ ] **ADDENDA:** The attached _____ is/are made part of this Offer.

This Offer was drafted by [Licensee and Firm] Assistant City Attorney Elizabeth Majerus

(x) Ryan Sorenson 3/21/23
Buyer's Signature▲ Print Name Here▶ Date▲

(x) MeredithDeBruin 3/21/23
Buyer's Signature▲ Print Name Here▶ Date▲

SELLER ACCEPTS THIS OFFER. THE WARRANTIES, REPRESENTATIONS AND COVENANTS MADE IN THIS OFFER SURVIVE CLOSING AND THE CONVEYANCE OF THE PROPERTY. SELLER AGREES TO CONVEY THE PROPERTY ON THE TERMS AND CONDITIONS AS SET FORTH HEREIN AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS OFFER.

(x) Brian Scheele 2-13-2022
Seller's Signature▲ Print Name Here▶ Brian Scheele Date▲

(x) _____
Seller's Signature▲ Print Name Here▶ Date▲

This Offer was presented to Seller by [Licensee and Firm] _____
_____ on _____ at _____ a.m./p.m.
This Offer is rejected _____ _____ This Offer is countered [See attached counter] _____ _____
Seller Initials▲ Date▲ Seller Initials▲ Date▲

VIII

R. C. No. 173 - 22 - 23. By FINANCE AND PERSONNEL COMMITTEE. March 6, 2023.

Your Committee to whom was referred Res. No. 137-22-23 by Alderpersons Mitchell and Filicky-Peneski terminating the City of Sheboygan Tax Incremental District (TID) No. 6 (South Pier/Lakefront District) and authorizing the Finance Director to distribute excess increment to overlying taxing districts; recommends adopting the Resolution.

_____ _____

_____ _____

_____ _____

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated_____ 20____. _____, City Clerk

Approved_____ 20____. _____, Mayor

III

Res. No. 137 - 22 - 23. By Alderpersons Mitchell and Filicky-Peneski.
February 20, 2023.

A RESOLUTION terminating the City of Sheboygan Tax Incremental District (TID) No. 6 (South Pier/Lakefront District) and authorizing the Finance Director to distribute excess increment to overlying taxing districts.

WHEREAS, the City of Sheboygan Common Council passed Res. No. 306-91-92 creating Tax Incremental Financing (TIF) District No. 6 on January 20, 1992 and adopted a project plan in the same year; and

WHEREAS, all project costs identified in the project plan and any amendments have been fully expended within the prescribed time; and

WHEREAS, the City has collected sufficient increment with respect to the district in an amount equal to the aggregate of all project costs under the project plan and any amendments to the project plan, resulting in termination pursuant to § 66.1105(7)(a), Wis. Stats.

NOW, THEREFORE, BE IT RESOLVED: That the Common Council and the City of Sheboygan does terminate TIF District No. 6.

BE IT FURTHER RESOLVED: That the City Clerk shall, within sixty (60) days of this resolution or prior to the deadline of March 21, 2023, whichever comes first, notify the Wisconsin Department of Revenue (DOR) that the TID has been terminated, as required by § 66.1105(8)(a), Wis. Stats.

BE IT FURTHER RESOLVED: That the City Clerk shall sign the required DOR final accounting form (PE-223) agreeing on a date by which the City of Sheboygan shall submit final accounting information to DOR, as required by § 66.1105(8)(c), Wis. Stats.

BE IT FURTHER RESOLVED: That the Finance Director/Treasurer shall distribute any excess increment collected after providing for ongoing expenses of the TID, to the affected taxing districts with proportionate shares to be determined by the final audit by the City's auditors, Baker Tilly.

FTP

BE IT FURTHER RESOLVED: That the City of Sheboygan shall accept all remaining debts for TID No. 6 as determined by the final audit by the City's auditors, Baker Tilly.

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

VIII

R. C. No. 174 - 22 - 23. By FINANCE AND PERSONNEL COMMITTEE. March 6, 2023.

Your Committee to whom was referred Res. No. 138-22-23 by Alderpersons Mitchell and Filicky-Peneski terminating the City of Sheboygan Tax Incremental District (TID) No. 10 (Water Street Neighborhood) and authorizing the Finance Director to distribute excess increment to overlying taxing districts; recommends adopting the Resolution.

_____ _____

_____ _____

_____ _____

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated_____ 20____. _____, City Clerk

Approved_____ 20____. _____, Mayor

III

Res. No. 138 - 22 - 23. By Alderpersons Mitchell and Filicky-Peneski.
February 20, 2023.

A RESOLUTION terminating the City of Sheboygan Tax Incremental District (TID) No. 10 (Water Street Neighborhood) and authorizing the Finance Director to distribute excess increment to overlying taxing districts.

WHEREAS, the City of Sheboygan Common Council passed Res. No. 47-97-98 creating Tax Incremental Financing (TIF) District No. 10 on May 19, 1997 and adopted a project plan in the same year; and

WHEREAS, all project costs identified in the project plan and any amendments have been fully expended within the prescribed time; and

WHEREAS, the City has collected sufficient increment with respect to the district in an amount equal to the aggregate of all project costs under the project plan and any amendments to the project plan, resulting in termination pursuant to § 66.1105(7)(a), Wis. Stats.

NOW, THEREFORE, BE IT RESOLVED: That the Common Council and the City of Sheboygan does terminate TIF District No. 10.

BE IT FURTHER RESOLVED: That the City Clerk shall, within sixty (60) days of this resolution or prior to the deadline of March 21, 2023, whichever comes first, notify the Wisconsin Department of Revenue (DOR) that the TID has been terminated, as required by § 66.1105(8)(a), Wis. Stats.

BE IT FURTHER RESOLVED: That the City Clerk shall sign the required DOR final accounting form (PE-223) agreeing on a date by which the City of Sheboygan shall submit final accounting information to DOR, as required by § 66.1105(8)(c), Wis. Stats.

BE IT FURTHER RESOLVED: That the Finance Director/Treasurer shall distribute any excess increment collected after providing for ongoing expenses of the TID, to the affected taxing districts with proportionate shares to be determined by the final audit by the City's auditors, Baker Tilly.

FHP

BE IT FURTHER RESOLVED: That the City of Sheboygan shall accept all remaining debts for TID No. 10 as determined by the final audit by the City's auditors, Baker Tilly.

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

VIII

R. C. No. 175 - 22 - 23. By FINANCE AND PERSONNEL COMMITTEE. March 6, 2023.

Your Committee to whom was referred Res. No. 139-22-23 by Alderpersons Mitchell and Filicky-Peneski terminating the City of Sheboygan Tax Incremental District (TID) No. 12 (Niagara Avenue) and authorizing the Finance Director to distribute excess increment to overlying taxing districts; recommends adopting the Resolution.

_____ _____

_____ _____

_____ _____

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated_____ 20____. _____, City Clerk

Approved_____ 20____. _____, Mayor

III

Res. No. 139 - 22 - 23. By Alderpersons Mitchell and Filicky-Peneski.
February 20, 2023.

A RESOLUTION terminating the City of Sheboygan Tax Incremental District (TID) No. 12 (Niagara Avenue) and authorizing the Finance Director to distribute excess increment to overlying taxing districts.

WHEREAS, the City of Sheboygan Common Council passed Res. No. 294-99-00 creating Tax Incremental Financing (TIF) District No. 12 on February 21, 2000 and adopted a project plan in the same year; and

WHEREAS, all project costs identified in the project plan and any amendments have been fully expended within the prescribed time; and

WHEREAS, the City has collected sufficient increment with respect to the district in an amount equal to the aggregate of all project costs under the project plan and any amendments to the project plan, resulting in termination pursuant to § 66.1105(7)(a), Wis. Stats.

NOW, THEREFORE, BE IT RESOLVED: That the Common Council and the City of Sheboygan does terminate TIF District No. 12.

BE IT FURTHER RESOLVED: That the City Clerk shall, within sixty (60) days of this resolution or prior to the deadline of March 21, 2023, whichever comes first, notify the Wisconsin Department of Revenue (DOR) that the TID has been terminated, as required by § 66.1105(8)(a), Wis. Stats.

BE IT FURTHER RESOLVED: That the City Clerk shall sign the required DOR final accounting form (PE-223) agreeing on a date by which the City of Sheboygan shall submit final accounting information to DOR, as required by § 66.1105(8)(c), Wis. Stats.

BE IT FURTHER RESOLVED: That the Finance Director/Treasurer shall distribute any excess increment collected after providing for ongoing expenses of the TID, to the affected taxing districts with proportionate shares to be determined by the final audit by the City's auditors, Baker Tilly.

FTP

BE IT FURTHER RESOLVED: That the City of Sheboygan shall accept all remaining debts for TID No. 12 as determined by the final audit by the City's auditors, Baker Tilly.

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

VIII

R. C. No. 176 - 22 - 23. By FINANCE AND PERSONNEL COMMITTEE. March 6, 2023.

Your Committee to whom was referred Res. No. 140-22-23 by Alderpersons Mitchell and Filicky-Peneski terminating the City of Sheboygan Tax Incremental District (TID) No. 13 (Landmark Square/Founders Club) and authorizing the Finance Director to distribute excess increment to overlying taxing districts; recommends adopting the Resolution.

_____ _____

_____ _____

_____ _____

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated_____ 20____. _____, City Clerk

Approved_____ 20____. _____, Mayor

III

Res. No. 140 - 22 - 23. By Alderpersons Mitchell and Filicky-Peneski.
February 20, 2023.

A RESOLUTION terminating the City of Sheboygan Tax Incremental District (TID) No. 13 (Landmark Square/Founders Club) and authorizing the Finance Director to distribute excess increment to overlying taxing districts.

WHEREAS, the City of Sheboygan Common Council passed Res. No. 165-05-06 creating Tax Incremental Financing (TIF) District No. 13 on November 21, 2005 and adopted a project plan in the same year; and

WHEREAS, all project costs identified in the project plan and any amendments have been fully expended within the prescribed time; and

WHEREAS, the City has collected sufficient increment with respect to the district in an amount equal to the aggregate of all project costs under the project plan and any amendments to the project plan, resulting in termination pursuant to § 66.1105(7)(a), Wis. Stats.

NOW, THEREFORE, BE IT RESOLVED: That the Common Council and the City of Sheboygan does terminate TIF District No. 13.

BE IT FURTHER RESOLVED: That the City Clerk shall, within sixty (60) days of this resolution or prior to the deadline of March 21, 2023, whichever comes first, notify the Wisconsin Department of Revenue (DOR) that the TID has been terminated, as required by § 66.1105(8)(a), Wis. Stats.

BE IT FURTHER RESOLVED: That the City Clerk shall sign the required DOR final accounting form (PE-223) agreeing on a date by which the City of Sheboygan shall submit final accounting information to DOR, as required by § 66.1105(8)(c), Wis. Stats.

BE IT FURTHER RESOLVED: That the Finance Director/Treasurer shall distribute any excess increment collected after providing for ongoing expenses of the TID, to the affected taxing districts with proportionate shares to be determined by the final audit by the City's auditors, Baker Tilly.

FHP

BE IT FURTHER RESOLVED: That the City of Sheboygan shall accept all remaining debts for TID No. 13 as determined by the final audit by the City's auditors, Baker Tilly.

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

VIII

R. C. No. 177 - 22 - 23. By FINANCE AND PERSONNEL COMMITTEE. March 6, 2023.

Your Committee to whom was referred Res. No. 141-22-23 by Alderpersons Mitchell and Filicky-Peneski terminating the City of Sheboygan Tax Incremental District (TID) No. 14 (Taylor Drive) and authorizing the Finance Director to distribute excess increment to overlying taxing districts; recommends adopting the Resolution.

_____ _____

_____ _____

_____ _____

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated_____ 20____. _____, City Clerk

Approved_____ 20____. _____, Mayor

Res. No. 141 - 22 - 23. By Alderpersons Mitchell and Filicky-Peneski.
February 20, 2023.

A RESOLUTION terminating the City of Sheboygan Tax Incremental District (TID) No. 14 (Taylor Drive) and authorizing the Finance Director to distribute excess increment to overlying taxing districts.

WHEREAS, the City of Sheboygan Common Council passed Res. No. 181-10-11 creating Tax Incremental Financing (TIF) District No. 14 on January 4, 2011 and adopted a project plan in the same year; and

WHEREAS, all project costs identified in the project plan and any amendments have been fully expended within the prescribed time; and

WHEREAS, the City has collected sufficient increment with respect to the district in an amount equal to the aggregate of all project costs under the project plan and any amendments to the project plan, resulting in termination pursuant to § 66.1105(7)(a), Wis. Stats.

NOW, THEREFORE, BE IT RESOLVED: That the Common Council and the City of Sheboygan does terminate TIF District No. 14.

BE IT FURTHER RESOLVED: That the City Clerk shall, within sixty (60) days of this resolution or prior to the deadline of March 21, 2023, whichever comes first, notify the Wisconsin Department of Revenue (DOR) that the TID has been terminated, as required by § 66.1105(8)(a), Wis. Stats.

BE IT FURTHER RESOLVED: That the City Clerk shall sign the required DOR final accounting form (PE-223) agreeing on a date by which the City of Sheboygan shall submit final accounting information to DOR, as required by § 66.1105(8)(c), Wis. Stats.

BE IT FURTHER RESOLVED: That the Finance Director/Treasurer shall distribute any excess increment collected after providing for ongoing expenses of the TID, to the affected taxing districts with proportionate shares to be determined by the final audit by the City's auditors, Baker Tilly.

FtP

BE IT FURTHER RESOLVED: That the City of Sheboygan shall accept all remaining debts for TID No. 14 as determined by the final audit by the City's auditors, Baker Tilly.

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

VIII

R. C. No. 178 - 22 - 23. By FINANCE AND PERSONNEL COMMITTEE. March 6, 2023.

Your Committee to whom was referred Res. No. 142-22-23 by Alderpersons Mitchell and Filicky-Peneski terminating the City of Sheboygan Tax Incremental District (TID) No. 15 (Pick N Save-Southside) and authorizing the Finance Director to distribute excess increment to overlying taxing districts; recommends adopting the Resolution.

_____ _____

_____ _____

_____ _____

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated_____ 20____. _____, City Clerk

Approved_____ 20____. _____, Mayor

III

Res. No. 142 - 22 - 23. By Alderpersons Mitchell and Filicky-Peneski.
February 20, 2023.

A RESOLUTION terminating the City of Sheboygan Tax Incremental District (TID) No. 15 (Pick N Save-Southside) and authorizing the Finance Director to distribute excess increment to overlying taxing districts.

WHEREAS, the City of Sheboygan Common Council passed Res. No. 239-10-11 creating Tax Incremental Financing (TIF) District No. 15 on April 6, 2011 and adopted a project plan in the same year; and

WHEREAS, all project costs identified in the project plan and any amendments have been fully expended within the prescribed time; and

WHEREAS, the City has collected sufficient increment with respect to the district in an amount equal to the aggregate of all project costs under the project plan and any amendments to the project plan, resulting in termination pursuant to § 66.1105(7)(a), Wis. Stats.

NOW, THEREFORE, BE IT RESOLVED: That the Common Council and the City of Sheboygan does terminate TIF District No. 15.

BE IT FURTHER RESOLVED: That the City Clerk shall, within sixty (60) days of this resolution or prior to the deadline of March 21, 2023, whichever comes first, notify the Wisconsin Department of Revenue (DOR) that the TID has been terminated, as required by § 66.1105(8)(a), Wis. Stats.

BE IT FURTHER RESOLVED: That the City Clerk shall sign the required DOR final accounting form (PE-223) agreeing on a date by which the City of Sheboygan shall submit final accounting information to DOR, as required by § 66.1105(8)(c), Wis. Stats.

BE IT FURTHER RESOLVED: That the Finance Director/Treasurer shall distribute any excess increment collected after providing for ongoing expenses of the TID, to the affected taxing districts with proportionate shares to be determined by the final audit by the City's auditors, Baker Tilly.

FTP

BE IT FURTHER RESOLVED: That the City of Sheboygan shall accept all remaining debts for TID No. 15 as determined by the final audit by the City's auditors, Baker Tilly.

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

IX

R. C. No. 179 - 22 - 23. By FINANCE AND PERSONNEL COMMITTEE. March 6, 2023.

Your Committee to whom was referred Gen. Ord. No. 28-22-23 by Alderpersons Mitchell and Filicky-Peneski amending the process for preparation and approval of the City's Executive Budget contained in Sections 2-903 and 2-905 of the Municipal Code; recommends adopting the Ordinance.

_____ _____

_____ _____

_____ _____

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated_____ 20____. _____, City Clerk

Approved_____ 20____. _____, Mayor

Gen. Ord. No. 28 - 22 - 23. By Alderpersons Mitchell and Filicky-Peneski.
February 20, 2023.

AN ORDINANCE amending the process for preparation and approval of the City's Executive Budget contained in Sections 2-903 and 2-905 of the Municipal Code.

THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Sec. 2-903 of the Municipal Code entitled "Departmental estimates consideration; standing committee review" is hereby amended to read as follows:

"Sec. 2-903. - Departmental estimates consideration; standing committee review.

The City Administrator, together with the Mayor, shall consider such departmental estimates as provided in section 2-902 in consultation with the department head and shall then determine the total amount to be recommended in the budget for such department or activity. Such recommendation shall be submitted to the Committee of the Whole for review."

Section 2. Sec. 2-905 of the Municipal Code entitled "Proposed budget review, public hearing, amendment, adoption" shall be amended to read as follows:

"Sec. 2-905. - Proposed budget review, public hearing, amendment, adoption.

Upon completion of the review of the proposed budget by the Committee of the Whole, the Committee of the Whole shall submit to the council a budget resolution providing a summary budget less anticipated revenues and a tax levy for the ensuing year. After submission of the proposed budget resolution to the council, it shall hold a public hearing as required by Wis. Stats. § 65.90. Following the public hearing the proposed budget may be changed as amended and shall then be adopted at a regular or special meeting of the council."

FTP

Section 3. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication.

I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

VII

R. C. No. 180 - 22 - 23. By COMMITTEE OF THE WHOLE. March 6, 2023.

Your Committee to whom was referred Res. No. 136-22-23 by Alderperson Dekker adopting the City of Sheboygan 2023-2028 Strategic Plan; recommends motion to file the document and request Baker Tilly work with elected and appointed city management and administration to create an updated document for the 2023-2024 Common Council with the intention of the 2023-2024 Common Council bringing a Resolution back to the Committee of the Whole at a bare minimum for discussion regarding future strategic plan.

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated_____ 20____. _____, City Clerk

Approved_____ 20____. _____, Mayor

Res. No. 136 22 - 23. By Alderperson Dekker. February 20, 2023.

A RESOLUTION adopting the City of Sheboygan 2023-2028 Strategic Plan.

WHEREAS, in November, 2021, via Res. No. 51-21-22, the City of Sheboygan contracted with Baker Tilly to assist the City with the important task of updating its five-year strategic plan; and

WHEREAS, in the first quarter of 2022, stakeholder engagement commenced with stakeholder interviews arranged and conducted with all department heads and elected officials, as well as nine community focus groups including: Small Employers; Large Employers; Neighborhoods; Social Services; Tourism; Housing; Families and Schools; Community, Arts, and Culture; Elevating Diverse Voices; and

WHEREAS, in February 2022, a resident input questionnaire was released to the public and collected over 1,800 responses; and

WHEREAS, during the external stakeholder engagement phase, the common themes identified included:

- Shopping, Restaurants and Downtown
- Community
- Communication, Collaboration, and Clarification of Rules and Responsibilities
- Businesses and Workforce
- Community Amenities
- Housing

and

WHEREAS, the 2023-2028 Strategic Plan updates the City's Vision to: "Sheboygan embraces a diverse and inclusive community culture, continuously practicing innovative and visionary governance" and the Mission Statement to: "The City of Sheboygan is committed to creating and maintaining a place of welcoming and belonging for all that live, work, and play in our great community." The City's core values remain unchanged: Service, Teamwork, Accountability, Innovation, Respect, Stewardship (STAIRS); and

WHEREAS, the 2023-2028 Strategic Plan updates the City's goals for the next five years to:

- Advance Organizational Culture
- Embrace Continuous Improvement
- Elevate Community Alliances and Quality of Life
- Promote Sustainable Growth

NOW, THEREFORE, BE IT RESOLVED: That the City of Sheboygan hereby adopts the 2023-2028 Strategic Plan, a copy of which is attached to this Resolution.

Dean Dikka

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

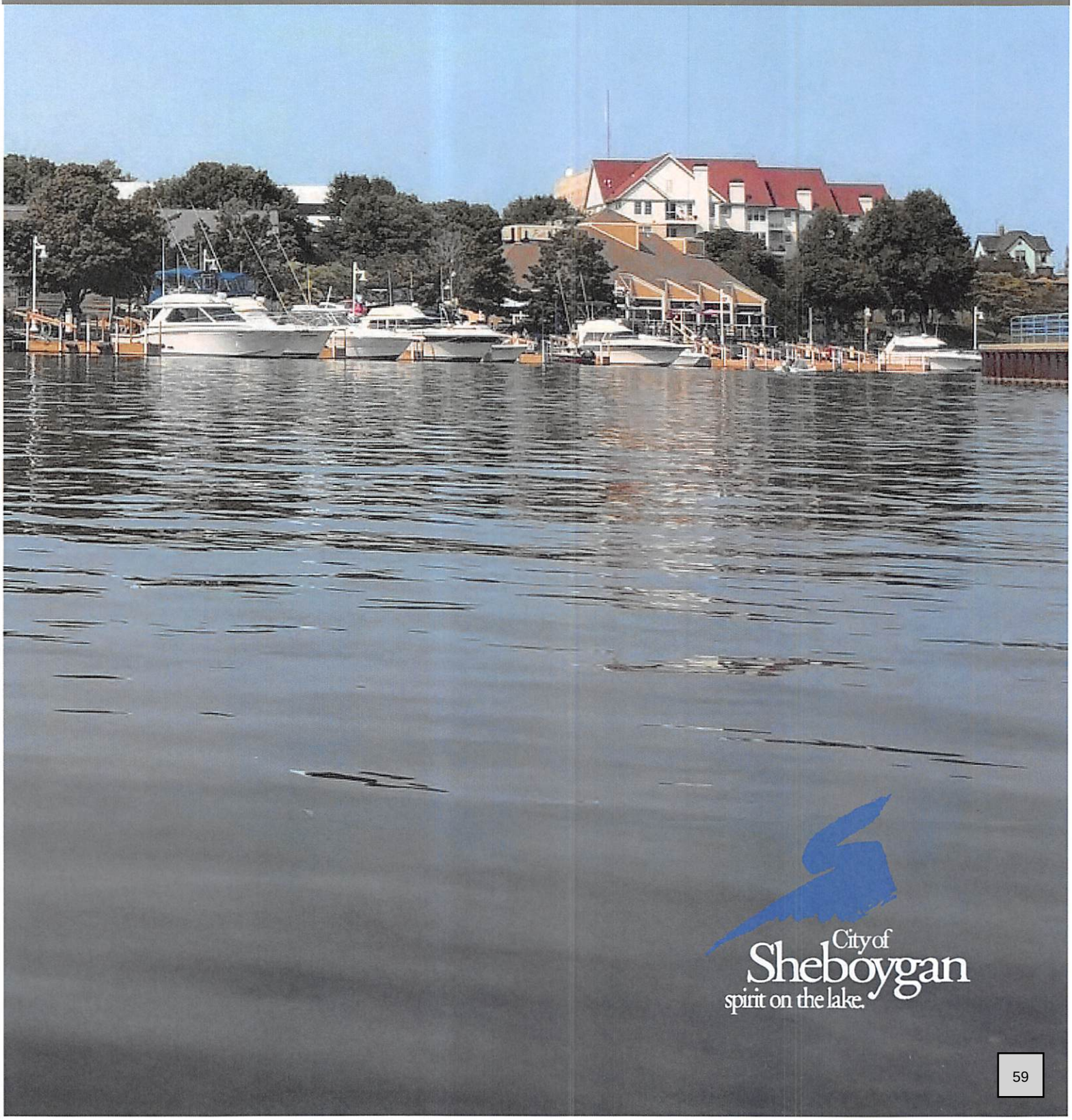
Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

bakertilly

City of Sheboygan
Strategic Plan

FY 2023-24 through FY 2027-28



City of Sheboygan
spirit on the lake.

Acknowledgments

Elected Officials

Amanda Salazar, Alderperson
Angela Ramey, Alderperson
Betty Ackley, Aldersperson
Barb Felde, Aldersperson
Dean Dekker, Alderperson
Grazia Perrella, Alderperson
Joe Heidemann, Alderperson
Roberta Filicky-Peneski, Alderperson
Ryan Sorenson, Mayor
Trey Mitchell, Alderperson
Zach Rust, Alderperson
Natasha Torry, Municipal Court Judge
Meredith DeBruin, City Clerk
Charles Adams, City Attorney

City Staff

Chad Pelishek, Director of Planning & Development
Christopher Domagalski, Police Chief
David Biebel, Director of Public Works
Derek Muench, Director of Parking and Transit
Emily Rendall-Araujo, Senior Services Director
Eric Bushman, Director of IT
Eric Montellano, Fire Chief
Garrett Erickson, Library Director
Joe Trueblood, Water Utility Superintendent
Kaitlyn Krueger, Director of Finance
Carrie Arenz, Management Analyst

Acknowldegment is also given to former Alderpersons Leslie Laster and Markus Savaglio and former City Administrator Todd Wolf

Executive Summary

Introduction

Located on the eastern shore of Wisconsin, the City of Sheboygan is the "Spirit on the Lake." From the breathtaking views of Lake Michigan along the City's two miles of sandy beaches to world-class sailing and premier charter fishing, this coastal community has a lot to offer. For time spent out of the water, the historic downtown district boasts unique shopping, dining, and entertainment that is welcomed by many residents and visitors.

To expand on the City's successes and strengths, and to expand the initiatives implemented in the 2017-2022 Strategic Plan, the City of Sheboygan, Wisconsin engaged Baker Tilly to work in collaboration with the Mayor, Common Council, and City leaders from across the organization and various community stakeholders to develop the City's next five-year strategic plan. The process to develop the next strategic plan was complex and required coordination of numerous elements. These elements included:

- Identify the City's strengths, weaknesses, opportunities, and threats through discussions with City officials, staff, and community members.
- Facilitation of various planning workshops focused to develop a plan for the City's future.
- Establish the City's vision and mission statement to guide the operations and service delivery activities. Develop a set of goals and objectives that are intended to inform the City's decision-making process.

City of Sheboygan
spirit on the lake.

Why a Strategic Plan?

Strategic planning is a product of strategic thinking, which should occur not only in periodic planning exercises such as the one just completed, but on a continuous basis. Strategic thinking and planning occur at the highest levels of the organization but should not stop there. It must cascade to lower levels of the organization and directly drive decision making at the operational level. The intentions of strategic planning should be to identify and prioritize the core purposes of the organization and the most important attributes of success.

The strategic planning process, therefore, was designed as an exercise in collective foresight, wherein the City's leaders collaborated to clarify what long-term strategic success looks like for Sheboygan in the light of the conditions the City faces today and expects to face in the future.

Strategic Planning Process

The strategic planning process focused primarily on what the city needs to do to achieve its long-term vision and accomplish its operational mission. The organizational strategic plan is therefore less concerned with the day-to-day of municipal operations and service delivery. Good strategic planning addresses the issues and opportunities that challenge the organization today and, more importantly, those that will challenge it tomorrow. Accordingly, the organizational strategic planning process was an exercise in collective foresight, to work all together to clarify what strategic success looks like for the City of Sheboygan long-term.

The approach used for the City's strategic planning project was broken out into four separate phases using the D4 Framework, Define, Discover, Develop, and Deploy.

Strategic Planning Process

DEFINE

This phase involved project start-up activities, initial data collection, stakeholder identification and involvement planning, initial meetings with key project staff, confirming scope and refining and finalizing the project plan.

DISCOVER

This was the primary data collection phase of the methodology, including the development of the stakeholder engagement plan, the completion of internal interviews and focus groups, and conducting baseline assessment activities. The discovery phase establishes the factual foundation for the sub-sequent phases of the planning process.

DEVELOP

Encompassed in this phase were the tasks and steps needed to create, review, and adopt a written strategic plan to guide the overall priorities of the organization going forward. It included the completion of multiple intensive strategy workshop sessions to identify strategic goals, objectives, and initiatives.

DEPLOY

This phase of the methodology involves the development of an implementation milestones, accountabilities, and various other steps necessary to link the strategic plan to other on-going City plans and programs.

Stakeholder Engagement

Introduction

One of the first steps to developing a successful strategic planning project requires engaging internal and external stakeholders. In this step, the Baker Tilly team worked closely with the City's project team to design a plan that considered a variety of stakeholder interests and groups within and outside of the organization. After establishing an engagement plan, the Baker Tilly team conducted discovery interviews that primarily focused on data collection, and facilitating internal one-on-one and focus group discussions. The next step of the stakeholder engagement process involved engaging external stakeholders. The involvement of community members is a cornerstone of a successful strategic plan and based on the stakeholder engagement plan, the Baker Tilly team facilitated numerous community focus group sessions, as well as distributing a resident questionnaire.

This section of the strategic plan document provides a summary of the major themes identified from the internal discovery interviews, the community focus group sessions, and the results of the resident questionnaire.

City of Sheboygan
spirit on the lake.

Stakeholder Engagement Participants

Elected Officials

Amanda Salazar, Alderperson
Angela Ramey, Alderperson
Betty Ackley, Alderperson
Barbe Felde, Alderperson
Charles Adams, City Attorney
Dean Dekker, Alderperson
Grazia Perrella, Alderperson
Joe Heidemann, Alderperson
Meredith DeBruin, City Clerk
Natasha Torry, Municipal Court Judge
Roberta Filicky-Peneski, Alderperson
Ryan Sorenson, Mayor
Trey Mitchell, Alderperson
Zach Rust, Alderperson

City Staff Members

Carrie Arenz, Management Analyst
Chad Pelishek, Director of Planning & Development
Christopher Domagalski, Police Chief
David Biebel, Director of Public Works
Derek Muench, Director of Parking and Transit
Emily Rendall-Araujo, Senior Services Director
Eric Bushman, Director of IT
Eric Montellano, Fire Chief
Garrett Erickson, Library Director
Joe Trueblood, Water Utility Superintendent
Kaitlyn Krueger, Director of Finance

Community Focus Groups

Small Employers
Large Employers
Neighborhoods
Social Services
Tourism
Housing
Families and Schools
Community, Arts, and Culture
Elevating Diverse Voices

Internal Stakeholder Enagagement

During the interview discussions, the Baker Tilly team asked targeted questions to identify and understand key organizational, operational, financial, service delivery, and other issues or concerns relevant to the current state and future strategic direction of the City of Sheboygan.

Following the conversations with the City's elected officials and staff members, the project team synthesized the results to identify common themes that surfaced during the discussions.
The common themes identified are as follows:

Municipal infrastructure, primarily roads and facilities, is a significant concern.

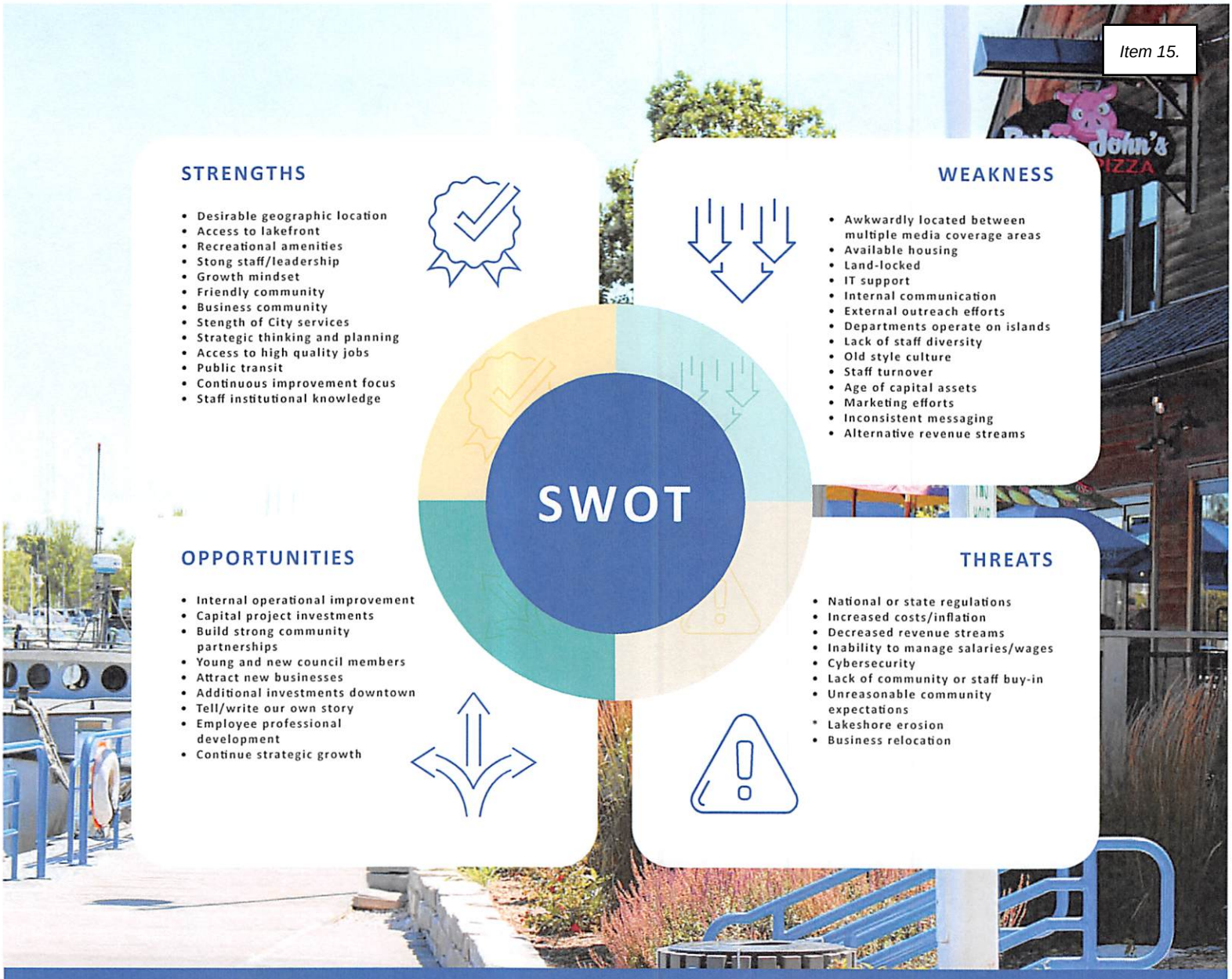
Improvement of the effectiveness of the city's communication and engagement with the public is a concern, including criticism of the city's website and the resultant proliferation of city websites for specific departments/programs. (Library, Police, Public Works, Uptown Social Senior Center, Shoreline Metro, Wastewater)

Housing choices – concerns about the availability of affordable workforce housing, senior housing, and potential opposition to increasing densities.

Economic development and tourism

Operational Excellence – people/process/technology issues to address, including diversity, equity, inclusion and belonging.

Quality of life – parks/recreation/library/arts and culture, etc.



STRENGTHS

- Desirable geographic location
- Access to lakefront
- Recreational amenities
- Stong staff/leadership
- Growth mindset
- Friendly community
- Business community
- Stength of City services
- Strategic thinking and planning
- Access to high quality jobs
- Public transit
- Continuous improvement focus
- Staff institutional knowledge

WEAKNESS

- Awkwardly located between multiple media coverage areas
- Available housing
- Land-locked
- IT support
- Internal communication
- External outreach efforts
- Departments operate on islands
- Lack of staff diversity
- Old style culture
- Staff turnover
- Age of capital assets
- Marketing efforts
- Inconsistent messaging
- Alternative revenue streams

SWOT

OPPORTUNITIES

- Internal operational improvement
- Capital project investments
- Build strong community partnerships
- Young and new council members
- Attract new businesses
- Additional investments downtown
- Tell/write our own story
- Employee professional development
- Continue strategic growth

THREATS

- National or state regulations
- Increased costs/inflation
- Decreased revenue streams
- Inability to manage salaries/wages
- Cybersecurity
- Lack of community or staff buy-in
- Unreasonable community expectations
- Lakeshore erosion
- Business relocation

After evaluating the attributes of the current and future operational environment, staff members critically and constructively considered the current state of the organization itself.

- Strengths are those assets and capabilities presently available within the organization that can be leveraged to achieve desired results.
- Conversely, weaknesses are those current aspects of the organization that stand in the way of strategic success and that must be overcome to achieve optimal results.
- Opportunities are strategic advantage that are intended to capitalize on strengths, overcoming weaknesses, and mitigating threats.
- Threats are future external events that, if unmitigated, have the potential to impair the organization's ability to realize strategic success. These may be political, economic, societal, natural, or man-made in nature.

External Stakeholder Enagagement

During the external stakeholder engagement phase, the Baker Tilly team met with various community focus groups and because of those conversations a variety of common themes about the city were revealed. Here is a summary of the common themes from the community focus group sessions:

Shopping, Restaraunts, and Downtown

- There is a large variety of and high-quality small businesses.
- There are many good restaurant options.
- There is a lack of shopping opportunities for certain necessities, such as clothing and specialty grocery, which leads to people leaving Sheboygan to fulfill their needs.
- Downtown is walkable and has potential, but parking needs to be evaluated and addressed to better support businesses; vacant storefronts should be addressed.
- Downtown and other successful restaurant/entertainment areas could be connected more strongly, through the street, pedestrian, and transit network. Examples were the Sheboygan River, South Pier, 8th Street, and 3 Sheeps. The City could consider additional wayfinding signage.

Community

- Many participants mentioned a positive view of the city as a safe community with a small town/Midwest vibe.
- The location is a strength and could be used as an advantage in marketing efforts.
- There is not a consensus on community inclusion. Some people mentioned a strong sense of community and that people are very friendly. Other people said that it can be difficult for new residents (especially young professionals, but also others) to get involved and meet people after moving there.
- Regarding diversity, equity, and inclusion, the City is making efforts to evaluate internal and external policies to update its practices and studying other communities for best practices. However, focus group participants that weighed in on the diversity, equity, and inclusion topic, indicated that there is a long way to go to change embedded culture and policy practices, both within the culture of the community, as well as within City government.
- There was not a consensus in how affordable the city is, even among people who have lived in bigger cities prior to moving (back) to Sheboygan. Generally, participants stated that the City is not easily affordable for people in working class or factory jobs, single parents, and those without a college degree, while it is very affordable for those in higher paying jobs. Please also see the discussion of affordable housing below.
- Challenges were identified regarding policies and practices for diversity, equity, and inclusion efforts (including outdated policies as well as criticisms of this planning process).

Communication, Collaboration, and Clarification of Rules and Responsibilities

- The City was commended for the approachability of the staff and how easy the City is for businesses to work with.
- Many groups wanted more and proactive communication from the city and wanted the city to take the lead (or at least designate a leader) in beginning collaboration with different actors in the same sector.
- The City could continue to raise awareness through communication on what they (and partner entities) are doing to address issues and make progress, including celebrating positive events and community "wins" in a timely manner.
- There seems to be a lack of understanding and/or miscommunication surrounding different actors' and entities' roles and responsibilities within the city. For example, within the tourism/regional marketing space, the City could lead discussion of goals and outcomes, and then offer more transparency about and coordination of different entities' roles within the city.

Businesses and Workforce

- All businesses are having difficulties finding workers. Larger businesses in Sheboygan hire many kinds of workers, from factory workers to scientists with PhDs.
- It was generally agreed upon that workers in manufacturing are the most difficult to find, which can make it difficult to retain and grow a Sheboygan-based business location. The large employers recognized that they sometimes compete for the same talent. Additionally, they have seen people leave the area if they can work remotely.
- It is particularly difficult to recruit young professionals to the area from other parts of the country, especially if they are single. However, many employers have had generally good results in employee retention. Some employers are actively providing events and activities to integrate employees into the community. However, there may be opportunities to make this a community-wide effort through a young professional's group or other community-based activities.
- A lack of available housing and difficulty finding childcare were frequently cited as inhibiting additional workers (especially manufacturing/blue collar workers) from relocating to Sheboygan.
- Large employers recruit nationwide, with many new employees taking jobs without visiting the city beforehand. They praised the social media efforts of the City, because it has been effective in enticing and attracting new employees to the area; businesses would like the City to keep this up; additional recruitment assistance from the community would be welcome.
- For some small businesses in the tourism sector, locals can be unsupportive of price points or food and entertainment offerings for regular outings, particularly in the non-tourism season. This can cause businesses to struggle in the off-season to reach consumers and support revenues.

Businesses and Workforce *continued*

- Small employers, especially, noted that the business community is very collaborative and will always step up to help each other out. Some indicated a strong relationship with the City; others did not have that relationship. Small businesses noted that they would appreciate assistance with formalizing their network to strengthen it further. Large employers didn't mention this issue; however their focus group was centered more on employee recruitment and retention.

Community Ammenities

- People seem to love both the lakefront and the other natural amenities surrounding the city.
- People enjoy the entertainment that is available but would also appreciate more "active" entertainment; that is, something more than watching a show or walking through an art gallery.
- Many people brought up a lack of activities for teenagers and the young adult (18–20-year-old) cohorts, as well as a lack of places for young professionals.
- People seemed to agree that there were a lot of activities available for younger kids. The Community Recreation programs were good and appreciated.
- A third space (public social space) option would be appreciated, especially if it had something for all ages.
- Childcare is expensive and difficult to find.
- Public transportation is good in the city but doesn't serve the west part of the county well. It should also be reviewed for K-12 students.
- There was not a consensus on the quality of public schools, especially compared to "suburban" schools. It may be a difference in perception between people with and without kids in the schools; for example, the online ratings that people see when searching for a house compared to satisfaction once they interact with the schools.

Housing

- There is a reported housing shortage in the city. It can be difficult to find an affordable home for first time home buyers in a desirable price range.
- It was reported that new homes are typically being built in the $300,000+ range, which is appropriate and affordable for some people but not for others.
- There are not many small new homes being built within city limits because it is difficult to make a profit on smaller homes in the current market. The City could look at potential incentives for this type of housing if that was a priority.
- There were concerns stated about a comparatively high property tax rate.
- There seems to be two types of rentals: high-end apartments and standalone older houses/units in neighborhoods. There are some reported difficulties with regulation/enforcement on standalone homes, both in terms of enforcing standards on landlords and on enforcement on tenant actions that filters up to landlords. This issue could be further studied for a policy review.
- Housing is very difficult to find, especially for those with yearly wages in the $40,000 range and is impacting the workforce.

Vision, Mission, and Values

Our Vision

An organization's vision is aspirational in nature. It defines what the organization wants to be or to achieve. It is an idealized description of the desired future state of the City.

Based on a visioning exercises a consensus statement of vision for the city organization and its staff was developed, as follows:

"Sheboygan embraces a diverse and inclusive community culture, continuously practicing innovative and visionary governance."

VISION

Sheboygan embraces a diverse and inclusive community culture, continuously practicing innovative and visionary governance.

- Promote sustainable growth
- Advance organizational culture
- Elevate community alliances and quality of life
- Embrace continuous improvement

City of Sheboygan
spirit on the lake.

Our Mission

A mission statement describes the organization's purpose. It defines the "business" of the organization and its relationship to its customers.

A newly updated and more focused mission statement for the organization is shown below:

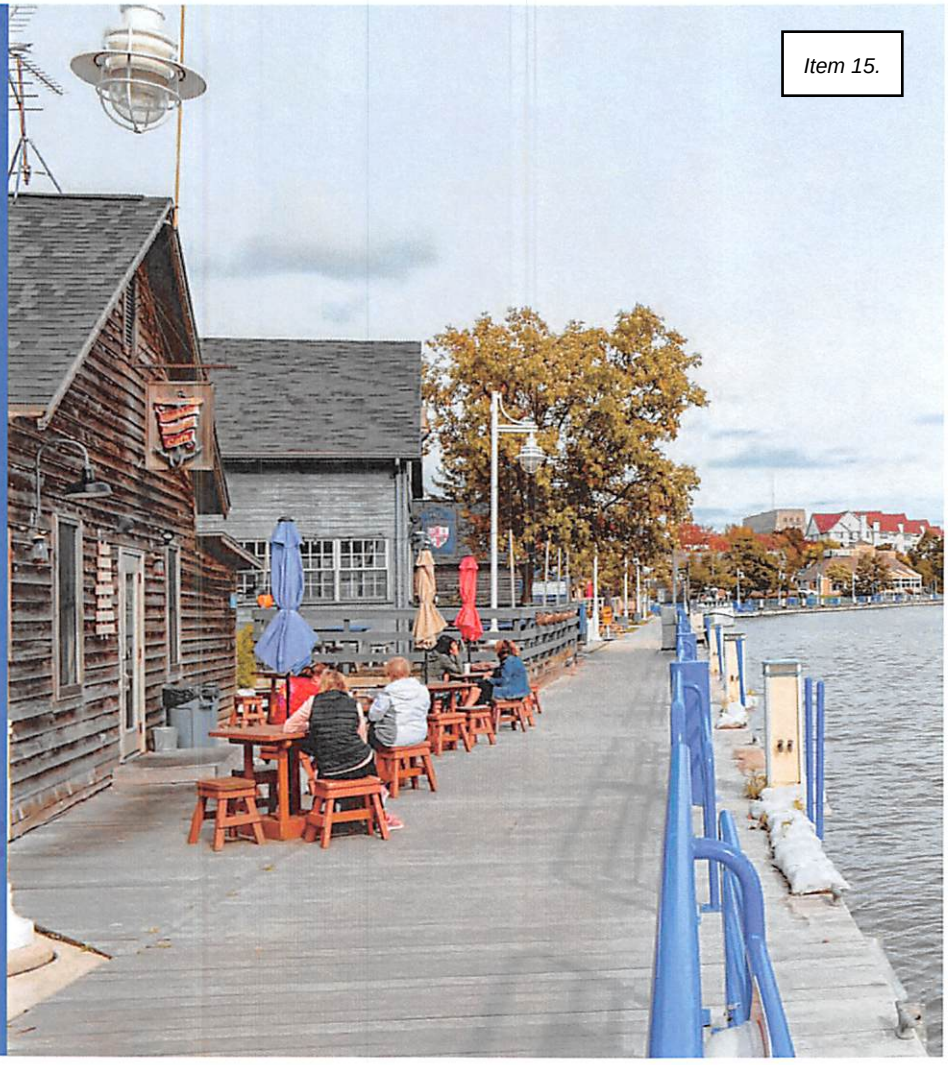
"The City of Sheboygan is committed to creating and maintaining a place of welcoming and belonging for all that live, work, and play in our great community."

Our Values

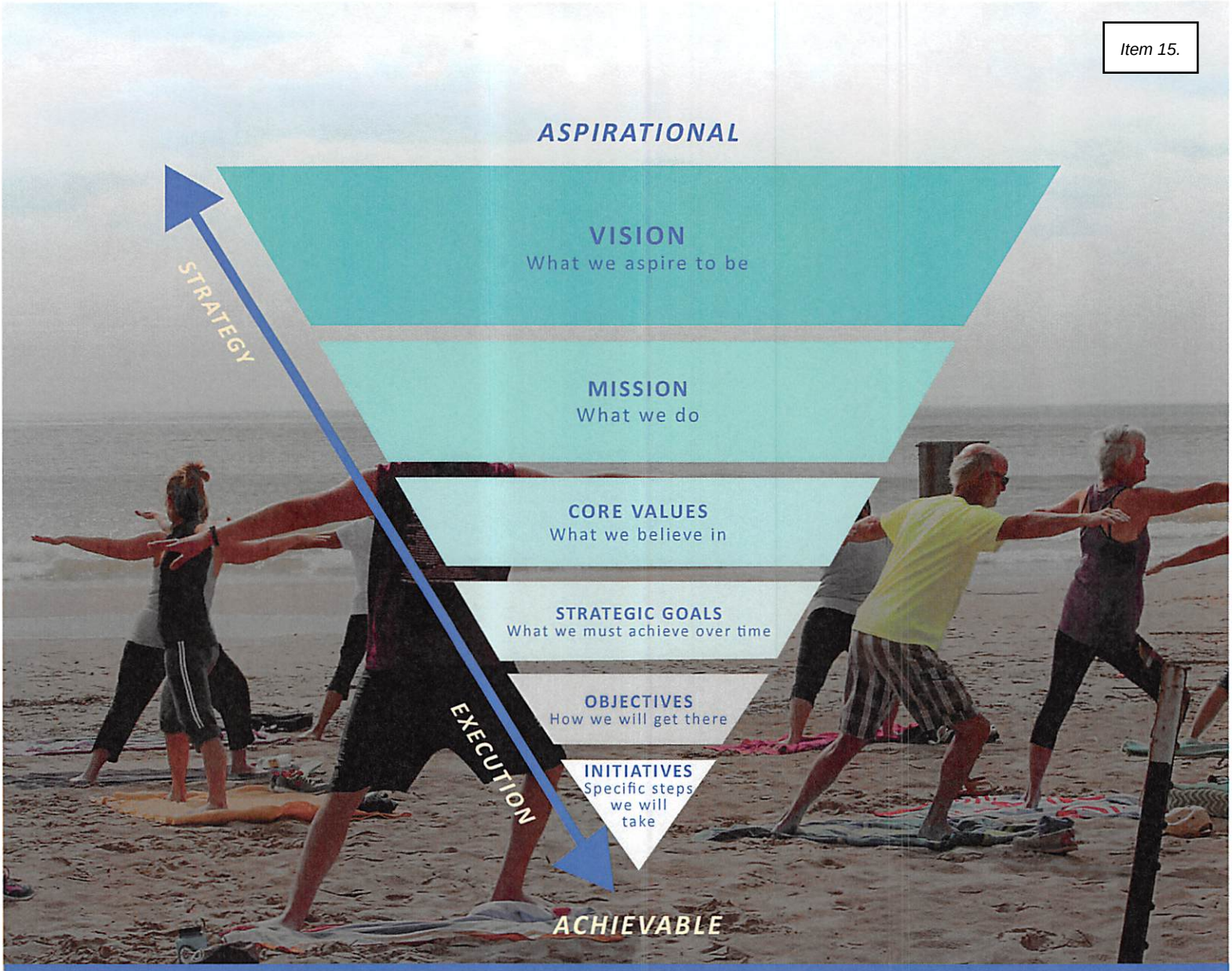
Values are the fundamental principles that guide how members of the organization conduct themselves in pursuit of the mission and vision of the organization. Together, values provide an ethical framework for decision making and action.

The City coined their values by an acronym "STAIRS"; Service, Teamwork, Accountability, Innovation, Respect, and Stewardship.

Here are the core values of the Sheboygan city organization:



SERVICE	Our duty is to the people we serve. We are accessible, consistent, and responsive in providing service and solutions beyond expectations.
TEAMWORK	Our team emphasizes trust, full cooperation, and commitment to thorough, effective communication without our City organization.
ACCOUNTABILITY	One of our most important values. We maintain an organizational reputation for openness, accountability, and integrity.
INNOVATION	Identify, develop, and deploy leading edge technology, employee development programs, and process improvement tools.
RESPECT	Treating people with dignity and an attitude of caring, understanding, and genuine consideration. Valuing everyone as an individual.
STEWARDSHIP	Proper use of public resources; striving continually for the greatest possible efficiency, effectiveness, and quality outcome.



Strategic Goals and Objectives

After systematically scanning the external environment, evaluating the strengths and weaknesses of the organization, identifying opportunities and threats, and confirming the organizations vision, mission, and values. The focus of the strategic planning effort turned to the identification of specific strategic goals likely to have the greatest positive impact on the performance of the organization and the results it delivers.

Using brainstorming techniques, the city leadership and staff were challenged to imagine a future filled with great success. They visualized an organization that is advancing steadily towards its vision and accomplishing its mission in accordance with its principles and values. Participants listed the action steps that, if taken today, would lead the organization to the future they visualized. They considered how to leverage strengths to overcome weaknesses and how to mitigate threats to create opportunities.

Many ideas were generated and captured on "sticky notes," with participants describing their own aspirations and priorities for the organization. Working collaboratively, they grouped these ideas together to reveal common key strategic areas of long-term focus, along with a set of immediate steps to initiate and propel the implementation of the strategic plan.

Goals and Objectives

We have ambitious goals as we respond to community interests and organizational needs. Our Strategic Plan contains four multi-year goals covering a range of important initiatives intended to position the City well over five years.

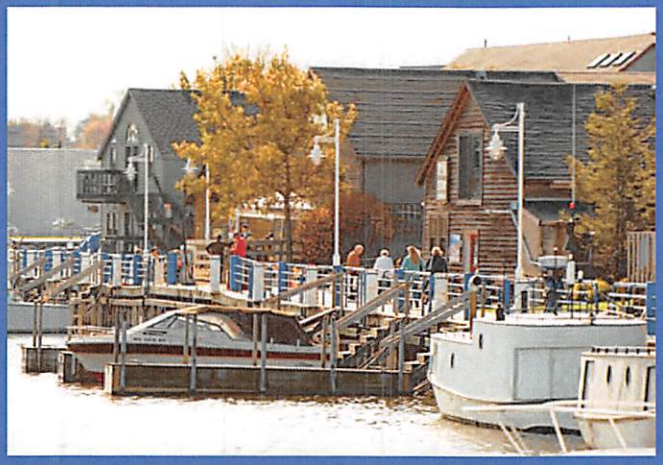
Each of these goals has an associated set of strategies.

Advance Organizational Culture

- Invest in Employee Development
- Continue to Recruit, Hire and Retain Employees
- Develop and Implement a robust Diversity, Equity and Inclusion Program
- Empower Employees and Improve Collaboration

Embrace Continuous Improvement

- Develop On-Going Operational Evaluation Program
- Improve Internal and External Communications
- Enhance Facilities Improvement Planning



Elevate Community Alliances and Quality of Life

- Enhance Community Relationships and Engagement Practices
- Embrace Community Recreational, Social and Leisure Offerings
- Embrace Intergovernmental and Business Collaboration

Promote Sustainable Growth

- Embrace Economic Development
- Embrace Future Expansion
- Encourage Housing Opportunities

Advance Organizational Culture

An organization's culture defines the way to behave within the organization. This culture consists of shared beliefs and values established by leaders and then communicated and reinforced through various methods, ultimately shaping employee ideals, behaviors and understanding. The City of Sheboygan is dedicated to embracing an organizational culture that is based on welcoming and belonging.

Objectives

- Invest in Employee Development
- Continue to Recruit, Hire and Retain Employees
- Develop and implement a robust Diversity, Equity, and Inclusion Program
- Empower Employees and Improve Collaboration

Initiatives

- Invest in Employee Development
  - Incorporate professional training within employee performance goals
  - Develop a comprehensive employee training program
  - Explore education reimbursement program
- Continue to Recruit, Hire and Retain Employees
  - Revamp and modernize hiring process
  - Develop an annual employee survey
  - Establish a recruitment program
- Develop and implement a robust Diversity, Equity, and Inclusion Program
  - Collaborate with local groups and community members to develop a DEIB program
  - Explore the hiring of a DEIB Coordinator
  - Review existing personnel policies
  - Develop comprehensive on-boarding guidelines for staff, alders, and committee members
- Empower Employees and Improve Collaboration
  - Establish an employee engagement committee
  - Develop cross-functional employee training program
  - Re-establish employee relations committee

Embrace Continuous Improvement

Continuous improvement is the ongoing improvement of practices, services, or processes through incremental and breakthrough improvements. These efforts can seek "incremental" improvement over time or "breakthrough" improvement all at once. It is important to the city to actively integrate innovative measures to bring better value and services to the community.

Objectives

- Develop On-Going Operational Evaluation Program
- Improve Internal and External Communications
- Enhance Facilities Improvement Planning

Initiatives

- Develop On-Going Operational Evaluation Program
  - Establish continuous improvement committee
  - Create an annual Department process improvement report
  - Expand the LEAN program
- Improve Internal and External Communications
  - Establish an agenda item during team meetings to discuss best practices or process improvements – report to department heads monthly
  - Establish a monthly lunch and learn meeting
  - Develop partnership with local and regional media
  - Develop communication and social media plan
  - Improve internal employee newsletter with more engagement
- Enhance Facilities Improvement Planning
  - Explore feasibility of using renewable energy for City facilities
  - Leverage the enterprise asset management system to develop a facilities maintenance plan

Elevate Community Alliances and Quality of Life

Engaging and building alliances within the community is essential to providing effective public service and fostering a high qualify of life. This effort aims to elevate community engagement by working closely with community groups to ensure the city's decision-making process emphasizing equity as a critical input and outcome.

Objectives

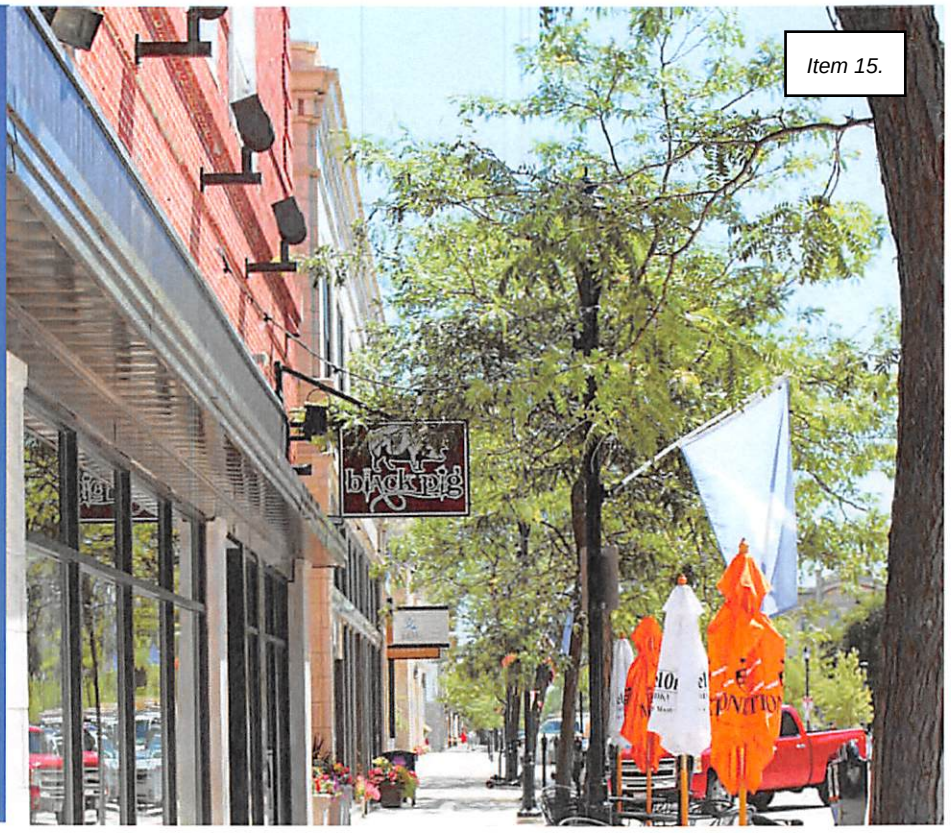
- Enhance Community Relationships and Engagement Practices
- Embrace Community Recreational, Social and Leisure Offerings
- Embrace Intergovernmental and Business Collaboration

Initiatives

- Enhance Community Relationships and Engagement Practices
  - Reevaluate Neighborhood Association structure and make necessary changes and updates
  - Align community/ neighborhood investments with 3.1.1
  - Expand on the Police and Fire Academies with a General City Academy/ "Open Doors" program
  - Maximize use of public facilities to improve public engagement
- Embrace Community Recreational, Social and Leisure Offerings
  - Focus on activities for families, children, tweens, and teens/ young adults
  - Intentionally recruit businesses catering to 3.2.1 group
  - Improve nightlife offerings
- Embrace Intergovernmental and Business Collaboration
  - Develop a Community Engagement framework
  - Maximize City relationships with community organizations
  - Track City engagement with the community and "be our own champion"
  - Form partnerships with businesses to accomplish 3.2

Promote Sustainable Growth

The desire to grow and expand as a city must come with a balance. This strategy seeks to promote sustainable expansion and growth to meet the needs of today without compromising the quality of life for future generations. By making sustainable investments the future of the city will improve and bring further opportunities.

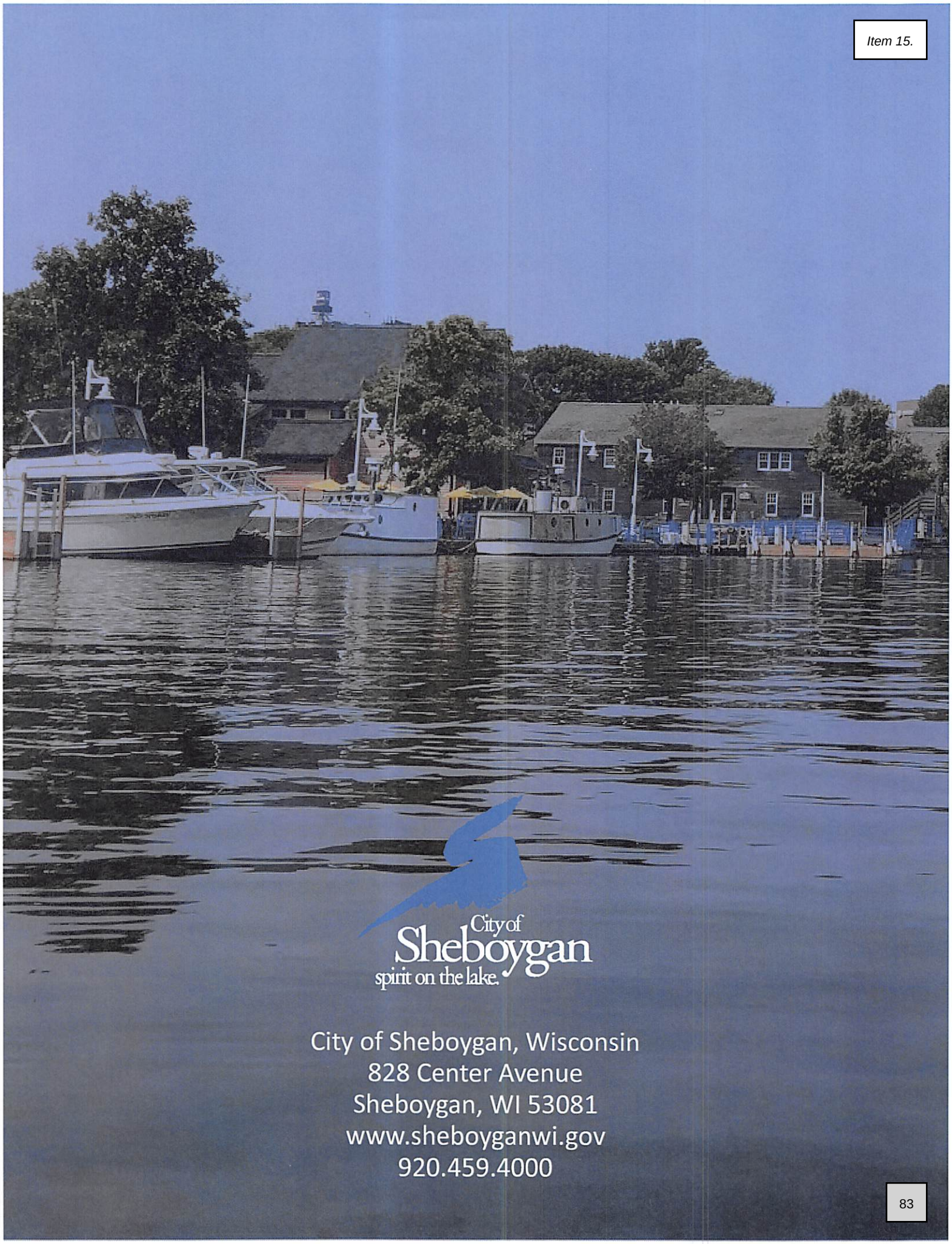


Objectives

- Embrace Economic Development
- Embrace Future Expansion
- Encourage Housing Opportunities

Initiatives

- Embrace Economic Development
  - New marketing and outreach strategies for the city regarding development
  - Focus on recruiting varying types of workforce and jobs to our local economy (Adding Tech/Data jobs to our area)
  - Create a program to help "Develop the Developer" with partners (Chamber/SCEDC) to provide resources for smaller local developers
- Embrace Future Expansion
  - Reimagine roads/ infrastructure needs (Road Diets, Complete Streets)
  - Develop long term expansion and redevelopment master plan
  - Integrate tactical urbanism techniques to try to optimism space
- Encourage Housing Opportunities
  - Effectively communicate the need for new housing in Sheboygan and existing constraints leading to a gap, leverage business leaders when helpful for economic development/ workforce aspect
  - Develop new zoning ordinance that incorporates urbanism
  - Develop a master plan for the Gartman property



City of
Sheboygan
spirit on the lake.

City of Sheboygan, Wisconsin
828 Center Avenue
Sheboygan, WI 53081
www.sheboyganwi.gov
920.459.4000

VI

R. C. No. 181 - 22 - 23. By LICENSING, HEARINGS, AND PUBLIC SAFETY COMMITTEE. March 6, 2023.

Your Committee to whom was referred R. O. No. 110-22-23 by City Clerk submitting various license applications; recommends granting the applications.

_____ _____

_____ _____

_____ _____

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated_____ 20____. _____, City Clerk

Approved_____ 20____. _____, Mayor

II

R. O. No. 110 - 22 - 23. By CITY CLERK. February 20, 2023.

Submitting various license applications.

City Clerk

CHANGE OF AGENT

Shawn Dortman is replacing Christine Loose as agent effective immediately for Kohler Co. Tax Key #'s C9030458110, 59030458050, 59030258160, 59030458180, 59030458170, 59030458190, 59030458200.

CHANGE OF PREMISE

No.	Name	Address
1040	Brennan's	1101 Michigan Avenue - Two-day event to be held 5/6/23 and 5/7/23: to include West and South Parking Lot in addition to current premises.
1040	Brennan's	1101 Michigan Avenue - Three-day event to be held 8/11/23 through 8/13/23: to include West and South Parking Lot in addition to current premises.

LHPS

II

R. O. No. 115 - 22 - 23. By CITY PLAN COMMISSION. March 6, 2023.

Your Commission to whom was referred Gen. Ord. No. 21-22-23 by Alderperson Felde amending the City's Future Land Use Map of the Sheboygan Comprehensive Plan to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel #59281631481 (Lot 1) from Public Parks and Open Space to Multi-Family Residential Classification; recommends adopting the Ordinance.

_____

CITY PLAN COMMISSION

Gen. Ord. No. 21 - 22 - 23. By Alderperson Felde. February 20, 2023.

AN ORDINANCE amending the City's Future Land Use Map of the Sheboygan Comprehensive Plan to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel #59281631481 (Lot 1) from Public Parks and Open Space to Multi-Family Residential Classification.

THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Chapter 2 of the Sheboygan Comprehensive Plan establishing future land use classifications is hereby amended by changing the Future Land Use Maps thereof and Use Classifications of the following described lands from Class Public Parks and Open Space to Multi-Family Residential Classification:

Property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel #59281631481 (Lot 1):

That part of the Northwest 1/4 of the Southeast 1/4 of Section 16, Town 15 North, Range 23 East, located in the City of Sheboygan, Sheboygan County, Wisconsin, more fully described as follows: COMMENCING at the Southwest corner of said Southeast 1/4 Section; thence North 00°18'14" East along the West line of said Southeast 1/4 Section 2576.74 feet to a point; thence North 89°28'01" East 45.07 feet to the point of beginning of the lands to be described hereinafter; thence continue North 89°28'01" East along the South line of Geele Avenue 620.08 feet to a point; thence South 00°24'35" West 450.72 feet to a point; thence North 89°48'21" West 618.34 feet to a point; thence North 00°11'39" East along the East line of N. Taylor Drive 442.85 feet to the point of beginning.

Section 2. Said zoning amendment shall be effective upon passage, publication and satisfaction of the transfer of parcel #59281631481 from the Sheboygan Area School District to Froedtert Health, Inc., or related entity, for development of medical facilities and senior housing (high density assisted living facility and memory care on proposed northwest corner lot and lower density independent living facilities on proposed southeast corner lot) on or before December 31, 2024.

City Plan

Section 3. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication.

Barb Felde

I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

PROPOSED COMPREHENSIVE PLAN AMENDMENT FROM PUBLIC PARKS AND OPEN SPACES TO MULTI-FAMILY RESIDENTIAL

CLIENT

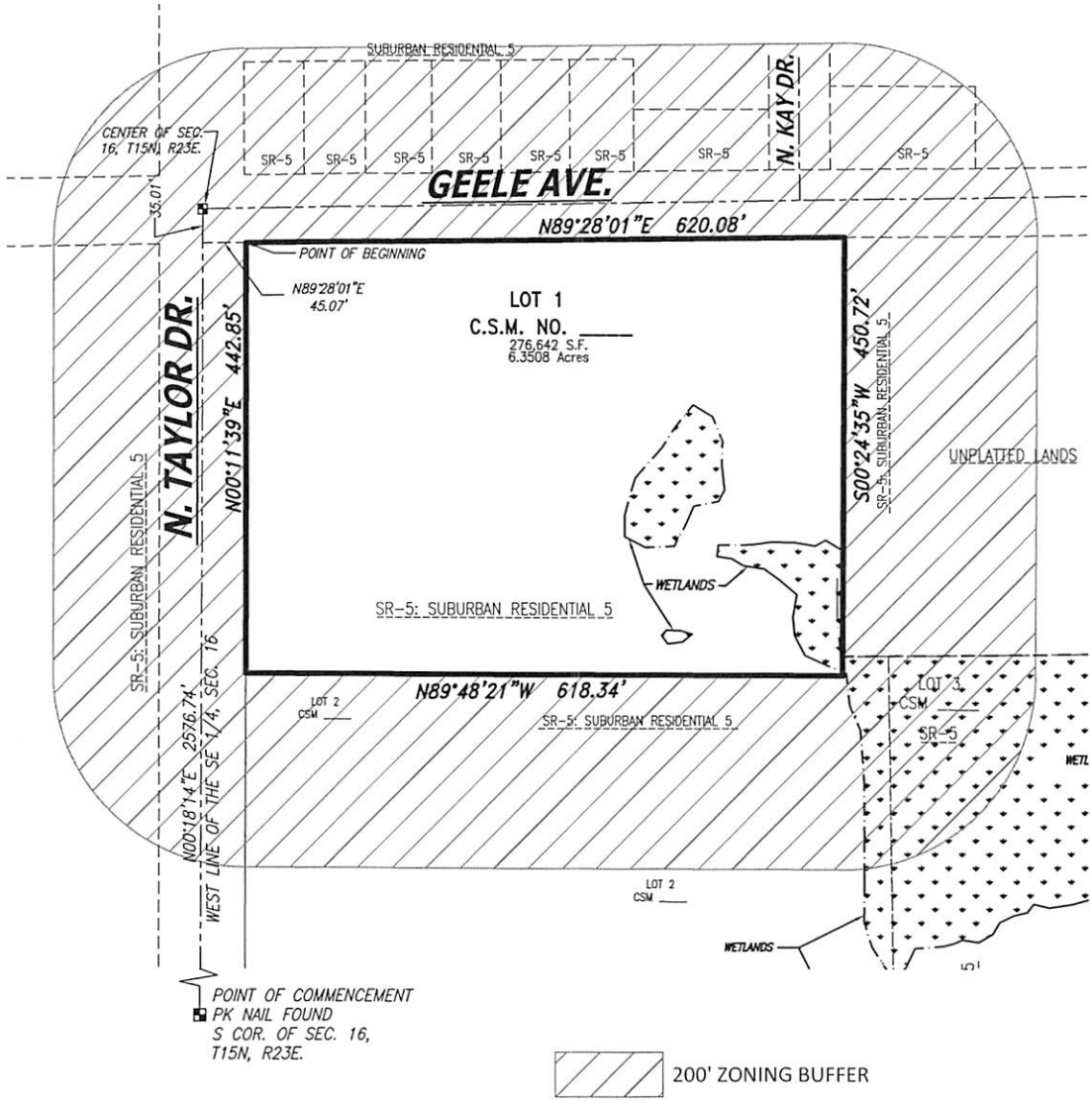
Ryan Companies US, Inc.

SITE ADDRESS

Sheboygan County Tax Parcel 59281631481 City of Sheboygan, Sheboygan County, Wisconsin.

LEGAL DESCRIPTION - LOT 1

That part of the Northwest 1/4 of the Southeast 1/4 of Section 16, Town 15 North, Range 23 East, located in the City of Sheboygan, Sheboygan County, Wisconsin, more fully described as follows:
COMMENCING at the Southwest corner of said Southeast 1/4 Section; thence North 00°18'14" East along the West line of said Southeast 1/4 Section 2576.74 feet to a point; thence North 89°28'01" East 45.07 feet to the point of beginning of the lands to be described hereinafter; thence continue North 89°28'01" East along the South line of Geele Avenue 620.08 feet to a point; thence South 00°24'35" West 450.72 feet to a point; thence North 89°48'21" West 618.34 feet to a point; thence North 00°11'39" East along the East line of N. Taylor Drive 442.85 feet to the point of beginning.



Graphic Scale

0 150 300

1" = 150'

Date: February 9, 2023
Sheet 1 OF 3 SHEETS

Date	Revision description	

CHAPUT LAND SURVEYS
234 W. Florida Street Milwaukee, WI 53204
414-224-8068 www.chaputlandsurveys.com

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Drawing No. 1729-SWC

II

R. O. No. 1116 - 22 - 23. By CITY PLAN COMMISSION. March 6, 2023.

Your Commission to whom was referred Gen. Ord. No. 22-22-23 by Alderperson Felde amending the City's Future Land Use Map of the Sheboygan Comprehensive Plan to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel #59281631481 (Lot 2) from Public Parks and Open Space to Institutional and Community Facilities Classification; recommends adopting the Ordinance.

_____

CITY PLAN COMMISSION

Gen. Ord. No. 22 - 22 - 23. By Alderperson Felde. February 20, 2023.

AN ORDINANCE amending the City's Future Land Use Map of the Sheboygan Comprehensive Plan to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel #59281631481 (Lot 2) from Public Parks and Open Space to Institutional and Community Facilities Classification.

THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Chapter 2 of the Sheboygan Comprehensive Plan establishing future land use classifications is hereby amended by changing the Future Land Use Maps thereof and Use Classifications of the following described lands from Class Public Parks and Open Space to Institutional and Community Facilities Classification:

Property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel #59281631481 (Lot 2):

That part of the Northwest 1/4 of the Southeast 1/4 of Section 16, Town 15 North, Range 23 East, located in the City of Sheboygan, Sheboygan County, Wisconsin more fully described as follows: COMMENCING at the Southwest corner of said Southeast 1/4 Section; thence North 00°18'14" East along the West line of said Southeast 1/4 Section 2576.74 feet to a point; thence North 89°28'01" East 45.07 feet to a point; thence South 00°11'39" West 442.85 feet to the point of beginning of the lands to be described hereinafter; thence continue South 89°48'21" East 618.34 feet to a point; thence North 00°24'35" East 19.85 feet to a point; thence North 89°28'01" East 47.56 feet to a point; thence South 00°48'29" East 797.00 feet to a point lying along the North line of Saemann Avenue; thence South 89°11'31" West along said North line 680.01 feet; thence North 00°11'39" East along the East line of N. Taylor Drive 788.32' to the point of beginning.

Section 2. Said zoning amendment shall be effective upon passage, publication and satisfaction of the transfer of parcel #59281631481 from the Sheboygan Area School District to Froedtert Health, Inc., or related entity, for development of medical facilities and senior housing (high density assisted living facility and memory care on proposed northwest corner lot and lower density independent living facilities on proposed southeast corner lot) on or before December 31, 2024.

City Plan

Section 3. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication.

Bart Yelde

I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

PROPOSED COMPREHENSIVE PLAN AMENDMENT FROM PUBLIC PARKS AND OPEN SPACES TO INSTITUTIONAL AND COMMUNITY FACILITIES

CLIENT

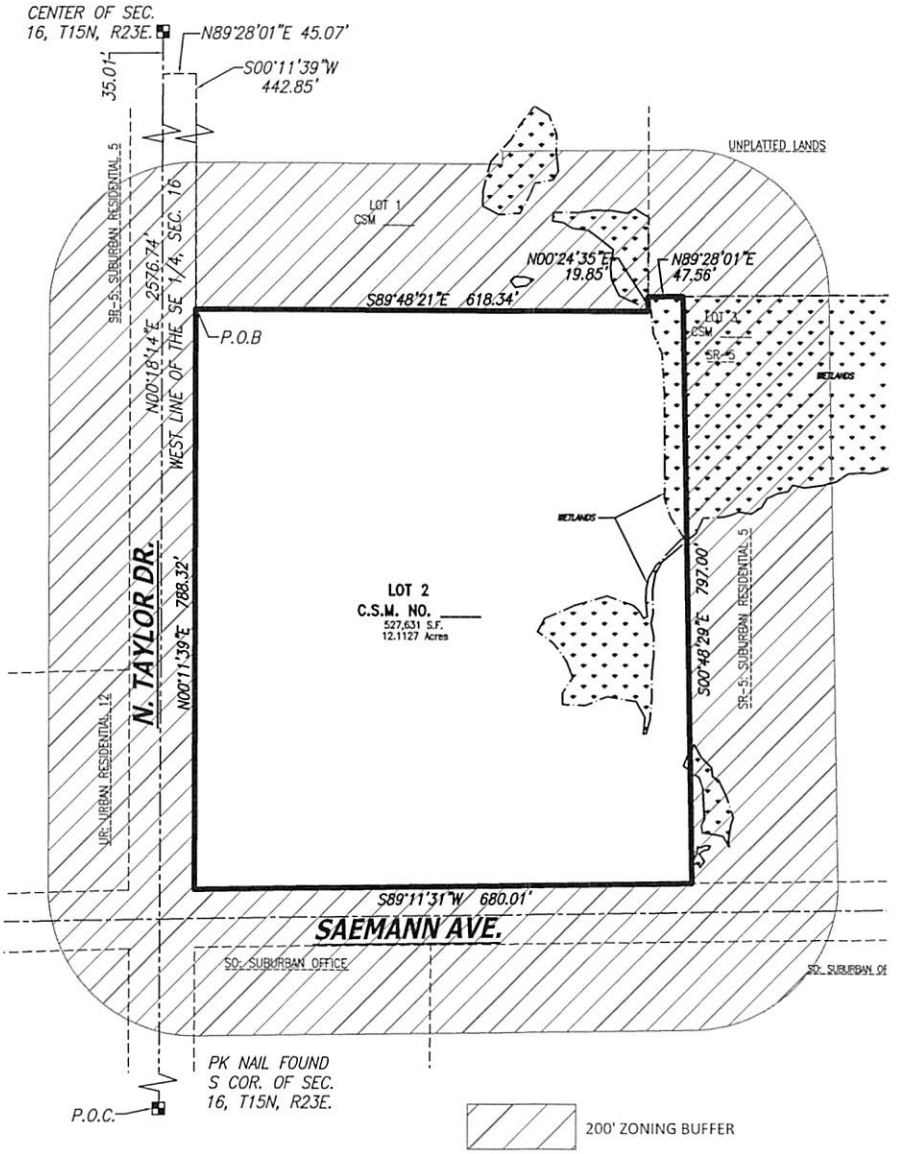
Ryan Companies US, Inc.

SITE ADDRESS

Sheboygan County Tax Parcel 59281631481 City of Sheboygan, Sheboygan County, Wisconsin.

LEGAL DESCRIPTION - LOT 2

That part of the Northwest 1/4 of the Southeast 1/4 of Section 16, Town 15 North, Range 23 East, located in the City of Sheboygan, Sheboygan County, Wisconsin more fully described as follows:
COMMENCING at the Southwest corner of said Southeast 1/4 Section; thence North 00°18'14" East along the West line of said Southeast 1/4 Section 2576.74 feet to a point; thence North 89°28'01" East 45.07 feet to a point; thence South 00°11'39" West 442.85 feet to the point of beginning of the lands to be described hereinafter; thence South 89°48'21" East 618.34 feet to a point; thence North 00°24'35" East 19.85 feet to a point; thence North 89°28'01" East 47.56 feet to a point; thence South 00°48'29" East 797.00 feet to a point lying along the North line of Saemann Avenue; thence South 89°11'31" West along said North line 680.01 feet; thence North 00°11'39" East along the East line of N. Taylor Drive 788.32' to the point of beginning.



Graphic Scale
0 200 400
1" = 200'

Date: February 8, 2023
Sheet 2 OF 3 SHEETS

Date	Revision description	

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Drawing No. 1729-SWC

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II

R. O. No. 117 - 22 - 23. By CITY PLAN COMMISSION. March 6, 2023.

Your Commission to whom was referred Gen. Ord. No. 23-22-23 by Alderperson Felde amending the City's Future Land Use Map of the Sheboygan Comprehensive Plan to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel #59281631481 (Lot 3) from Public Parks and Open Space to Multi-Family Residential Classification; recommends adopting the Ordinance.

CITY PLAN COMMISSION

Gen. Ord. No. 23 - 22 - 23. By Alderperson Felde. February 20, 2023.

AN ORDINANCE amending the City's Future Land Use Map of the Sheboygan Comprehensive Plan to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel #59281631481 (Lot 3) from Public Parks and Open Space to Multi-Family Residential Classification.

THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Chapter 2 of the Sheboygan Comprehensive Plan establishing future land use classifications is hereby amended by changing the Future Land Use Maps thereof and Use Classifications of the following described lands from Class Public Parks and Open Space to Multi-Family Residential Classification:

Property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel #59281631481 (Lot 3):

That part of the Northwest 1/4 of the Southeast 1/4 of Section 16, Town 15 North, Range 23 East, located in the City of Sheboygan, Sheboygan County, Wisconsin more fully described as follows: COMMENCING at the Southwest corner of said Southeast 1/4 Section; thence North 00°18'14" East along the West line of said Southeast 1/4 Section 2576.74 feet to a point; thence North 89°28'01" East along the South line of Geele Avenue 665.14 feet to a point; thence South 00°24'35" West 430.89 feet to a point; thence North 89°28'01" East 47.56 feet to the point of beginning of the lands to be described hereinafter; thence continue North 89°28'01" East 411.89 feet to a point; thence South 00°24'35" West 795.20 feet to a point lying on the North line of Saemann Avenue; thence South 89°11'31" West along said North line 394.98 feet to a point; thence North 00°48'29" West 797.00 feet to the point of beginning.

Section 2. Said zoning amendment shall be effective upon passage, publication and satisfaction of the transfer of parcel #59281631481 from the Sheboygan Area School District to Froedtert Health, Inc., or related entity, for development of medical facilities and senior housing (high density assisted living facility and memory care on proposed northwest corner lot and lower density independent living facilities on proposed southeast corner lot) on or before December 31, 2024.

City Plan

Section 3. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication.

Barb Felde

I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

PROPOSED COMPREHENSIVE PLAN AMENDMENT FROM PUBLIC PARKS AND OPEN SPACE TO MULTI-FAMILY RESIDENTIAL

CLIENT

Ryan Companies US, Inc.

SITE ADDRESS

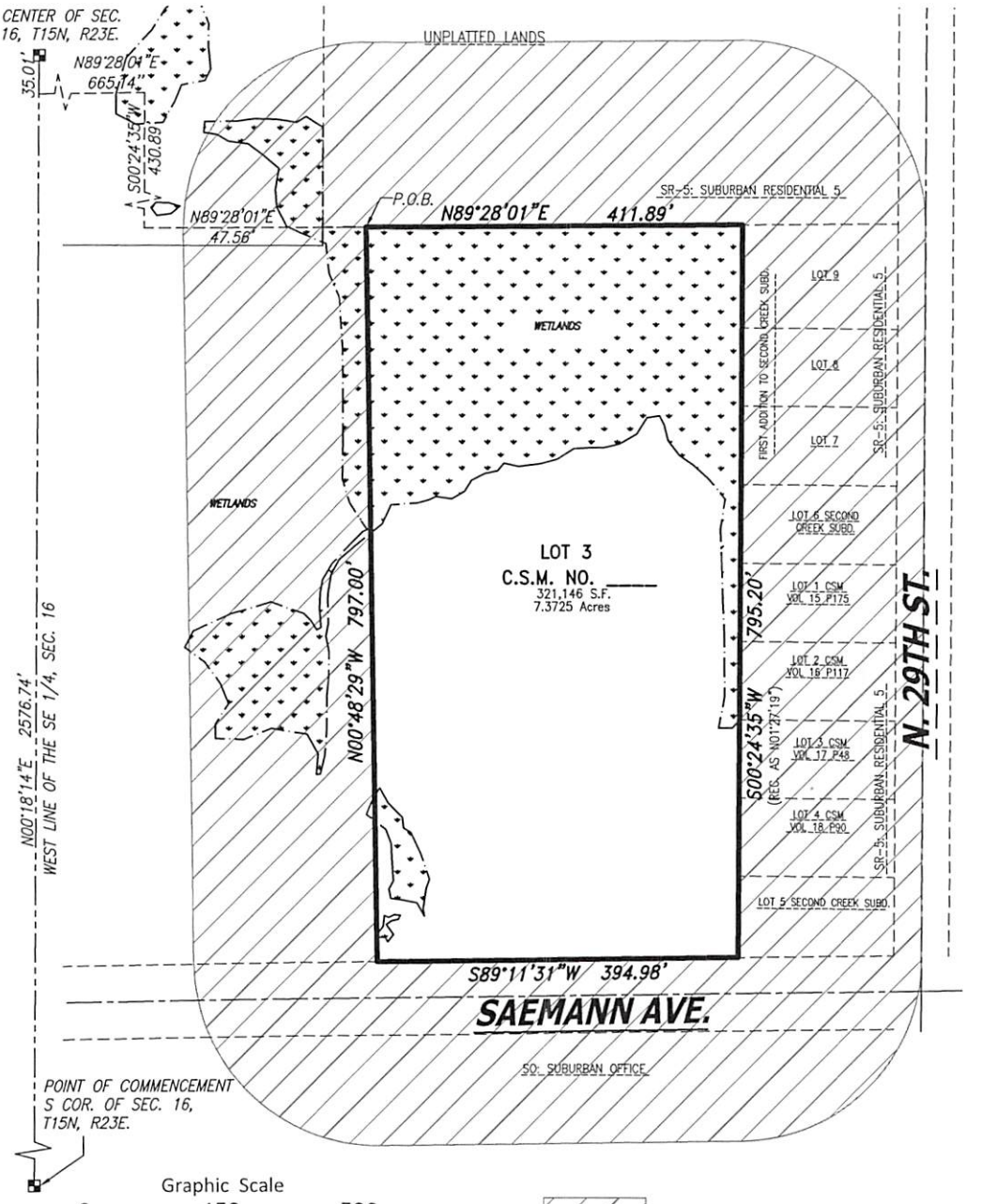
Sheboygan County Tax Parcel 59281631481 City of Sheboygan, Sheboygan County, Wisconsin.

LEGAL DESCRIPTION - LOT 3

That part of the Northwest 1/4 of the Southeast 1/4 of Section 16, Town 15 North, Range 23 East, located in the City of Sheboygan, Sheboygan County, Wisconsin more fully described as follows:

COMMENCING at the Southwest corner of said Southeast 1/4 Section;

thence North 00°18'14" East along the West line of said Southeast 1/4 Section 2576.74 feet to a point; thence North 89°28'01" East along the South line of Geele Avenue 665.14 feet to a point; thence South 00°24'35" West 430.89 feet to a point; thence North 89°28'01" East 47.56 feet to the point of beginning of the lands to be described hereinafter; thence continue North 89°28'01" East 411.89 feet to a point; thence South 00°24'35" West 795.20 feet to a point lying on the North line of Saemann Avenue; thence South 89°11'31" West along said North line 394.98 feet to a point; thence North 00°48'29" West 797.00 feet to the point of beginning.



Graphic Scale

0 150 300

1" = 150'

200' ZONING BUFFER

Date: February 9, 2023
Sheet 3 OF 3 SHEETS

Date	Revision description	

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Drawing No. 1729-SWC

II

R. O. No. 111 - 22 - 23. By CITY PLAN COMMISSION. March 6, 2023.

Your Commission to whom was referred Gen. Ord. No. 24-22-23 by Alderperson Felde and R. O. No. 107-22-23 by City Clerk submitting an application from Froedtert Health, Inc. to amend the City of Sheboygan Official Zoning Map of the Sheboygan Zoning Ordinance to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel #59281631481 (Lot 1) from Suburban Residential (SR-5) to Urban Residential (UR-12) Classification; recommends filing the R. O. and adopting the Ordinance.

_____

CITY PLAN COMMISSION

Gen. Ord. No. 24 - 22 - 23. By Alderperson Felde. February 20, 2023.

AN ORDINANCE amending the City of Sheboygan Official Zoning Map of the Sheboygan Zoning Ordinance to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel #59281631481 (Lot 1) from Suburban Residential (SR-5) to Urban Residential (UR-12) Classification.

THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Appendix A, Chapter 15 of the Sheboygan Zoning Ordinance establishing zoning districts and prescribing zoning standards and regulations is hereby amended by changing the Official Zoning Map thereof and Use District Classification of the following described lands from Class Suburban Residential (SR-5) to Urban Residential (UR-12) Classification:

Property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel #59281631481 (Lot 1):

That part of the Northwest 1/4 of the Southeast 1/4 of Section 16, Town 15 North, Range 23 East, located in the City of Sheboygan, Sheboygan County, Wisconsin, more fully described as follows: COMMENCING at the Southwest corner of said Southeast 1/4 Section; thence North 00°18'14" East along the West line of said Southeast 1/4 Section 2576.74 feet to a point; thence North 89°28'01" East 45.07 feet to the point of beginning of the lands to be described hereinafter; thence continue North 89°28'01" East along the South line of Geele Avenue 620.08 feet to a point; thence South 00°24'35" West 450.72 feet to a point; thence North 89°48'21" West 618.34 feet to a point; thence North 00°11'39" East along the East line of N. Taylor Drive 442.85 feet to the point of beginning.

Section 2. Said zoning amendment shall be effective upon passage, publication and satisfaction of the transfer of parcel #59281631481 from the Sheboygan Area School District to Froedtert Health, Inc., or related entity, for development of medical facilities and senior housing (high density assisted living facility and memory care on proposed northwest corner lot and lower density independent living facilities on proposed southeast corner lot) on or before December 31, 2024.

City Plan

Section 3. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication.

Barb Felde

I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

PROPOSED REZONE MAP AMENDMENT FROM SUBURBAN RESIDENTIAL (SR-5) TO URBAN RESIDENTIAL (UR-12)

CLIENT

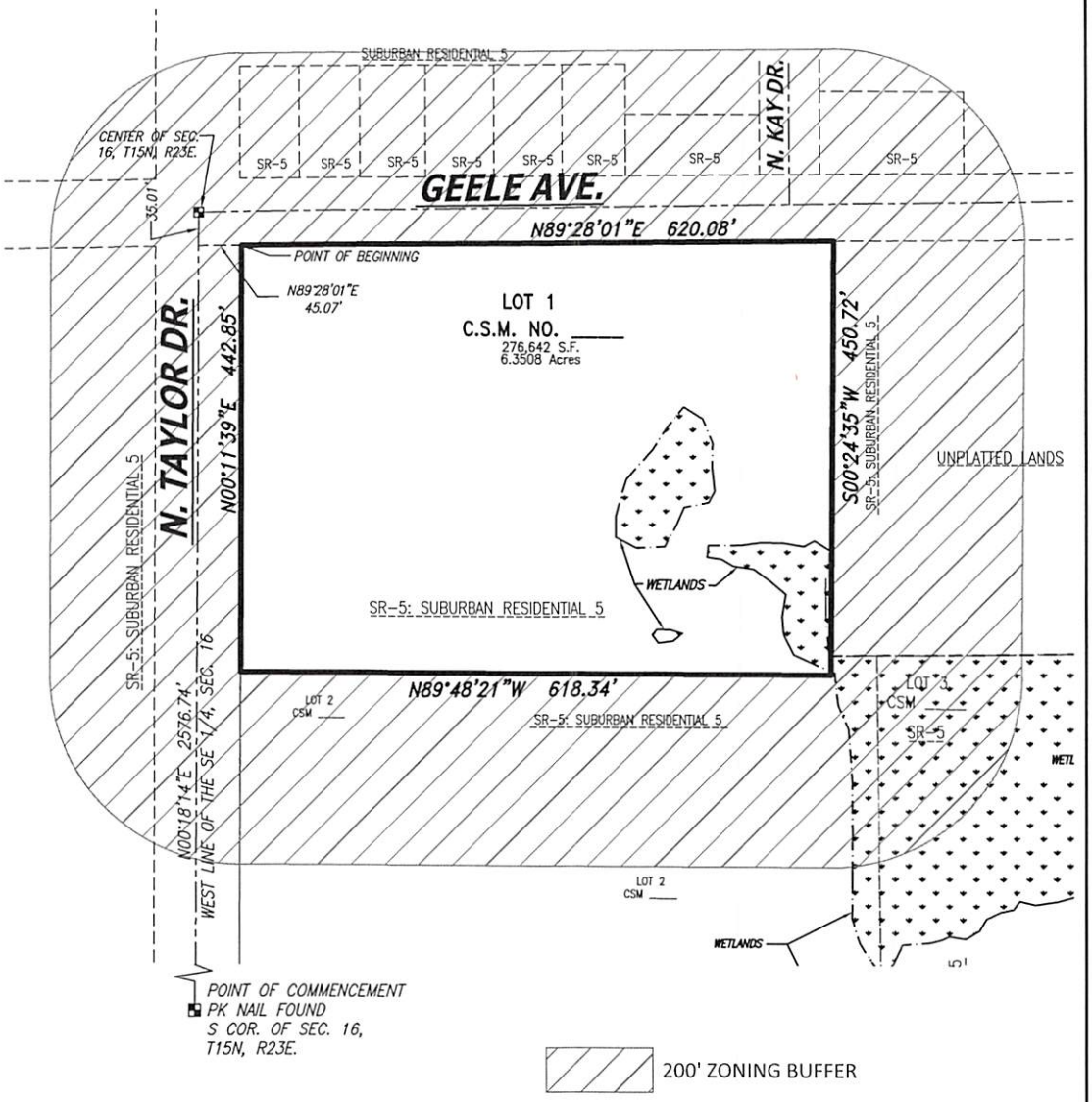
Ryan Companies US, Inc.

SITE ADDRESS

Sheboygan County Tax Parcel 59281631481 City of Sheboygan, Sheboygan County, Wisconsin.

LEGAL DESCRIPTION - LOT 1

That part of the Northwest 1/4 of the Southeast 1/4 of Section 16, Town 15 North, Range 23 East, located in the City of Sheboygan, Sheboygan County, Wisconsin, more fully described as follows:
COMMENCING at the Southwest corner of said Southeast 1/4 Section; thence North 00°18'14" East along the West line of said Southeast 1/4 Section 2576.74 feet to a point; thence North 89°28'01" East 45.07 feet to the point of beginning of the lands to be described hereinafter; thence continue North 89°28'01" East along the South line of Geele Avenue 620.08 feet to a point; thence South 00°24'35" West 450.72 feet to a point; thence North 89°48'21" West 618.34 feet to a point; thence North 00°11'39" East along the East line of N. Taylor Drive 442.85 feet to the point of beginning.



Graphic Scale
0 150 300
1" = 150'

Date: February 9, 2023
Sheet 1 OF 3 SHEETS

Date	Revision description	

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Drawing No. 1729-SWC

II

R. O. No. 107 - 22 - 23. By CITY CLERK. February 20, 2023.

Submitting an application from Froedtert Health, Inc. for a change in zoning classification for property off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel No. 59281631481 (Lot 1) from Suburban Residential (SR-5) to Urban Residential (UR-12) Classification.

City Plan

CITY CLERK

February 13, 2023

Chad Pelishek, Director
Department of Planning & Development
City of Sheboygan
828 Center Ave, Suite 208
Sheboygan, WI 53081

RE: Request for Amendment to Official Zoning Map

Dear Mr. Pelishek:

Froedtert has entered into a purchase contract to acquire from the Sheboygan Area School District their 25-acre vacant site located at the corner of Taylor Dr and Saemann Ave. Froedtert intends to subdivide the site to allow for two proposed development projects:

1. A new healthcare facility containing a neighborhood hospital, surgery center, and medical clinic space. This project will be located on an approximately 12.1-acre parcel located at the southeast corner of the site, depicted as "Lot 2" on the enclosed draft CSM. This proposed land use is consistent with the pattern of development along the Taylor Dr medical and commercial corridor.
2. A new senior housing development including multiple housing options for seniors. The development is planned to include 150-200 units of independent living, assisted living, and memory care. This project will be located at the northwest and southeast corners of the site on two separate parcels containing approximately 13.7 acres, depicted as "Lot 1" and "Lot 3" on the enclosed draft CSM. This proposed land use provides a comfortable transition from the proposed Froedtert facility to the nearby single family residential neighborhood.

The proposed projects would benefit the Sheboygan community in many ways, including, without limitation, as follows:

- Brings home a group of local physicians currently practicing outside the Sheboygan market
- Centralizes range of healthcare services in a community-focused, modern medical facility, delivering patient care closer to home
- Adds a new healthcare option to Sheboygan through Froedtert's academic-based approach to medicine
- Addresses local need for senior housing indicated by Sheboygan's housing study
- As aging residents in the community move into the new senior housing, they will vacate single family homes that young families can move into

Our development team hosted a community open house on January 18 and comments from community members indicated three important themes that we are confident we can accommodate in our development plans:

1. Provide appropriate buffering between the proposed project and the adjacent residential homes that abut the site to the east. *The zoning code specifies "bufferyard" requirements that will be incorporated into our site plan.*
2. Preserve as much wooded area and wildlife habitat as possible. *A significant portion of wooded areas on the site is not slated for development and will be preserved as wetlands.*
3. During construction, be thoughtful about disruption to the neighbors and be accountable to concerns as they arise. *Our construction teams will communicate regularly with the neighbors to address concerns throughout the process. We have already created a project email that community members can use to contact the development team any time: TaylorDr.Project@ryancompanies.com*

Quite simply, these projects are aimed at meeting the needs of the Sheboygan community in a variety of meaningful ways and in alignment with the City of Sheboygan Department of Planning & Development's mission statement. Moreover, the projects will feature a wide array of green design elements, designed to minimize buildings' impacts on the environment and nature, as well as promote energy efficiency and renewable resources.

COMPREHENSIVE PLAN AMENDMENT

Concurrent with the zoning change, the proposed projects require amendments to the City of Sheboygan Comprehensive Plan as follows:

1. **Froedtert healthcare parcel**: Change land use classification from "Public Parks and Open Space" to "Institutional and Community Facilities," which aligns with the health care facilities immediately to the south.
2. **Senior housing parcels**: Change land use classification from "Public Parks and Open Space" to "Multi-Family Residential."

The proposed projects support the following Key Initiatives indicated in the Comprehensive Plan:

- **Promoting infill development and redevelopment –** *established land uses surround this parcel on all sides creating a vacant, infill site condition that is ready to be placed into service as a productive land use for the community*
- **Spur economic development and job creation –** *the proposed projects represent a $70M+ capital investment into the community and are estimated to create 300 permanent jobs (in addition to construction jobs during development)*
- **Strengthening older neighborhoods –** *existing neighborhoods will benefit from new healthcare and housing options close to home*
- **Diversifying the City's housing stock –** *Sheboygan has a shortage of senior housing which this project delivers*

AMENDMENT TO OFFICIAL ZONING MAP

The proposed projects require amendments to the Official Zoning Map as follows:

1. **Froedtert healthcare parcel**: Change zoning classification from "Suburban Residential (SR-5)" to "Suburban Office (SO)," which aligns with the health care facilities immediately to the south.
2. **Senior housing parcels**: Change zoning classification from "Suburban Residential (SR-5)" to "Urban Residential (UR-12)."

The zoning ordinance provides the process to amend the zoning map. Subsection 15.903(4)(c)1.-3. (pages 317-318) poses the following three questions which help to justify the need for a zoning change:

1. How does the proposed Official Zoning Map amendment further the purposes of this Chapter as outlined in Section 15.005 and the applicable rules and regulations of the Wisconsin Department of Natural Resources (DNR) and the Federal Emergency Management Agency (FEMA)?
    - *The project team is very familiar with local, county and state wetland regulations. The individuals assembled have worked together to successfully obtain permits from the Wisconsin Department of Natural Resources on several projects. The proposed projects will preserve and minimize impacts to the surrounding wetlands in accordance with the requirements of the Wisconsin DNR.*

2. Which of the following factors has arisen that are not properly addressed on the current Official Zoning Map?
    - *Two of the four factors listed in the ordinance apply in this case as follows*:
        - Factors have changed, (such as the availability of new data, the presence of new roads or other infrastructure, additional development, annexation, or other zoning changes), making the subject property more appropriate for a different zoning district
        - Growth patterns or rates have changed, thereby creating the need for an Amendment to the Official Zoning Map
3. How does the proposed amendment to the Official Zoning Map maintain the desired consistency of land uses, land use intensities, and land use impacts as related to the environs of the subject property?
    - *The use, character, and densities of the proposed projects are consistent with the pattern of development along the Taylor Dr medical and commercial corridor, while respecting the character and scale of the residential neighborhoods to the north and east of the site.*

Thank you for your consideration of this matter. We look forward to working with you, the City or Sheboygan, and the community throughout the development process.

Sincerely,

Ryan Marks

Ryan Marks
Vice President, Facilities Planning & Development

SHEBOYGAN AREA
SCHOOL DISTRICT

January 27, 2023

Chad Pelishek
Director of Planning and Development
City of Sheboygan
828 Center Avenue, Suite 208
Sheboygan, WI 53081

To whom it may concern:

I, Mark Boehlke, authorize Froedtert Health, Inc. to submit a rezone application for Sheboygan Area School District property located east of N. Taylor Drive and north of Saemann Avenue, parcel #59281631481.

Sincerely,

Mark J. Boehlke

Mark Boehlke
Assistant Superintendent Business and Operational Services

Department of Business and Operational Services
830 Virginia Avenue • Sheboygan, WI 53081 • **PHONE:** 920-459-3523 • **FAX:** 920-459-4300
www.sheboygan.k12.wi.us

OFFICE USE ONLY
APPLICATION NO.: _____
RECEIPT NO.: _____
FILING FEE: $200.00 (Payable to City of Sheboygan)

CITY OF SHEBOYGAN
APPLICATION FOR
AMENDMENT OF OFFICIAL ZONING MAP

(Requirements Per Section 15.903)
Revised May, 2012

Completed application is to be filed with the Office of the City Clerk, City Hall, 828 Center Avenue. Application will not be processed if all required attachments and filing fee of $200 (payable to the City of Sheboygan) is not submitted along with a complete and legible application. Application filing fee is non-refundable.

1. APPLICANT INFORMATION

APPLICANT: Froedtert Health, Inc. PHONE NO.: (414) 805-3934

ADDRESS: 9200 W Wisconsin Ave, Milwaukee, WI 53226

E-MAIL: ryan.marks@froedtert.com

OWNER OF SITE: Sheboygan Area School District PHONE NO.: (920) 459-3500

2. DESCRIPTION OF THE SUBJECT SITE

ADDRESS OF PROPERTY AFFECTED: Northeast corner of N.Taylor Dr. and Saemann Ave.

LEGAL DESCRIPTION: see attached, proposed draft CSM to subdivide the site. This application applies to Lot 1 of the attached draft CSM

PARCEL NO. 59281631481 MAP NO. _____

EXISTING ZONING DISTRICT CLASSIFICATION: Suburban Residential SR-5

PROPOSED ZONING DISTRICT CLASSIFICATION: Urban Residential UR-12

BRIEF DESCRIPTION OF THE **EXISTING** OPERATION OR USE: Vacant land

_____

BRIEF DESCRIPTION OF THE **PROPOSED** OPERATION OR USE: _____

Assisted Living Facility and Memory Care_____

3. JUSTIFICATION OF THE PROPOSED ZONING MAP AMENDMENT

How does the proposed Official Zoning Map amendment further the purposes of the Zoning Ordinance as outlined in Section 15.005 and, for flood plains or wetlands, the applicable rules and regulations of the Wisconsin Department of Natural Resources and the Federal Emergency Management Agency? _____

See attached narrative

Which of the following factors has arisen that are not properly addressed on the current Official Zoning Map? (Provide explanation in space provided below.)

- ❑ The designations of the Official Zoning Map should be brought into conformity with the Comprehensive Master Plan.
- ❑ A mistake was made in mapping on the Official Zoning Map. (An area is developing in a manner and purpose different from that for which it is mapped.) *NOTE: If this reason is cited, it must be demonstrated that the discussed inconsistency between actual land use and designated zoning is not intended, as the City may intend to stop an undesirable land use pattern from spreading.*
- ❑ Factors have changed, (such as the availability of new data, the presence of new roads or other infrastructure, additional development, annexation, or other zoning changes), making the subject property more appropriate for a different zoning district.
- ❑ Growth patterns or rates have changed, thereby creating the need for an amendment to the Official Zoning Map.
- ❑ Explain: _____

How does the proposed amendment to the Official Zoning Map maintain the desired consistency of land uses, land use intensities, and land use impacts as related to the environs of the subject property? _____

See attached narrative

Indicate reasons why the applicant believes the proposed map amendment is in harmony with the recommendations of the City of Sheboygan Comprehensive Plan.

See attached narrative

4. CERTIFICATE

I hereby certify that all the above statements and attachments submitted hereto are true and correct to the best of my knowledge and belief.

Ryan Marks — 2/13/2023

APPLICANT'S SIGNATURE — **DATE**

Ryan Marks

PRINT ABOVE NAME

APPLICATION SUBMITTAL REQUIREMENTS

A copy of the current zoning map of the subject property and vicinity showing:

- ❑ The property proposed to be rezoned.
- ❑ All lot dimensions of the subject property.
- ❑ All other lands within 200 feet of the subject property.
- ❑ Map size not more than 11" X 17" and map scale not less than 1" = 600'.
- ❑ Graphic scale and north arrow.

ZONING MAP
SENIOR HOUSING-change zoning classification from "Suburban Residential (SR-5)" to "Urban Residential (UI

11/1/2022, 2:07:21 PM

City Zoning Published Layer

- Mixed Residential-8 District
- Neighborhood Office District
- Neighborhood Residential-6 District
- Suburban Commercial District
- Suburban Industrial District
- Suburban Office District
- Suburban Residential-5 District
- Urban Commercial District
- Urban Industrial District

1:9,028

0 0.05 0.1 0.2 mi

0 0.07 0.15 0.3 km

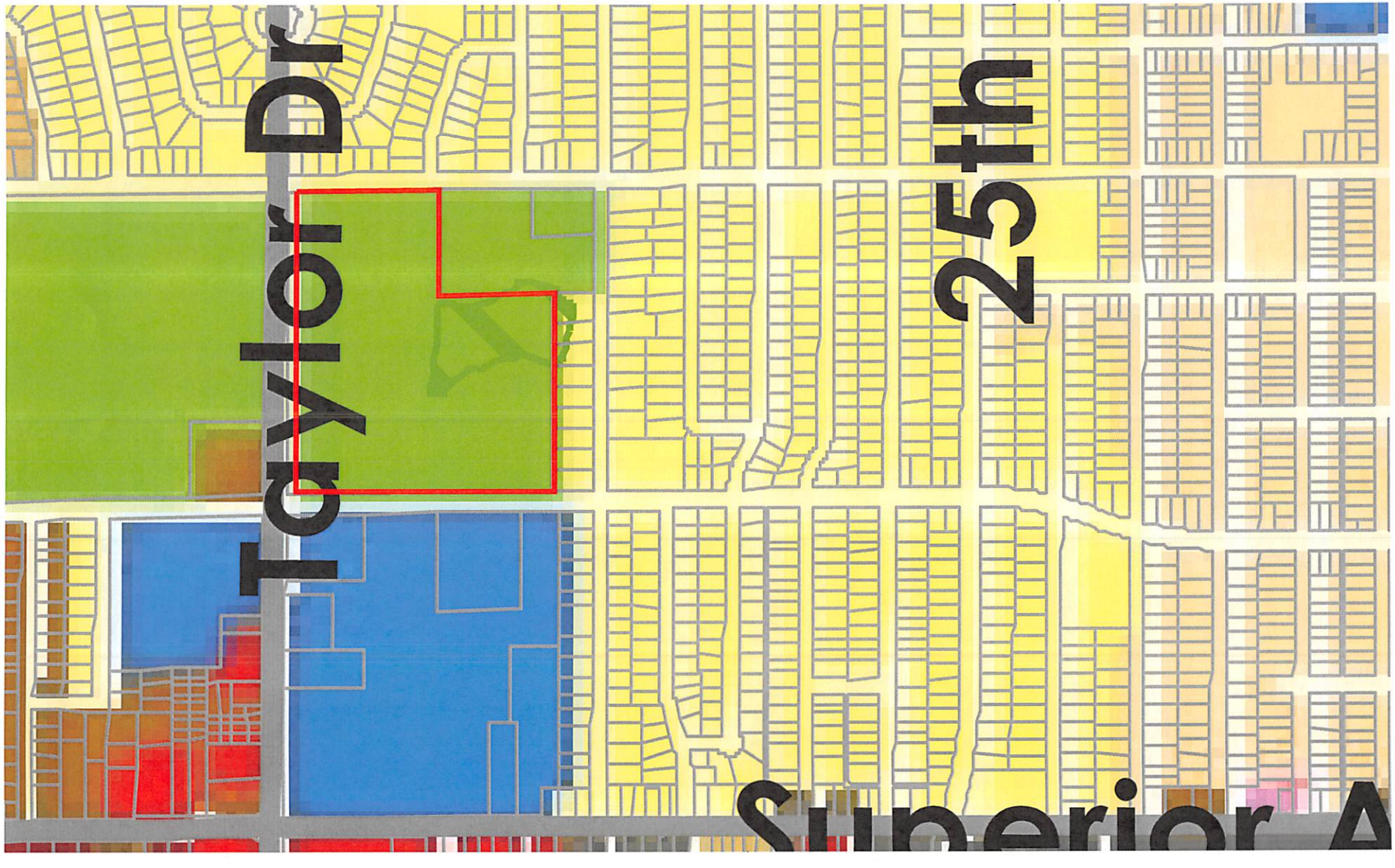
Esri Canada, Esri, HERE, Garmin, GeoTechnologies, Inc., Intermap, USGS, METI/NASA, EPA, USDA

ArcGIS Web Ap

Esri Canada, Esri, HERE, Garmin, GeoTechnologies, Inc., Intermap, USGS, METI/NASA, EPA, USDA

COMPREHENSIVE PLAN

Senior Housing Parcels-change land use classification from "Public Parks and Open Space" (green) to "Multi-Family Residential" (brown)



PROPOSED REZONE MAP AMENDMENT FROM SUBURBAN RESIDENTIAL (SR-5) TO URBAN RESIDENTIAL (UR-12)

CLIENT

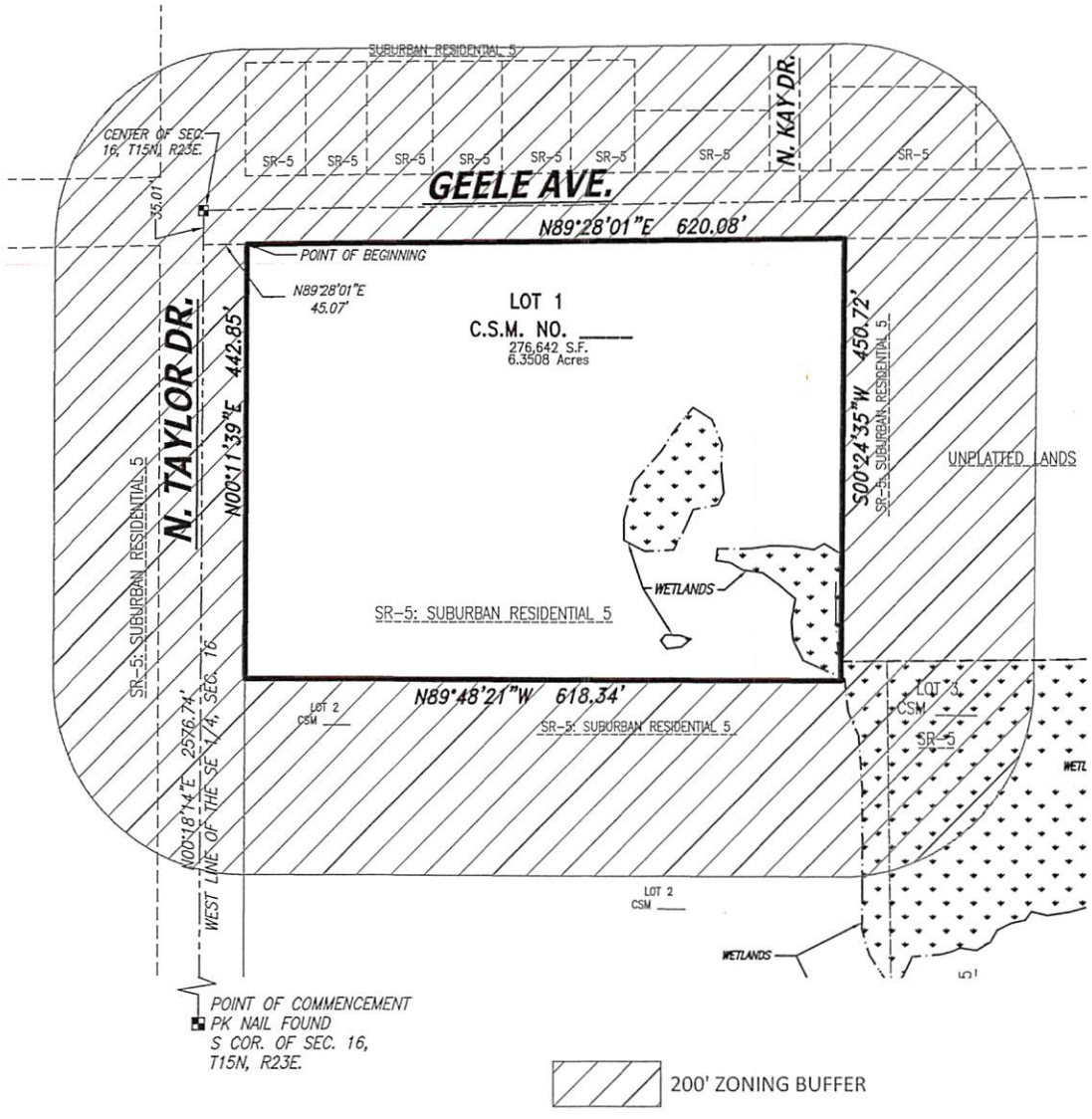
Ryan Companies US, Inc.

SITE ADDRESS

Sheboygan County Tax Parcel 59281631481 City of Sheboygan, Sheboygan County, Wisconsin.

LEGAL DESCRIPTION - LOT 1

That part of the Northwest 1/4 of the Southeast 1/4 of Section 16, Town 15 North, Range 23 East, located in the City of Sheboygan, Sheboygan County, Wisconsin, more fully described as follows:
COMMENCING at the Southwest corner of said Southeast 1/4 Section; thence North 00°18'14" East along the West line of said Southeast 1/4 Section 2576.74 feet to a point; thence North 89°28'01" East 45.07 feet to the point of beginning of the lands to be described hereinafter; thence continue North 89°28'01" East along the South line of Geele Avenue 620.08 feet to a point; thence South 00°24'35" West 450.72 feet to a point; thence North 89°48'21" West 618.34 feet to a point; thence North 00°11'39" East along the East line of N. Taylor Drive 442.85 feet to the point of beginning.



Graphic Scale
0 150 300
1" = 150'

Date: February 9, 2023
Sheet 1 OF 3 SHEETS

Date	Revision description	

CHAPUT LAND SURVEYS
234 W. Florida Street Milwaukee, WI 53204
414-224-8068 www.chaputlandsurveys.com

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Drawing No. 1729-SWC

CERTIFIED SURVEY MAP NO. _____

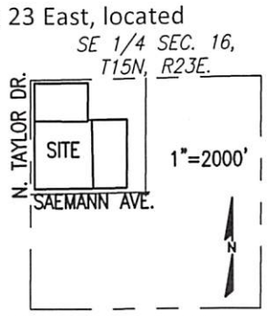
That part of the Northwest 1/4 of the Southeast 1/4 of Section 16, Town 15 North, Range 23 East, located in the City of Sheboygan, Sheboygan County, Wisconsin

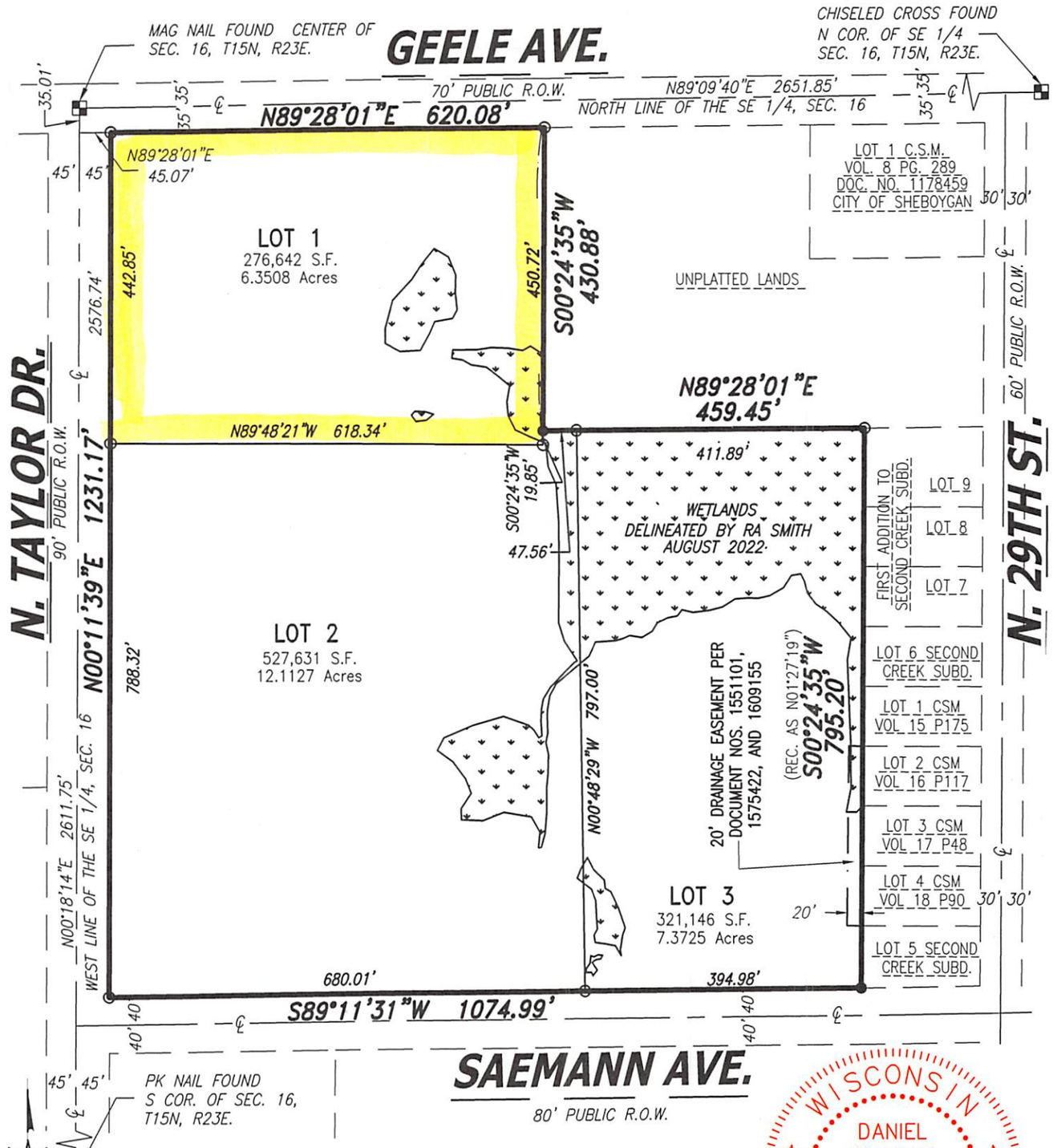
Bearings are referenced to the Sheboygan County Coordinate System, in which the North line of the Southwest 1/4 of Section 16, Town 15 North, Range 23 East, bears N89°09'40"E.

LEGEND

- ○ Indicates Set 1" Iron Pipe, 18" in length weighing 1.13 lbs. per lineal foot.
- ● Indicates Found 1" Iron Pipe.

Subdivider:
FROEDERT HEALTH, INC.
900 N 92ND ST.
MILWAUKEE, WI 53226





NOTE:
Cross access easements and storm water easements to be provided by separate document

GRAPHIC SCALE
0 200 400
1 inch = 200 ft.

WISCONSIN
DANIEL BEDNAR
S-2812
GERMANTOWN
WI
LAND SURVEYOR

CHAPUT LAND SURVEYS
234 W. Florida Street Milwaukee, WI 53204
414-224-8068 www.chaputlandsurveys.com

This instrument was drafted by Daniel Bednar
Registered Land Surveyor S-2812

Date: January 18, 2023
Sheet 1 OF 3 SHEETS
Drawing No. 1729-

CERTIFIED SURVEY MAP NO. _____

That part of the Northwest 1/4 of the Southeast 1/4 of Section 16, Town 15 North, Range 23 East, located in the City of Sheboygan, Sheboygan County, Wisconsin

SURVEYOR'S CERTIFICATE

STATE OF WISCONSIN}
:SS
MILWAUKEE COUNTY}

I, DANIEL BEDNAR, Registered Land Surveyor, do hereby certify:
THAT I have surveyed, divided and mapped a part of the Northwest 1/4 of the Southeast 1/4 of Section 16, Town 15 North, Range 23 East, located within the City of Sheboygan, Sheboygan County, Wisconsin, bounded and described as follows:

COMMENCING at the Southwest corner of said Southeast 1/4 Section;
thence North 00°18'14" East along the West line of said Southeast 1/4 Section 2576.74 feet to a point; thence North 89°28'01" East 45.07 feet to the point of beginning of the lands to be described hereinafter; thence continue North 89°28'01" East along the South line of Geele Avenue 620.08 feet to a point; thence South 00°24'35" West 430.88 feet to a point; thence North 89°28'01" East 459.45 feet to a point; thence South 00°24'35" West 795.20 feet to a point on the North line of Saemann Avenue; thence South 89°11'31" West along said North line 1074.99 feet to a point on the East line of North Taylor Drive; thence North 00°11'39" East along said East line 1231.17 feet to the point of beginning.

Said lands contain 1,125,419 square feet, or 25.8359 acres.

THAT I have made the survey, land division and map by the direction of Froedert Health, Inc., Owner.

THAT the map is a correct representation of all the exterior boundaries of the land surveyed and the land division thereof made.

THAT I have fully complied with the provisions of Chapter 236.34 of the Wisconsin Statutes and the Land Division and the Subdivision Ordinance of the City of Sheboygan in surveying, dividing and mapping the same.

January 25, 2023
DATE

WISCONSIN
DANIEL
BEDNAR
S-2812
GERMANTOWN
WI
LAND SURVEYOR

DANIEL BEDNAR
REGISTERED LAND SURVEYOR S-2812

CHAPUT
LAND SURVEYS
234 W. Florida Street
Milwaukee, WI 53204
414-224-8068
www.chaputlandsurveys.com

This instrument was drafted by Daniel Bednar
Registered Land Surveyor S-2812

CERTIFIED SURVEY MAP NO. _____

Part of the Southwest 1/4 and the Southeast 1/4 of the Southwest 1/4 of Section 28, Town 15 North, Range 23 East, located within the Village of Kohler, Sheboygan County, Wisconsin

CORPORATE OWNER'S CERTIFICATE

Froedert Health, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin , as owner, certifies that said company caused the land described on this map to be surveyed, divided, mapped and dedicated as represented on this map in accordance with the requirements of the Village of Kohler Code of Ordinances.

This agreement shall be binding on the undersigned and assigns.

In Witness Where of, Froedert Health, Inc. has caused these presents to be signed by _____, its _____, at _____, Wisconsin, ____ day of _____, 2023.

In the presence of:

Froedert Health, Inc.

_____
(print name)

STATE OF WISCONNSIN)
): SS
SHEBOYGAN COUNTY)

Personally came before me this ____ day of _____,2023,_____, of the above named corporation, to me known as the person who executed the foregoing instrument, and to me known to be the _____ of the corporation, and acknowledged that they executed the foregoing instrument as such officers as the deed of the company, by its authority.

(Notary Seal)

_____
Notary Public State of Wisconsin
My commission expires,
My commission is permanent.

CITY PLAN COMMISSION CERTIFICATE OF APPROVAL

APPROVED by the Planning Commission of the City of Sheboygan on this ___ day of _____, 2023.

_____
Ryan Sorenson, Chairperson

_____
Meredith DeBruin, City Clerk

COMMON COUNCIL CERTIFICATE OF APPROVAL AND ACCEPTANCE OF DEDICATION

APPROVED by the Common Council of the City of Sheboygan on this ___ day of _____, 2023.

_____
Ryan Sorenson, Mayor

_____
Meredith DeBruin, City Clerk

WISCONSIN
DANIEL
BEDNAR
S-2812
GERMANTOWN
WI
LAND SURVEYOR

CHAPUT
LAND SURVEYS
234 W. Florida Street
Milwaukee, WI 53204
414-224-8068
www.chaputlandsurveys.com

This instrument was drafted by Daniel Bednar
Registered Land Surveyor S-2812

Date: January 25, 2023
Sheet 3 OF 3 SHEETS
Drawing No. 1729-SWS

CLK322B

City Of Sheboygan
City Clerk's Office

** General Receipt **

Receipt No: 230179
License No: 0000
Date: 02/15/2023
Received By: MMD
Received From: RYAN COMPLANIES US INC
Memo: LOT 1 - FROEDTERT REZONE
Method of Payment: $200.00 Check No. 888597
Total Received: $200.00

Fee Description	Fee
Zoning Change	200.00

This document signifies receipt of fees in the amount indicated above.

II

R. O. No. 112 - 22 - 23. By CITY PLAN COMMISSION. March 6, 2023.

Your Commission to whom was referred Gen. Ord. No. 25-22-23 by Alderperson Felde and R. O. No. 108-22-23 by City Clerk submitting an application from Froedtert Health, Inc. to amend the City of Sheboygan Official Zoning Map of the Sheboygan Zoning Ordinance to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel #59281631481 (Lot 2) from Suburban Residential (SR-5) to Suburban Office (SO) Classification; recommends filing the R. O. and adopting the Ordinance.

_____

CITY PLAN COMMISSION

Gen. Ord. No. 25 - 22 - 23. By Alderperson Felde. February 20, 2023.

AN ORDINANCE amending the City of Sheboygan Official Zoning Map of the Sheboygan Zoning Ordinance to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel #59281631481 (Lot 2) from Suburban Residential (SR-5) to Suburban Office (SO) Classification.

THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Appendix A, Chapter 15 of the Sheboygan Zoning Ordinance establishing zoning districts and prescribing zoning standards and regulations is hereby amended by changing the Official Zoning Map thereof and Use District Classification of the following described lands from Class Suburban Residential (SR-5) to Suburban Office (SO) Classification:

Property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel #59281631481 (Lot 2):

That part of the Northwest 1/4 of the Southeast 1/4 of Section 16, Town 15 North, Range 23 East, located in the City of Sheboygan, Sheboygan County, Wisconsin more fully described as follows: COMMENCING at the Southwest corner of said Southeast 1/4 Section; thence North 00°18'14" East along the West line of said Southeast 1/4 Section 2576.74 feet to a point; thence North 89°28'01" East 45.07 feet to a point; thence South 00°11'39" West 442.85 feet to the point of beginning of the lands to be described hereinafter; thence continue South 89°48'21" East 618.34 feet to a point; thence North 00°24'35" East 19.85 feet to a point; thence North 89°28'01" East 47.56 feet to a point; thence South 00°48'29" East 797.00 feet to a point lying along the North line of Saemann Avenue; thence South 89°11'31" West along said North line 680.01 feet; thence North 00°11'39" East along the East line of N. Taylor Drive 788.32' to the point of beginning.

Section 2. Said zoning amendment shall be effective upon passage, publication and satisfaction of the transfer of parcel #59281631481 from the Sheboygan Area School District to Froedtert Health, Inc., or related entity, for development of medical facilities and senior housing (high density assisted living facility and memory care on proposed northwest corner lot and lower density independent living facilities on proposed southeast corner lot) on or before December 31, 2024.

City Plan

Section 3. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication.

Barb Felde

I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

PROPOSED REZONE MAP AMENDMENT FROM SUBURBAN RESIDENTIAL (SR-5) TO SUBURBAN OFFICE (SO)

CLIENT

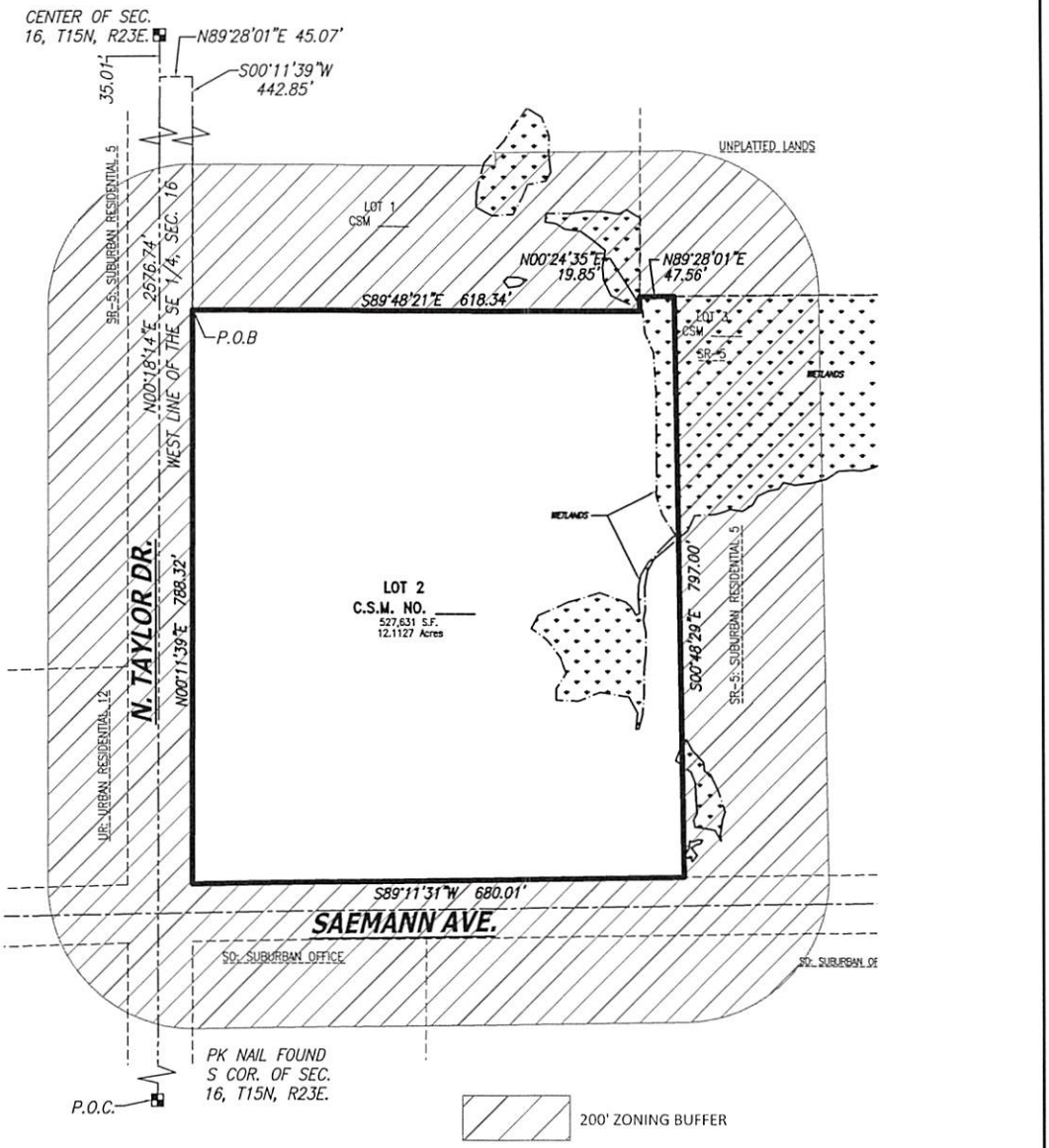
Ryan Companies US, Inc.

SITE ADDRESS

Sheboygan County Tax Parcel 59281631481 City of Sheboygan, Sheboygan County, Wisconsin.

LEGAL DESCRIPTION - LOT 2

That part of the Northwest 1/4 of the Southeast 1/4 of Section 16, Town 15 North, Range 23 East, located in the City of Sheboygan, Sheboygan County, Wisconsin more fully described as follows:
COMMENCING at the Southwest corner of said Southeast 1/4 Section; thence North 00°18'14" East along the West line of said Southeast 1/4 Section 2576.74 feet to a point; thence North 89°28'01" East 45.07 feet to a point; thence South 00°11'39" West 442.85 feet to the point of beginning of the lands to be described hereinafter; thence South 89°48'21" East 618.34 feet to a point; thence North 00°24'35" East 19.85 feet to a point; thence North 89°28'01" East 47.56 feet to a point; thence South 00°48'29" East 797.00 feet to a point lying along the North line of Saemann Avenue; thence South 89°11'31" West along said North line 680.01 feet; thence North 00°11'39" East along the East line of N. Taylor Drive 788.32' to the point of beginning.



Graphic Scale
0 200 400
1" = 200'

CHAPUT LAND SURVEYS
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Date: February 8, 2023
Sheet 2 OF 3 SHEETS

Date	Revision description	

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Drawing No. 1729-SWC

II

R. O. No. 108 - 22 - 23. By CITY CLERK. February 20, 2023.

Submitting an application from Froedtert Health, Inc. for a change in zoning classification for property off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel No. 59281631481 (Lot 2) from Suburban Residential (SR-5) to Suburban Office (SO) Classification.

CityPlan

CITY CLERK

February 13, 2023

Chad Pelishek, Director
Department of Planning & Development
City of Sheboygan
828 Center Ave, Suite 208
Sheboygan, WI 53081

RE: Request for Amendment to Official Zoning Map

Dear Mr. Pelishek:

Froedtert has entered into a purchase contract to acquire from the Sheboygan Area School District their 25-acre vacant site located at the corner of Taylor Dr and Saemann Ave. Froedtert intends to subdivide the site to allow for two proposed development projects:

1. A new healthcare facility containing a neighborhood hospital, surgery center, and medical clinic space. This project will be located on an approximately 12.1-acre parcel located at the southeast corner of the site, depicted as "Lot 2" on the enclosed draft CSM. This proposed land use is consistent with the pattern of development along the Taylor Dr medical and commercial corridor.
2. A new senior housing development including multiple housing options for seniors. The development is planned to include 150-200 units of independent living, assisted living, and memory care. This project will be located at the northwest and southeast corners of the site on two separate parcels containing approximately 13.7 acres, depicted as "Lot 1" and "Lot 3" on the enclosed draft CSM. This proposed land use provides a comfortable transition from the proposed Froedtert facility to the nearby single family residential neighborhood.

The proposed projects would benefit the Sheboygan community in many ways, including, without limitation, as follows:

- Brings home a group of local physicians currently practicing outside the Sheboygan market
- Centralizes range of healthcare services in a community-focused, modern medical facility, delivering patient care closer to home
- Adds a new healthcare option to Sheboygan through Froedtert's academic-based approach to medicine
- Addresses local need for senior housing indicated by Sheboygan's housing study
- As aging residents in the community move into the new senior housing, they will vacate single family homes that young families can move into

Our development team hosted a community open house on January 18 and comments from community members indicated three important themes that we are confident we can accommodate in our development plans:

1. Provide appropriate buffering between the proposed project and the adjacent residential homes that abut the site to the east. *The zoning code specifies "bufferyard" requirements that will be incorporated into our site plan.*
2. Preserve as much wooded area and wildlife habitat as possible. *A significant portion of wooded areas on the site is not slated for development and will be preserved as wetlands.*
3. During construction, be thoughtful about disruption to the neighbors and be accountable to concerns as they arise. *Our construction teams will communicate regularly with the neighbors to address concerns throughout the process. We have already created a project email that community members can use to contact the development team any time: TaylorDr.Project@ryancompanies.com*

Quite simply, these projects are aimed at meeting the needs of the Sheboygan community in a variety of meaningful ways and in alignment with the City of Sheboygan Department of Planning & Development's mission statement. Moreover, the projects will feature a wide array of green design elements, designed to minimize buildings' impacts on the environment and nature, as well as promote energy efficiency and renewable resources.

COMPREHENSIVE PLAN AMENDMENT

Concurrent with the zoning change, the proposed projects require amendments to the City of Sheboygan Comprehensive Plan as follows:

1. **Froedtert healthcare parcel**: Change land use classification from "Public Parks and Open Space" to "Institutional and Community Facilities," which aligns with the health care facilities immediately to the south.
2. **Senior housing parcels**: Change land use classification from "Public Parks and Open Space" to "Multi-Family Residential."

The proposed projects support the following Key Initiatives indicated in the Comprehensive Plan:

- **Promoting infill development and redevelopment –** *established land uses surround this parcel on all sides creating a vacant, infill site condition that is ready to be placed into service as a productive land use for the community*
- **Spur economic development and job creation –** *the proposed projects represent a $70M+ capital investment into the community and are estimated to create 300 permanent jobs (in addition to construction jobs during development)*
- **Strengthening older neighborhoods –** *existing neighborhoods will benefit from new healthcare and housing options close to home*
- **Diversifying the City's housing stock –** *Sheboygan has a shortage of senior housing which this project delivers*

AMENDMENT TO OFFICIAL ZONING MAP

The proposed projects require amendments to the Official Zoning Map as follows:

1. **Froedtert healthcare parcel**: Change zoning classification from "Suburban Residential (SR-5)" to "Suburban Office (SO)," which aligns with the health care facilities immediately to the south.
2. **Senior housing parcels**: Change zoning classification from "Suburban Residential (SR-5)" to "Urban Residential (UR-12)."

The zoning ordinance provides the process to amend the zoning map. Subsection 15.903(4)(c)1.-3. (pages 317-318) poses the following three questions which help to justify the need for a zoning change:

1. How does the proposed Official Zoning Map amendment further the purposes of this Chapter as outlined in Section 15.005 and the applicable rules and regulations of the Wisconsin Department of Natural Resources (DNR) and the Federal Emergency Management Agency (FEMA)?
    - *The project team is very familiar with local, county and state wetland regulations. The individuals assembled have worked together to successfully obtain permits from the Wisconsin Department of Natural Resources on several projects. The proposed projects will preserve and minimize impacts to the surrounding wetlands in accordance with the requirements of the Wisconsin DNR.*

2. Which of the following factors has arisen that are not properly addressed on the current Official Zoning Map?
    - *Two of the four factors listed in the ordinance apply in this case as follows*:
        - Factors have changed, (such as the availability of new data, the presence of new roads or other infrastructure, additional development, annexation, or other zoning changes), making the subject property more appropriate for a different zoning district
        - Growth patterns or rates have changed, thereby creating the need for an Amendment to the Official Zoning Map
3. How does the proposed amendment to the Official Zoning Map maintain the desired consistency of land uses, land use intensities, and land use impacts as related to the environs of the subject property?
    - *The use, character, and densities of the proposed projects are consistent with the pattern of development along the Taylor Dr medical and commercial corridor, while respecting the character and scale of the residential neighborhoods to the north and east of the site.*

Thank you for your consideration of this matter. We look forward to working with you, the City or Sheboygan, and the community throughout the development process.

Sincerely,

Ryan Marks

Ryan Marks
Vice President, Facilities Planning & Development

SHEBOYGAN AREA
SCHOOL DISTRICT

January 27, 2023

Chad Pelishek
Director of Planning and Development
City of Sheboygan
828 Center Avenue, Suite 208
Sheboygan, WI 53081

To whom it may concern:

I, Mark Boehlke, authorize Froedtert Health, Inc. to submit a rezone application for Sheboygan Area School District property located east of N. Taylor Drive and north of Saemann Avenue, parcel #59281631481.

Sincerely,

Mark J. Boehlke

Mark Boehlke
Assistant Superintendent Business and Operational Services

Department of Business and Operational Services
830 Virginia Avenue • Sheboygan, WI 53081 • **PHONE:** 920-459-3523 • **FAX:** 920-459-4300
www.sheboygan.k12.wi.us

OFFICE USE ONLY
APPLICATION NO.: _____
RECEIPT NO.: _____
FILING FEE: $200.00 (Payable to City of Sheboygan)

CITY OF SHEBOYGAN
APPLICATION FOR
AMENDMENT OF OFFICIAL ZONING MAP

(Requirements Per Section 15.903)
Revised May, 2012

Completed application is to be filed with the Office of the City Clerk, City Hall, 828 Center Avenue. Application will not be processed if all required attachments and filing fee of $200 (payable to the City of Sheboygan) is not submitted along with a complete and legible application. Application filing fee is non-refundable.

1. APPLICANT INFORMATION

APPLICANT: Froedtert Health, Inc. PHONE NO.: (414) 805-3934

ADDRESS: 9200 W Wisconsin Ave, Milwaukee, WI 53226

E-MAIL: ryan.marks@froedtert.com

OWNER OF SITE: Sheboygan Area School District PHONE NO.: (920) 459-3500

2. DESCRIPTION OF THE SUBJECT SITE

ADDRESS OF PROPERTY AFFECTED: Northeast corner of N.Taylor Dr. and Saemann Ave.

LEGAL DESCRIPTION: see attached, proposed draft CSM to subdivide the site. This application applies to Lot 2 of the attached draft CSM

PARCEL NO. _____ MAP NO. _____

EXISTING ZONING DISTRICT CLASSIFICATION: Suburban Residential SR-5

PROPOSED ZONING DISTRICT CLASSIFICATION: Suburban Office SO

BRIEF DESCRIPTION OF THE **EXISTING** OPERATION OR USE: Vacant land

_____

BRIEF DESCRIPTION OF THE **PROPOSED** OPERATION OR USE: _____

Froedtert Health Care Facility-see attached narrative

3. JUSTIFICATION OF THE PROPOSED ZONING MAP AMENDMENT

How does the proposed Official Zoning Map amendment further the purposes of the Zoning Ordinance as outlined in Section 15.005 and, for flood plains or wetlands, the applicable rules and regulations of the Wisconsin Department of Natural Resources and the Federal Emergency Management Agency? _____

See attached narrative

Which of the following factors has arisen that are not properly addressed on the current Official Zoning Map? (Provide explanation in space provided below.)

- ❑ The designations of the Official Zoning Map should be brought into conformity with the Comprehensive Master Plan.
- ❑ A mistake was made in mapping on the Official Zoning Map. (An area is developing in a manner and purpose different from that for which it is mapped.) *NOTE: If this reason is cited, it must be demonstrated that the discussed inconsistency between actual land use and designated zoning is not intended, as the City may intend to stop an undesirable land use pattern from spreading.*
- ❑ Factors have changed, (such as the availability of new data, the presence of new roads or other infrastructure, additional development, annexation, or other zoning changes), making the subject property more appropriate for a different zoning district.
- ❑ Growth patterns or rates have changed, thereby creating the need for an amendment to the Official Zoning Map.
- ❑ Explain: _____

How does the proposed amendment to the Official Zoning Map maintain the desired consistency of land uses, land use intensities, and land use impacts as related to the environs of the subject property? _____

See attached narrative

Indicate reasons why the applicant believes the proposed map amendment is in harmony with the recommendations of the City of Sheboygan Comprehensive Plan.

See attached narrative

4. CERTIFICATE

I hereby certify that all the above statements and attachments submitted hereto are true and correct to the best of my knowledge and belief.

Ryan Marks — 2/13/2023

APPLICANT'S SIGNATURE — **DATE**

Ryan Marks

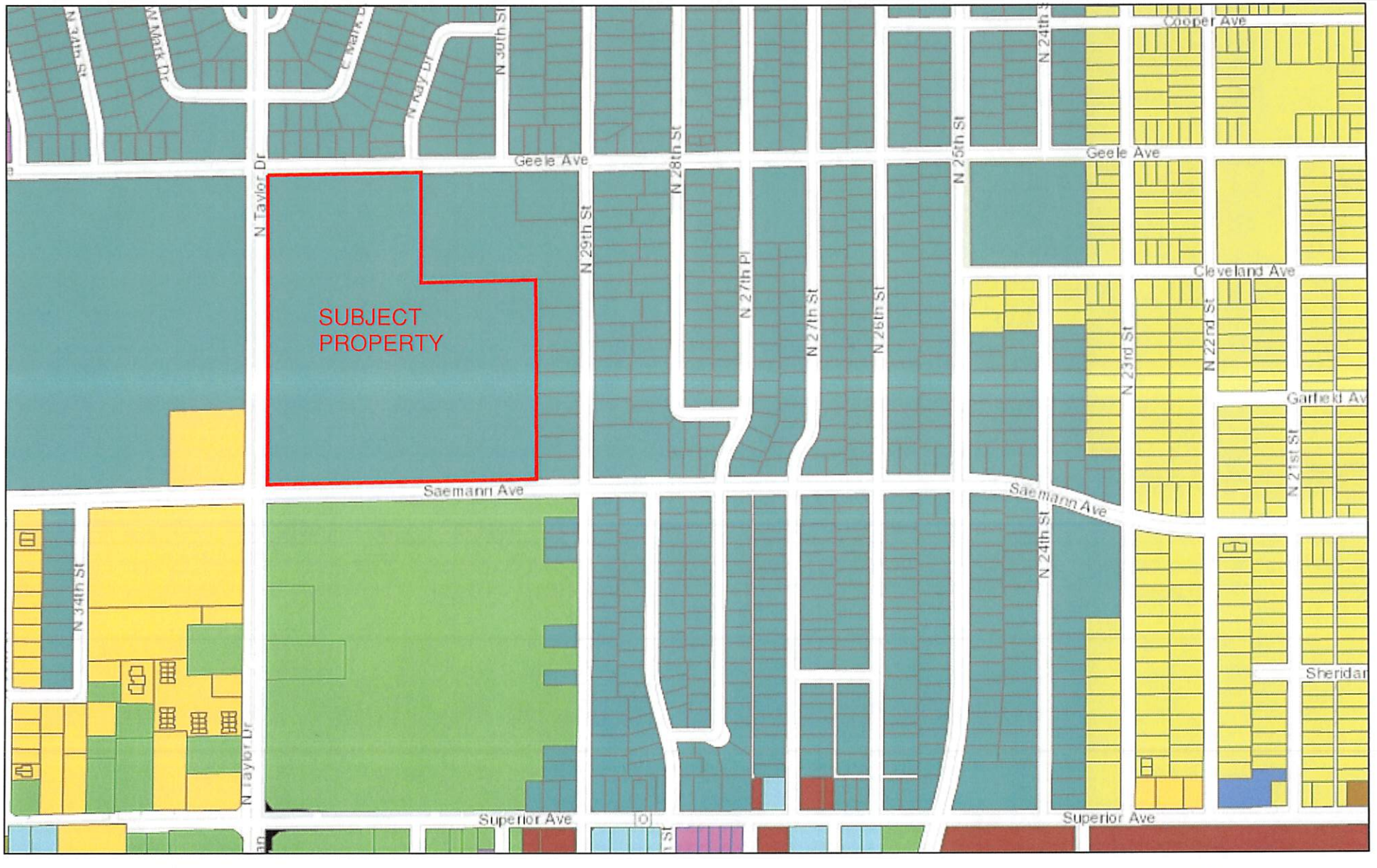
PRINT ABOVE NAME

APPLICATION SUBMITTAL REQUIREMENTS

A copy of the current zoning map of the subject property and vicinity showing:

- ❑ The property proposed to be rezoned.
- ❑ All lot dimensions of the subject property.
- ❑ All other lands within 200 feet of the subject property.
- ❑ Map size not more than 11" X 17" and map scale not less than 1" = 600'.
- ❑ Graphic scale and north arrow.

ZONING MAP
FROEDTERT HEALTH-change zoning classification from "Suburban Residential (SR-5)" to "Suburban Office (



11/1/2022, 2:07:21 PM

City Zoning Published Layer

- Mixed Residential-8 District
- Neighborhood Office District
- Neighborhood Residential-6 District
- Suburban Commercial District
- Suburban Industrial District
- Suburban Office District
- Suburban Residential-5 District
- Urban Commercial District
- Urban Industrial District

1:9,028

0 0.05 0.1 0.2 mi

0 0.07 0.15 0.3 km

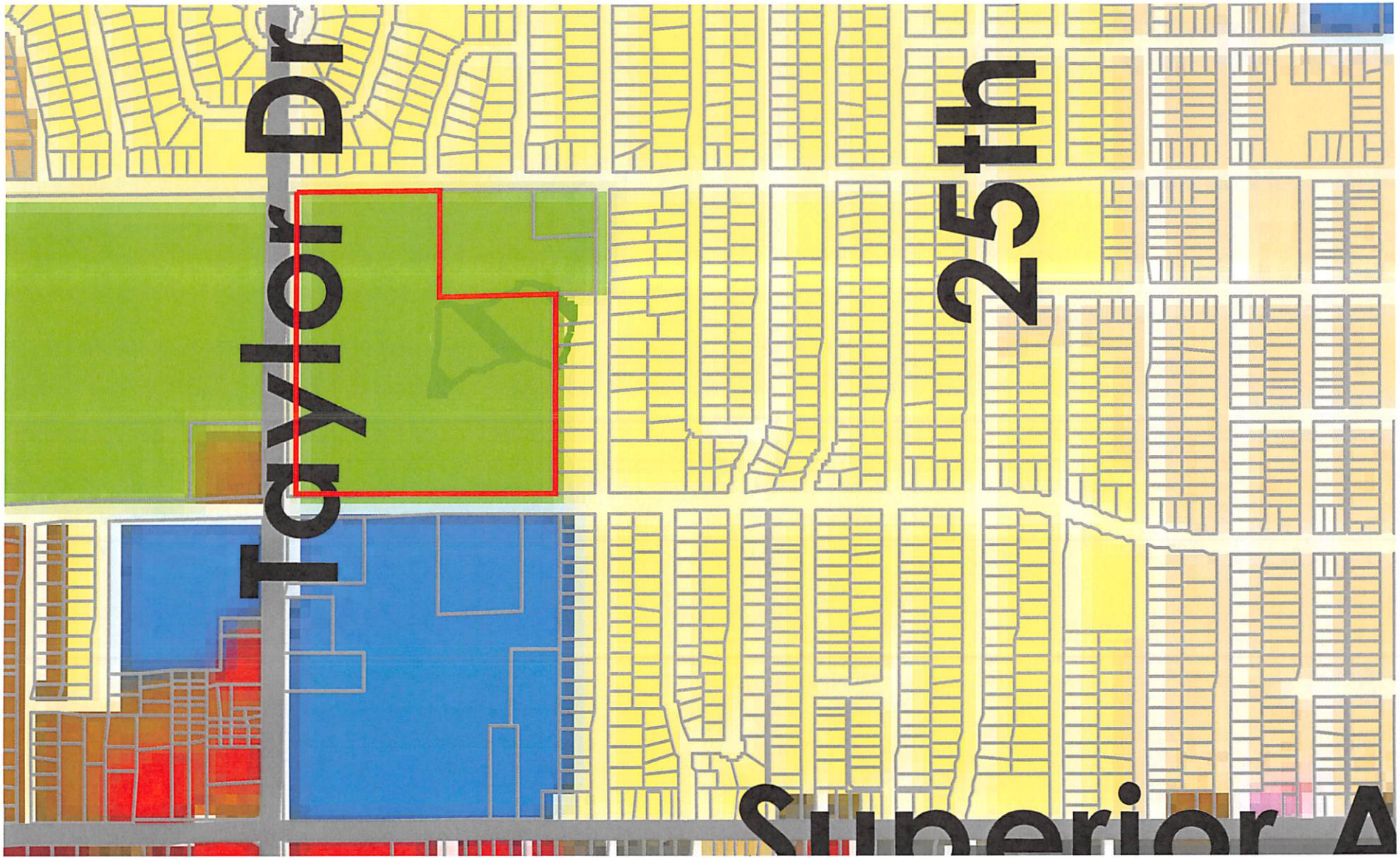
Esri Canada, Esri, HERE, Garmin, GeoTechnologies, Inc., Intermap, USGS, METI/NASA, EPA, USDA

ArcGIS Web Ap

Esri Canada, Esri, HERE, Garmin, GeoTechnologies, Inc., Intermap, USGS, METI/NASA, EPA, USDA

COMPREHENSIVE PLAN

Froedtert Health-change land use classification from "Public Parks and Open Space" (green) to "Institutional and Community Facilities" (blue)



PROPOSED REZONE MAP AMENDMENT FROM SUBURBAN RESIDENTIAL (SR-5) TO SUBURBAN OFFICE (SO)

CLIENT

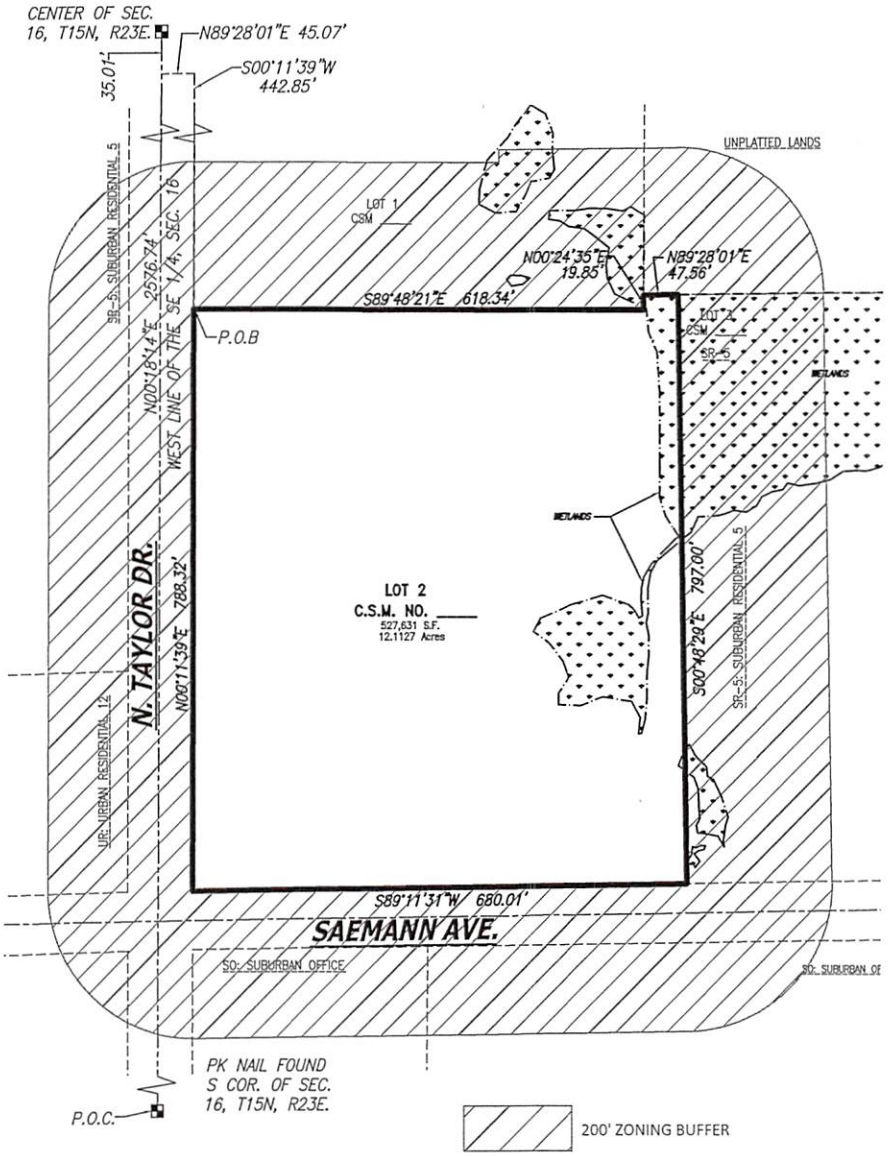
Ryan Companies US, Inc.

SITE ADDRESS

Sheboygan County Tax Parcel 59281631481 City of Sheboygan, Sheboygan County, Wisconsin.

LEGAL DESCRIPTION - LOT 2

That part of the Northwest 1/4 of the Southeast 1/4 of Section 16, Town 15 North, Range 23 East, located in the City of Sheboygan, Sheboygan County, Wisconsin more fully described as follows:
COMMENCING at the Southwest corner of said Southeast 1/4 Section; thence North 00°18'14" East along the West line of said Southeast 1/4 Section 2576.74 feet to a point; thence North 89°28'01" East 45.07 feet to a point; thence South 00°11'39" West 442.85 feet to the point of beginning of the lands to be described hereinafter; thence South 89°48'21" East 618.34 feet to a point; thence North 00°24'35" East 19.85 feet to a point; thence North 89°28'01" East 47.56 feet to a point; thence South 00°48'29" East 797.00 feet to a point lying along the North line of Saemann Avenue; thence South 89°11'31" West along said North line 680.01 feet; thence North 00°11'39" East along the East line of N. Taylor Drive 788.32' to the point of beginning.



Graphic Scale
0 200 400
1" = 200'

Date: February 8, 2023
Sheet 2 OF 3 SHEETS

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CHAPUT LAND SURVEYS
234 W. Florida Street Milwaukee, WI 53204
414-224-8068 www.chaputlandsurveys.com

Drawing No. 1729-SWC

CERTIFIED SURVEY MAP NO. _____

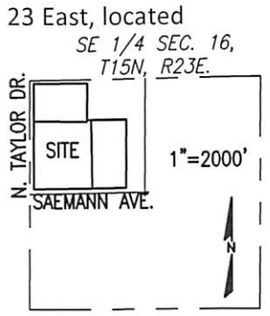
That part of the Northwest 1/4 of the Southeast 1/4 of Section 16, Town 15 North, Range 23 East, located in the City of Sheboygan, Sheboygan County, Wisconsin

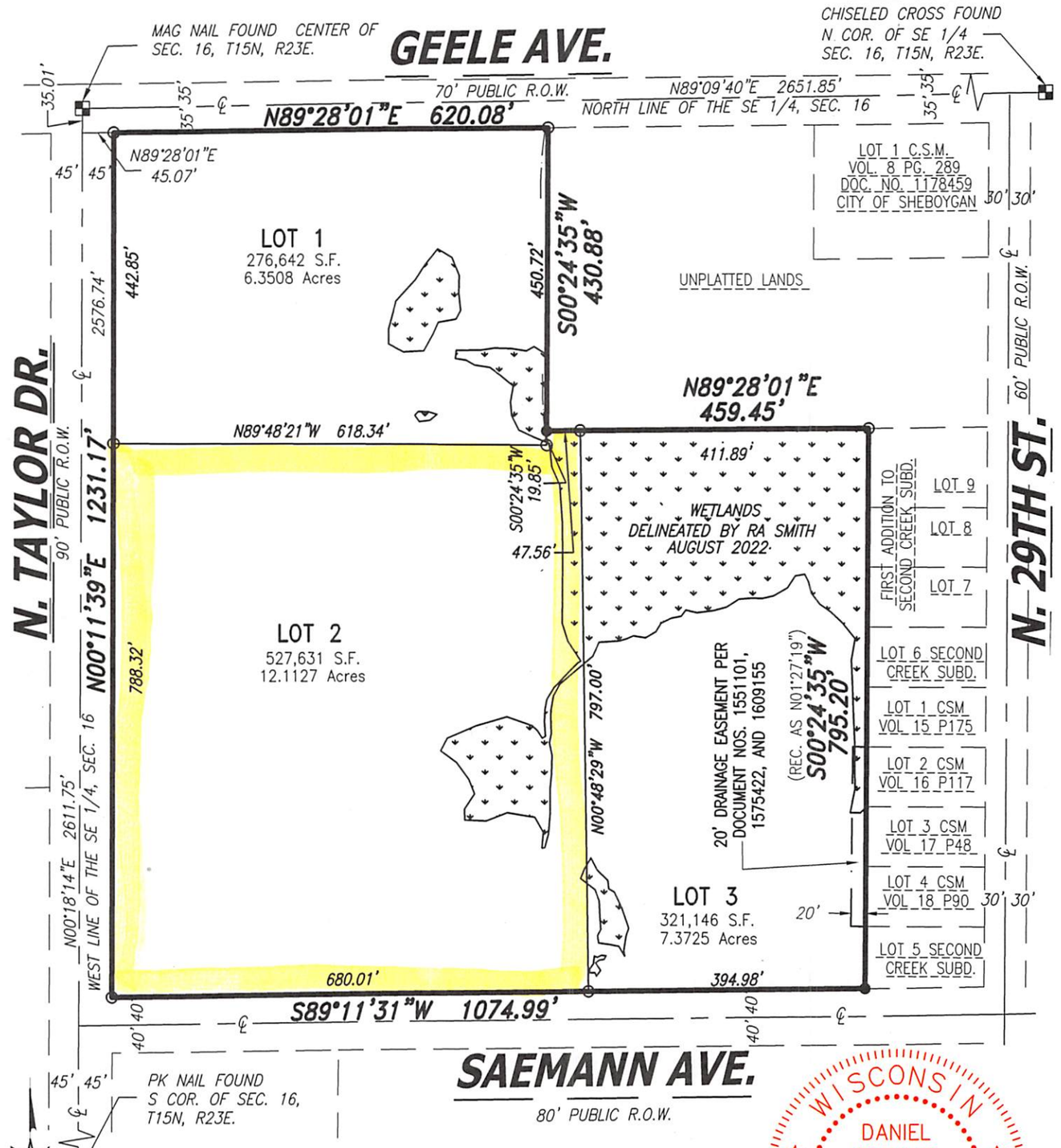
Bearings are referenced to the Sheboygan County Coordinate System, in which the North line of the Southwest 1/4 of Section 16, Town 15 North, Range 23 East, bears N89°09'40"E.

LEGEND

- ○ Indicates Set 1" Iron Pipe, 18" in length weighing 1.13 lbs. per lineal foot.
- ● Indicates Found 1" Iron Pipe.

Subdivider:
FROEDERT HEALTH, INC.
900 N 92ND ST.
MILWAUKEE, WI 53226





NOTE:
Cross access easements and storm water easements to be provided by separate document

GRAPHIC SCALE
0 200 400
1 inch = 200 ft.

WISCONSIN
DANIEL BEDNAR
S-2812
GERMANTOWN
WI
LAND SURVEYOR

CHAPUT LAND SURVEYS
234 W. Florida Street
Milwaukee, WI 53204
414-224-8068
www.chaputlandsurveys.com

This instrument was drafted by Daniel Bednar
Registered Land Surveyor S-2812

Date: January 18, 2023
Sheet 1 OF 3 SHEETS
Drawing No. 1729-

CERTIFIED SURVEY MAP NO. _____

That part of the Northwest 1/4 of the Southeast 1/4 of Section 16, Town 15 North, Range 23 East, located in the City of Sheboygan, Sheboygan County, Wisconsin

SURVEYOR'S CERTIFICATE

STATE OF WISCONSIN}
:SS
MILWAUKEE COUNTY}

I, DANIEL BEDNAR, Registered Land Surveyor, do hereby certify:
THAT I have surveyed, divided and mapped a part of the Northwest 1/4 of the Southeast 1/4 of Section 16, Town 15 North, Range 23 East, located within the City of Sheboygan, Sheboygan County, Wisconsin, bounded and described as follows:

COMMENCING at the Southwest corner of said Southeast 1/4 Section;
thence North 00°18'14" East along the West line of said Southeast 1/4 Section 2576.74 feet to a point; thence North 89°28'01" East 45.07 feet to the point of beginning of the lands to be described hereinafter; thence continue North 89°28'01" East along the South line of Geele Avenue 620.08 feet to a point; thence South 00°24'35" West 430.88 feet to a point; thence North 89°28'01" East 459.45 feet to a point; thence South 00°24'35" West 795.20 feet to a point on the North line of Saemann Avenue; thence South 89°11'31" West along said North line 1074.99 feet to a point on the East line of North Taylor Drive; thence North 00°11'39" East along said East line 1231.17 feet to the point of beginning.

Said lands contain 1,125,419 square feet, or 25.8359 acres.

THAT I have made the survey, land division and map by the direction of Froedert Health, Inc., Owner.

THAT the map is a correct representation of all the exterior boundaries of the land surveyed and the land division thereof made.

THAT I have fully complied with the provisions of Chapter 236.34 of the Wisconsin Statutes and the Land Division and the Subdivision Ordinance of the City of Sheboygan in surveying, dividing and mapping the same.

January 25, 2023
DATE

DANIEL BEDNAR
REGISTERED LAND SURVEYOR S-2812

WISCONSIN
DANIEL
BEDNAR
S-2812
GERMANTOWN
WI
LAND SURVEYOR

CHAPUT
LAND SURVEYS
234 W. Florida Street
Milwaukee, WI 53204
414-224-8068
www.chaputlandsurveys.com

This instrument was drafted by Daniel Bednar
Registered Land Surveyor S-2812

CERTIFIED SURVEY MAP NO. _____

Part of the Southwest 1/4 and the Southeast 1/4 of the Southwest 1/4 of Section 28, Town 15 North, Range 23 East, located within the Village of Kohler, Sheboygan County, Wisconsin

CORPORATE OWNER'S CERTIFICATE

Froedert Health, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin , as owner, certifies that said company caused the land described on this map to be surveyed, divided, mapped and dedicated as represented on this map in accordance with the requirements of the Village of Kohler Code of Ordinances.

This agreement shall be binding on the undersigned and assigns.

In Witness Where of, Froedert Health, Inc. has caused these presents to be signed by _____, its _____, at _____, Wisconsin, ____ day of _____, 2023.

In the presence of:

Froedert Health, Inc.

_____
(print name)

STATE OF WISCONNSIN)
): SS
SHEBOYGAN COUNTY)

Personally came before me this ____ day of _____,2023,_____, of the above named corporation, to me known as the person who executed the foregoing instrument, and to me known to be the _____ of the corporation, and acknowledged that they executed the foregoing instrument as such officers as the deed of the company, by its authority.

(Notary Seal)

_____
Notary Public State of Wisconsin
My commission expires,
My commission is permanent.

CITY PLAN COMMISSION CERTIFICATE OF APPROVAL

APPROVED by the Planning Commission of the City of Sheboygan on this ___ day of _____, 2023.

_____
Ryan Sorenson, Chairperson

_____
Meredith DeBruin, City Clerk

COMMON COUNCIL CERTIFICATE OF APPROVAL AND ACCEPTANCE OF DEDICATION

APPROVED by the Common Council of the City of Sheboygan on this ___ day of _____, 2023.

WISCONSIN
DANIEL
BEDNAR
S-2812
GERMANTOWN
WI
LAND SURVEYOR

_____
Ryan Sorenson, Mayor

_____
Meredith DeBruin, City Clerk

CHAPUT
LAND SURVEYS
234 W. Florida Street
Milwaukee, WI 53204
414-224-8068
www.chaputlandsurveys.com

This instrument was drafted by Daniel Bednar
Registered Land Surveyor S-2812

Date: January 25, 2023
Sheet 3 OF 3 SHEETS
Drawing No. 1729-[illegible]

CLK322B

City Of Sheboygan
City Clerk's Office

** General Receipt **

Receipt No: 230178
License No: 0000
Date: 02/15/2023
Received By: MMD
Received From: RYAN COMPANIES US, INC
Memo: LOT 2 - FROEDTERT REZONE
Method of Payment: $200.00 Check No. 889035
Total Received: $200.00

Fee Description	Fee
Zoning Change	200.00

This document signifies receipt of fees in the amount indicated above.

II

R. O. No. 113 - 22 - 23. By CITY PLAN COMMISSION. March 6, 2023.

Your Commission to whom was referred Gen. Ord. No. 26-22-23 by Alderperson Felde and R. O. No. 109-22-23 by City Clerk submitting an application from Froedtert Health, Inc. to amend the City of Sheboygan Official Zoning Map of the Sheboygan Zoning Ordinance to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel #59281631481 (Lot 3) from Suburban Residential (SR-5) to Urban Residential (UR-12) Classification.; recommends filing the R. O. and adopting the Ordinance.

_____

CITY PLAN COMMISSION

Gen. Ord. No. 26 - 22 - 23. By Alderperson Felde. February 20, 2023.

AN ORDINANCE amending the City of Sheboygan Official Zoning Map of the Sheboygan Zoning Ordinance to change the Use District Classification for property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel #59281631481 (Lot 3) from Suburban Residential (SR-5) to Urban Residential (UR-12) Classification.

THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Appendix A, Chapter 15 of the Sheboygan Zoning Ordinance establishing zoning districts and prescribing zoning standards and regulations is hereby amended by changing the Official Zoning Map thereof and Use District Classification of the following described lands from Class Suburban Residential (SR-5) to Urban Residential (UR-12) Classification:

Property located off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel #59281631481 (Lot 3):

That part of the Northwest 1/4 of the Southeast 1/4 of Section 16, Town 15 North, Range 23 East, located in the City of Sheboygan, Sheboygan County, Wisconsin more fully described as follows: COMMENCING at the Southwest corner of said Southeast 1/4 Section; thence North 00°18'14" East along the West line of said Southeast 1/4 Section 2576.74 feet to a point; thence North 89°28'01" East along the South line of Geele Avenue 665.14 feet to a point; thence South 00°24'35" West 430.89 feet to a point; thence North 89°28'01" East 47.56 feet to the point of beginning of the lands to be described hereinafter; thence continue North 89°28'01" East 411.89 feet to a point; thence South 00°24'35" West 795.20 feet to a point lying on the North line of Saemann Avenue; thence South 89°11'31" West along said North line 394.98 feet to a point; thence North 00°48'29" West 797.00 feet to the point of beginning.

Section 2. Said zoning amendment shall be effective upon passage, publication and satisfaction of the transfer of parcel #59281631481 from the Sheboygan Area School District to Froedtert Health, Inc., or related entity, for development of medical facilities and senior housing (high density assisted living facility and memory care on proposed northwest corner lot and lower density independent living facilities on proposed southeast corner lot) on or before December 31, 2024.

City Plan

Section 3. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication.

Barb Felde

I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

PROPOSED REZONE MAP AMENDMENT FROM SUBURBAN RESIDENTIAL (SR-5) TO URBAN RESIDENTIAL (UR-12)

CLIENT

Ryan Companies US, Inc.

SITE ADDRESS

Sheboygan County Tax Parcel 59281631481 City of Sheboygan, Sheboygan County, Wisconsin.

LEGAL DESCRIPTION - LOT 3

That part of the Northwest 1/4 of the Southeast 1/4 of Section 16, Town 15 North, Range 23 East, located in the City of Sheboygan, Sheboygan County, Wisconsin more fully described as follows:

COMMENCING at the Southwest corner of said Southeast 1/4 Section;

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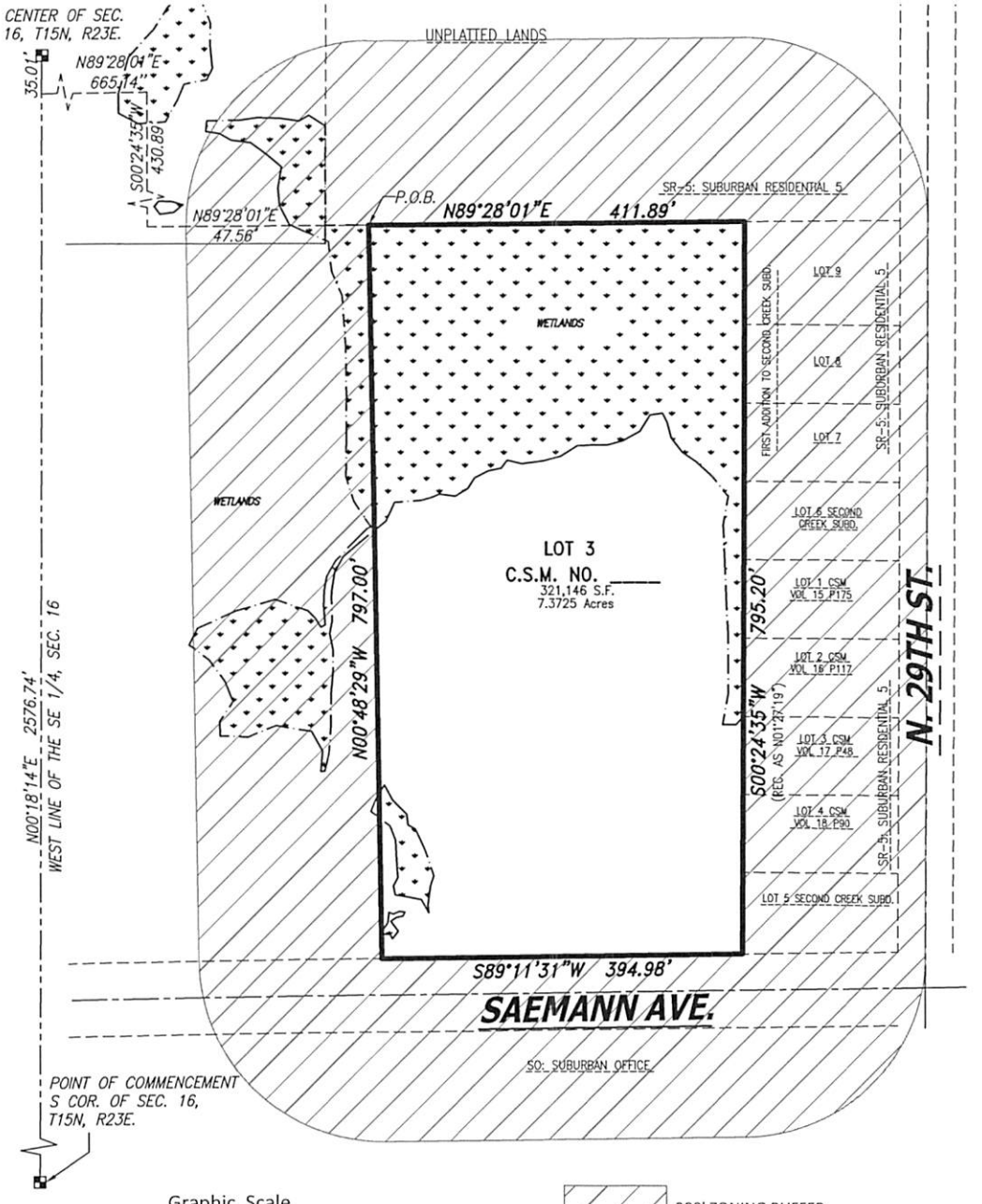


Graphic Scale

0 150 300

1" = 150'

200' ZONING BUFFER

Date: February 9, 2023
Sheet 3 OF 3 SHEETS

Date	Revision description	

This document is an instrument of professional service, and may be protected by the surveyors work product doctrine or surveyor / client privilege. The information shown hereon is intended solely for the use of the client and client directed third parties.

Drawing No. 1729-SWC

CHAPUT LAND SURVEYS
234 W. Florida Street Milwaukee, WI 53204
414-224-8068 www.chaputlandsurveys.com

II

17

R. O. No. 109 - 22 - 23. By CITY CLERK. February 20, 2023.

Submitting an application from Froedtert Health, Inc. for a change in zoning classification for property off of the Northeast corner of N. Taylor Drive and Saemann Avenue - Parcel No. 59281631481 (Lot 3) from Suburban Residential (SR-5) to Urban Residential (UR-12) Classification.

CityPlan

CITY CLERK

February 13, 2023

Froedtert & Medical College of Wisconsin

Chad Pelishek, Director
Department of Planning & Development
City of Sheboygan
828 Center Ave, Suite 208
Sheboygan, WI 53081

RE: Request for Amendment to Official Zoning Map

Dear Mr. Pelishek:

Froedtert has entered into a purchase contract to acquire from the Sheboygan Area School District their 25-acre vacant site located at the corner of Taylor Dr and Saemann Ave. Froedtert intends to subdivide the site to allow for two proposed development projects:

1. A new healthcare facility containing a neighborhood hospital, surgery center, and medical clinic space. This project will be located on an approximately 12.1-acre parcel located at the southeast corner of the site, depicted as "Lot 2" on the enclosed draft CSM. This proposed land use is consistent with the pattern of development along the Taylor Dr medical and commercial corridor.
2. A new senior housing development including multiple housing options for seniors. The development is planned to include 150-200 units of independent living, assisted living, and memory care. This project will be located at the northwest and southeast corners of the site on two separate parcels containing approximately 13.7 acres, depicted as "Lot 1" and "Lot 3" on the enclosed draft CSM. This proposed land use provides a comfortable transition from the proposed Froedtert facility to the nearby single family residential neighborhood.

The proposed projects would benefit the Sheboygan community in many ways, including, without limitation, as follows:

- Brings home a group of local physicians currently practicing outside the Sheboygan market
- Centralizes range of healthcare services in a community-focused, modern medical facility, delivering patient care closer to home
- Adds a new healthcare option to Sheboygan through Froedtert's academic-based approach to medicine
- Addresses local need for senior housing indicated by Sheboygan's housing study
- As aging residents in the community move into the new senior housing, they will vacate single family homes that young families can move into

Our development team hosted a community open house on January 18 and comments from community members indicated three important themes that we are confident we can accommodate in our development plans:

1. Provide appropriate buffering between the proposed project and the adjacent residential homes that abut the site to the east. *The zoning code specifies "bufferyard" requirements that will be incorporated into our site plan.*
2. Preserve as much wooded area and wildlife habitat as possible. *A significant portion of wooded areas on the site is not slated for development and will be preserved as wetlands.*
3. During construction, be thoughtful about disruption to the neighbors and be accountable to concerns as they arise. *Our construction teams will communicate regularly with the neighbors to address concerns throughout the process. We have already created a project email that community members can use to contact the development team any time: TaylorDr.Project@ryancompanies.com*

Quite simply, these projects are aimed at meeting the needs of the Sheboygan community in a variety of meaningful ways and in alignment with the City of Sheboygan Department of Planning & Development's mission statement. Moreover, the projects will feature a wide array of green design elements, designed to minimize buildings' impacts on the environment and nature, as well as promote energy efficiency and renewable resources.

COMPREHENSIVE PLAN AMENDMENT

Concurrent with the zoning change, the proposed projects require amendments to the City of Sheboygan Comprehensive Plan as follows:

1. **Froedtert healthcare parcel**: Change land use classification from "Public Parks and Open Space" to "Institutional and Community Facilities," which aligns with the health care facilities immediately to the south.
2. **Senior housing parcels**: Change land use classification from "Public Parks and Open Space" to "Multi-Family Residential."

The proposed projects support the following Key Initiatives indicated in the Comprehensive Plan:

- **Promoting infill development and redevelopment –** *established land uses surround this parcel on all sides creating a vacant, infill site condition that is ready to be placed into service as a productive land use for the community*
- **Spur economic development and job creation –** *the proposed projects represent a $70M+ capital investment into the community and are estimated to create 300 permanent jobs (in addition to construction jobs during development)*
- **Strengthening older neighborhoods –** *existing neighborhoods will benefit from new healthcare and housing options close to home*
- **Diversifying the City's housing stock –** *Sheboygan has a shortage of senior housing which this project delivers*

AMENDMENT TO OFFICIAL ZONING MAP

The proposed projects require amendments to the Official Zoning Map as follows:

1. **Froedtert healthcare parcel**: Change zoning classification from "Suburban Residential (SR-5)" to "Suburban Office (SO)," which aligns with the health care facilities immediately to the south.
2. **Senior housing parcels**: Change zoning classification from "Suburban Residential (SR-5)" to "Urban Residential (UR-12)."

The zoning ordinance provides the process to amend the zoning map. Subsection 15.903(4)(c)1.-3. (pages 317-318) poses the following three questions which help to justify the need for a zoning change:

1. How does the proposed Official Zoning Map amendment further the purposes of this Chapter as outlined in Section 15.005 and the applicable rules and regulations of the Wisconsin Department of Natural Resources (DNR) and the Federal Emergency Management Agency (FEMA)?
    - *The project team is very familiar with local, county and state wetland regulations. The individuals assembled have worked together to successfully obtain permits from the Wisconsin Department of Natural Resources on several projects. The proposed projects will preserve and minimize impacts to the surrounding wetlands in accordance with the requirements of the Wisconsin DNR.*

2. Which of the following factors has arisen that are not properly addressed on the current Official Zoning Map?
    - *Two of the four factors listed in the ordinance apply in this case as follows*:
        - Factors have changed, (such as the availability of new data, the presence of new roads or other infrastructure, additional development, annexation, or other zoning changes), making the subject property more appropriate for a different zoning district
        - Growth patterns or rates have changed, thereby creating the need for an Amendment to the Official Zoning Map
3. How does the proposed amendment to the Official Zoning Map maintain the desired consistency of land uses, land use intensities, and land use impacts as related to the environs of the subject property?
    - *The use, character, and densities of the proposed projects are consistent with the pattern of development along the Taylor Dr medical and commercial corridor, while respecting the character and scale of the residential neighborhoods to the north and east of the site.*

Thank you for your consideration of this matter. We look forward to working with you, the City or Sheboygan, and the community throughout the development process.

Sincerely,

Ryan Marks

Ryan Marks
Vice President, Facilities Planning & Development

SHEBOYGAN AREA
SCHOOL DISTRICT

January 27, 2023

Chad Pelishek
Director of Planning and Development
City of Sheboygan
828 Center Avenue, Suite 208
Sheboygan, WI 53081

To whom it may concern:

I, Mark Boehlke, authorize Froedtert Health, Inc. to submit a rezone application for Sheboygan Area School District property located east of N. Taylor Drive and north of Saemann Avenue, parcel #59281631481.

Sincerely,

Mark J. Boehlke

Mark Boehlke
Assistant Superintendent Business and Operational Services

Department of Business and Operational Services
830 Virginia Avenue • Sheboygan, WI 53081 • **PHONE:** 920-459-3523 • **FAX:** 920-459-4300
www.sheboygan.k12.wi.us

OFFICE USE ONLY
APPLICATION NO.: _____
RECEIPT NO.: _____
FILING FEE: $200.00 (Payable to City of Sheboygan)

CITY OF SHEBOYGAN
APPLICATION FOR
AMENDMENT OF OFFICIAL ZONING MAP

(Requirements Per Section 15.903)
Revised May, 2012

Completed application is to be filed with the Office of the City Clerk, City Hall, 828 Center Avenue. Application will not be processed if all required attachments and filing fee of $200 (payable to the City of Sheboygan) is not submitted along with a complete and legible application. Application filing fee is non-refundable.

1. APPLICANT INFORMATION

APPLICANT: Froedtert Health, Inc. PHONE NO.: (414) 805-3934

ADDRESS: 9200 W Wisconsin Ave, Milwaukee, WI 53226

E-MAIL: ryan.marks@froedtert.com

OWNER OF SITE: Sheboygan Area School District PHONE NO.: (920) 459-3500

2. DESCRIPTION OF THE SUBJECT SITE

ADDRESS OF PROPERTY AFFECTED: Northeast corner of N.Taylor Dr. and Saemann Ave.

LEGAL DESCRIPTION: see attached, proposed draft CSM to subdivide the site. This application applies to Lot 3 of the attached draft CSM

PARCEL NO. 59281631481 MAP NO. _____

EXISTING ZONING DISTRICT CLASSIFICATION: Suburban Residential SR-5

PROPOSED ZONING DISTRICT CLASSIFICATION: Urban Residential UR-12

BRIEF DESCRIPTION OF THE **EXISTING** OPERATION OR USE: Vacant land

_____

BRIEF DESCRIPTION OF THE **PROPOSED** OPERATION OR USE: _____

Independent Living_____

3. JUSTIFICATION OF THE PROPOSED ZONING MAP AMENDMENT

How does the proposed Official Zoning Map amendment further the purposes of the Zoning Ordinance as outlined in Section 15.005 and, for flood plains or wetlands, the applicable rules and regulations of the Wisconsin Department of Natural Resources and the Federal Emergency Management Agency? _____

See attached narrative

Which of the following factors has arisen that are not properly addressed on the current Official Zoning Map? (Provide explanation in space provided below.)

- ☐ The designations of the Official Zoning Map should be brought into conformity with the Comprehensive Master Plan.
- ☐ A mistake was made in mapping on the Official Zoning Map. (An area is developing in a manner and purpose different from that for which it is mapped.) *NOTE: If this reason is cited, it must be demonstrated that the discussed inconsistency between actual land use and designated zoning is not intended, as the City may intend to stop an undesirable land use pattern from spreading.*
- ☐ Factors have changed, (such as the availability of new data, the presence of new roads or other infrastructure, additional development, annexation, or other zoning changes), making the subject property more appropriate for a different zoning district.
- ☐ Growth patterns or rates have changed, thereby creating the need for an amendment to the Official Zoning Map.
- ☐ Explain: _____

How does the proposed amendment to the Official Zoning Map maintain the desired consistency of land uses, land use intensities, and land use impacts as related to the environs of the subject property? _____

See attached narrative

Indicate reasons why the applicant believes the proposed map amendment is in harmony with the recommendations of the City of Sheboygan Comprehensive Plan.

See attached narrative

4. CERTIFICATE

I hereby certify that all the above statements and attachments submitted hereto are true and correct to the best of my knowledge and belief.

Ryan Marks — 2/13/2023

APPLICANT'S SIGNATURE — **DATE**

Ryan Marks

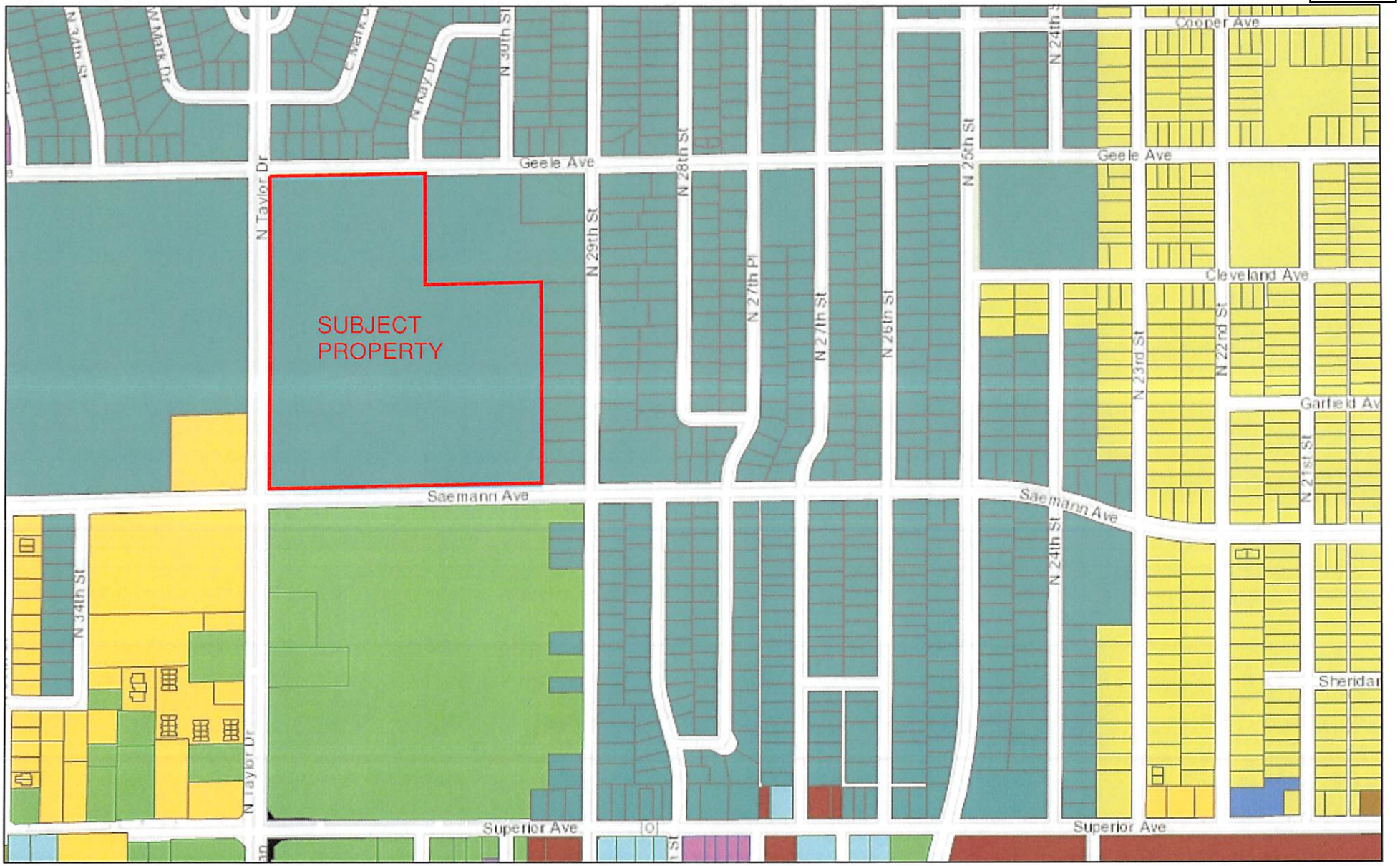
PRINT ABOVE NAME

APPLICATION SUBMITTAL REQUIREMENTS

A copy of the current zoning map of the subject property and vicinity showing:

- ❑ The property proposed to be rezoned.
- ❑ All lot dimensions of the subject property.
- ❑ All other lands within 200 feet of the subject property.
- ❑ Map size not more than 11" X 17" and map scale not less than 1" = 600'.
- ❑ Graphic scale and north arrow.

ZONING MAP
SENIOR HOUSING-change zoning classification from "Suburban Residential (SR-5)" to "Urban Residential (UI



11/1/2022, 2:07:21 PM

City Zoning Published Layer

- Mixed Residential-8 District
- Neighborhood Office District
- Neighborhood Residential-6 District
- Suburban Commercial District
- Suburban Industrial District
- Suburban Office District
- Suburban Residential-5 District
- Urban Commercial District
- Urban Industrial District

1:9,028

0 0.05 0.1 0.2 mi

0 0.07 0.15 0.3 km

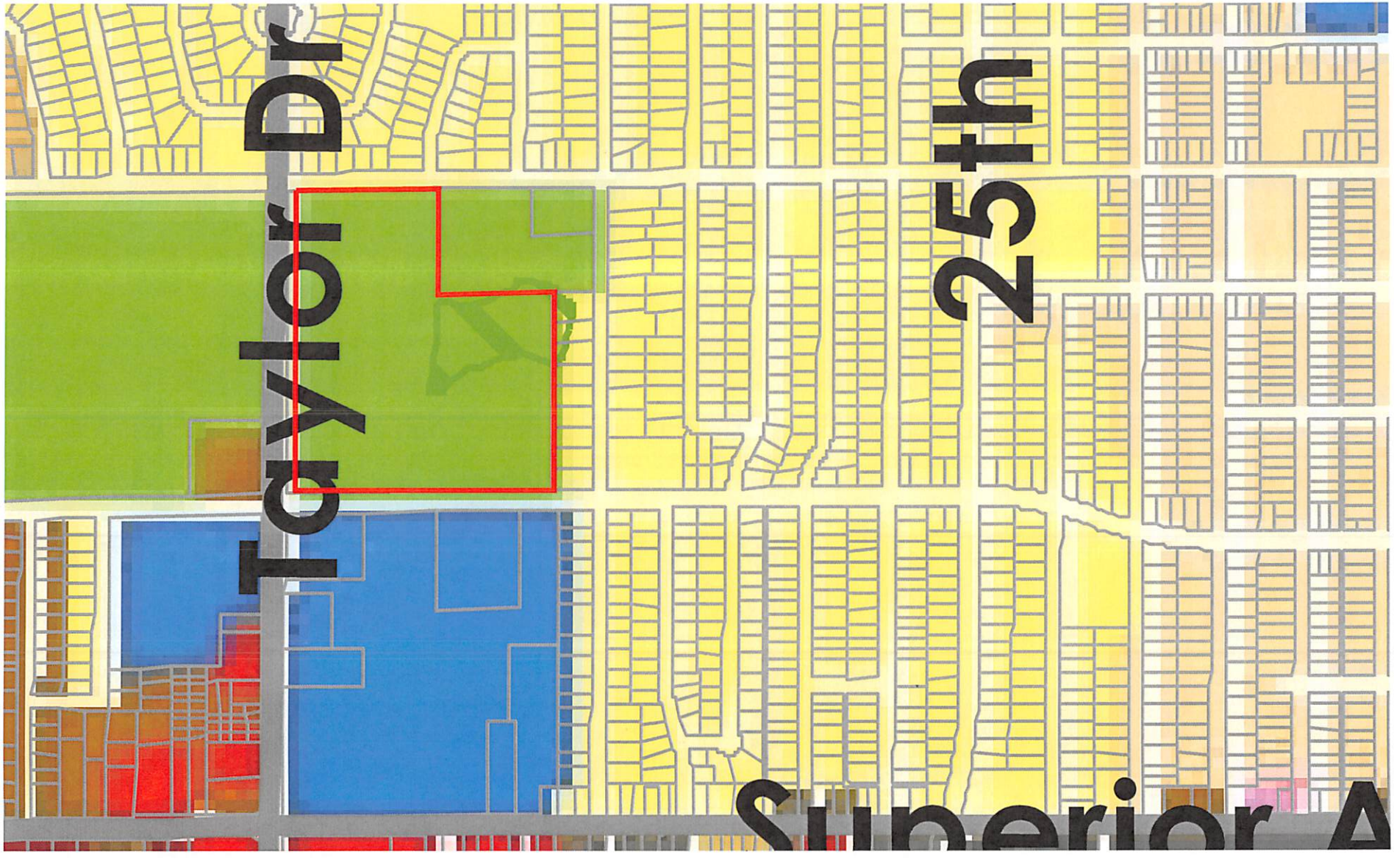
Esri Canada, Esri, HERE, Garmin, GeoTechnologies, Inc., Intermap, USGS, METI/NASA, EPA, USDA

ArcGIS Web App

Esri Canada, Esri, HERE, Garmin, GeoTechnologies, Inc., Intermap, USGS, METI/NASA, EPA, USDA

COMPREHENSIVE PLAN

Senior Housing Parcels-change land use classification from "Public Parks and Open Space" (green) to "Multi-Family Residential" (brown)



PROPOSED REZONE MAP AMENDMENT FROM SUBURBAN RESIDENTIAL (SR-5) TO URBAN RESIDENTIAL (UR-12)

CLIENT

Ryan Companies US, Inc.

SITE ADDRESS

Sheboygan County Tax Parcel 59281631481 City of Sheboygan, Sheboygan County, Wisconsin.

LEGAL DESCRIPTION - LOT 3

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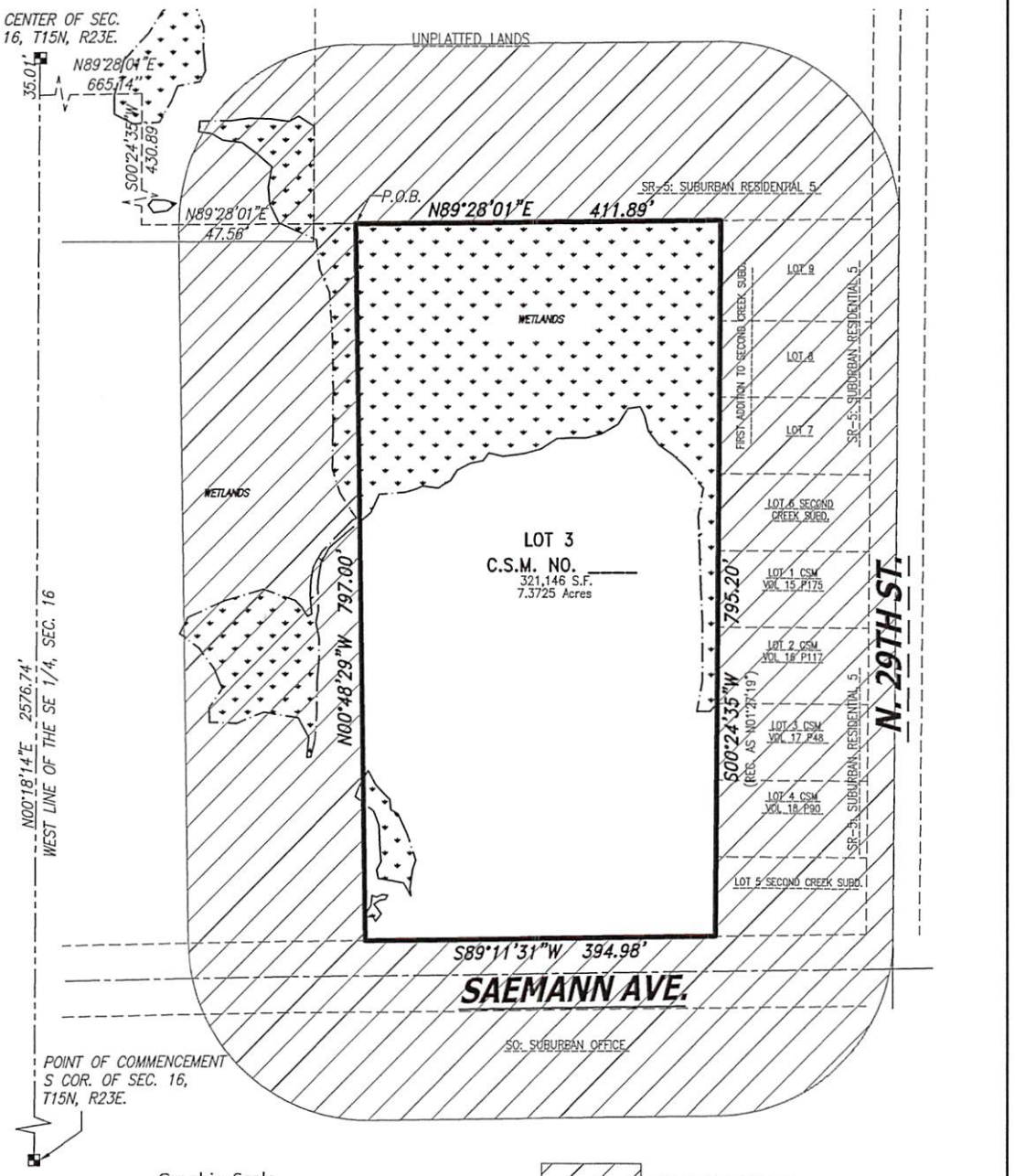

Graphic Scale

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1" = 150'

200' ZONING BUFFER

Date: February 9, 2023
Sheet 3 OF 3 SHEETS

Date	Revision description	

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Drawing No. 1729-SWC

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234 W. Florida Street Milwaukee, WI 53204
414-224-8068 www.chaputlandsurveys.com

CERTIFIED SURVEY MAP NO. _____

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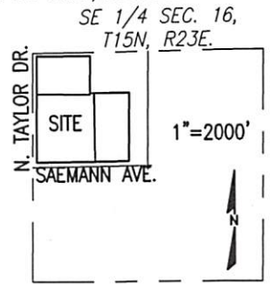
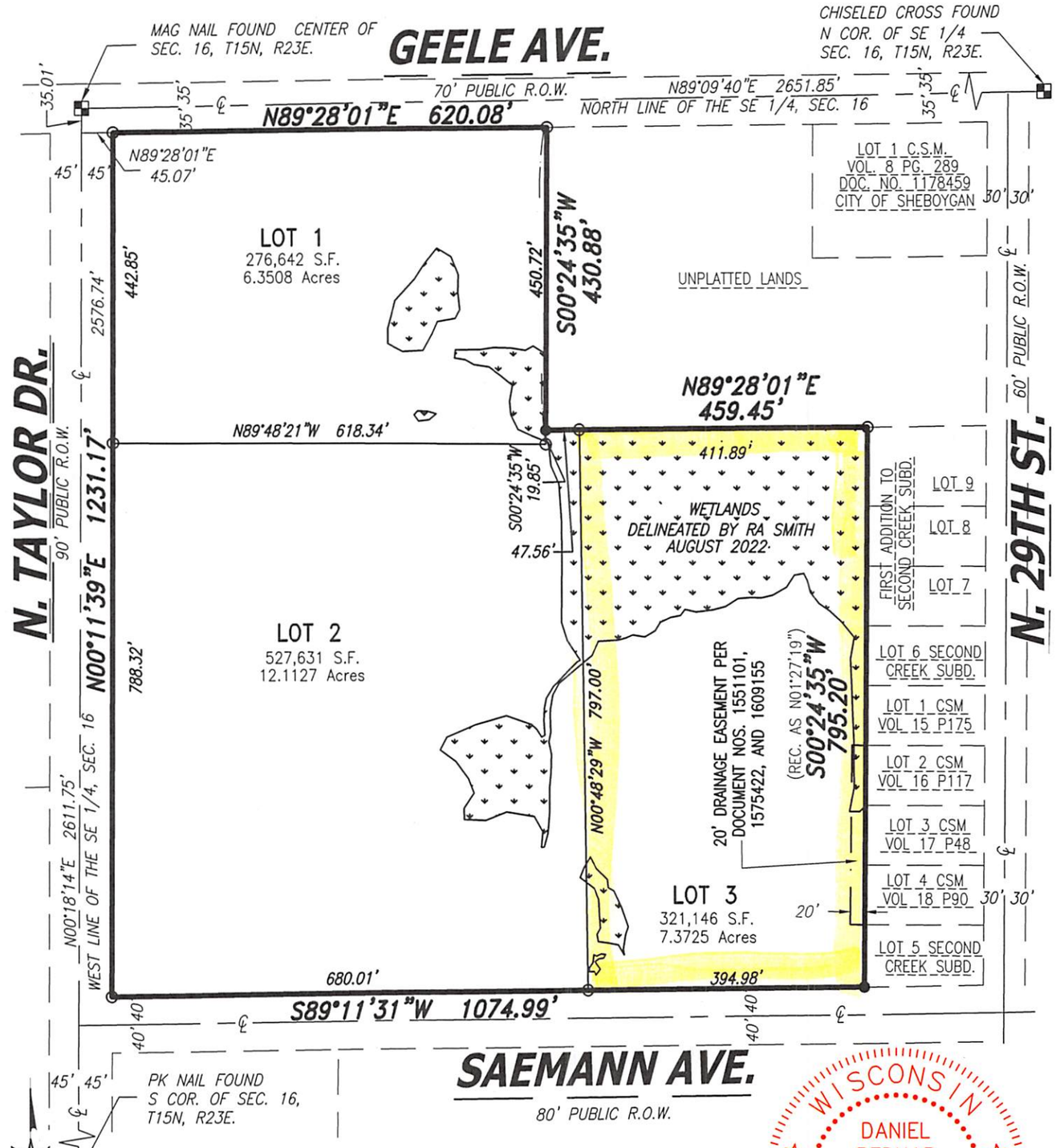
LEGEND

- ○ Indicates Set 1" Iron Pipe, 18" in length weighing 1.13 lbs. per lineal foot.
- ● Indicates Found 1" Iron Pipe.

Subdivider:
FROEDERT HEALTH, INC.
900 N 92ND ST.
MILWAUKEE, WI 53226





NOTE:
Cross access easements and storm water easements to be provided by separate document

GRAPHIC SCALE
0 200 400
1 inch = 200 ft.

WISCONSIN
DANIEL BEDNAR
S-2812
GERMANTOWN WI
LAND SURVEYOR

CHAPUT LAND SURVEYS
234 W. Florida Street Milwaukee, WI 53204
414-224-8068 www.chaputlandsurveys.com

This instrument was drafted by Daniel Bednar
Registered Land Surveyor S-2812

Date: January 18, 2023
Sheet 1 OF 3 SHEETS
Drawing No. 1729-

CERTIFIED SURVEY MAP NO. _____

That part of the Northwest 1/4 of the Southeast 1/4 of Section 16, Town 15 North, Range 23 East, located in the City of Sheboygan, Sheboygan County, Wisconsin

SURVEYOR'S CERTIFICATE

STATE OF WISCONSIN}
:SS
MILWAUKEE COUNTY}

I, DANIEL BEDNAR, Registered Land Surveyor, do hereby certify:
THAT I have surveyed, divided and mapped a part of the Northwest 1/4 of the Southeast 1/4 of Section 16, Town 15 North, Range 23 East, located within the City of Sheboygan, Sheboygan County, Wisconsin, bounded and described as follows:

COMMENCING at the Southwest corner of said Southeast 1/4 Section;
thence North 00°18'14" East along the West line of said Southeast 1/4 Section 2576.74 feet to a point; thence North 89°28'01" East 45.07 feet to the point of beginning of the lands to be described hereinafter; thence continue North 89°28'01" East along the South line of Geele Avenue 620.08 feet to a point; thence South 00°24'35" West 430.88 feet to a point; thence North 89°28'01" East 459.45 feet to a point; thence South 00°24'35" West 795.20 feet to a point on the North line of Saemann Avenue; thence South 89°11'31" West along said North line 1074.99 feet to a point on the East line of North Taylor Drive; thence North 00°11'39" East along said East line 1231.17 feet to the point of beginning.

Said lands contain 1,125,419 square feet, or 25.8359 acres.

THAT I have made the survey, land division and map by the direction of Froedert Health, Inc., Owner.

THAT the map is a correct representation of all the exterior boundaries of the land surveyed and the land division thereof made.

THAT I have fully complied with the provisions of Chapter 236.34 of the Wisconsin Statutes and the Land Division and the Subdivision Ordinance of the City of Sheboygan in surveying, dividing and mapping the same.

January 25, 2023
DATE

DANIEL BEDNAR
REGISTERED LAND SURVEYOR S-2812

WISCONSIN
DANIEL
BEDNAR
S-2812
GERMANTOWN
WI
LAND SURVEYOR

CHAPUT
LAND SURVEYS
234 W. Florida Street
Milwaukee, WI 53204
414-224-8068
www.chaputlandsurveys.com

This instrument was drafted by Daniel Bednar
Registered Land Surveyor S-2812

CERTIFIED SURVEY MAP NO. _____

Part of the Southwest 1/4 and the Southeast 1/4 of the Southwest 1/4 of Section 28, Town 15 North, Range 23 East, located within the Village of Kohler, Sheboygan County, Wisconsin

CORPORATE OWNER'S CERTIFICATE

Froedert Health, Inc., a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin , as owner, certifies that said company caused the land described on this map to be surveyed, divided, mapped and dedicated as represented on this map in accordance with the requirements of the Village of Kohler Code of Ordinances.

This agreement shall be binding on the undersigned and assigns.

In Witness Where of, Froedert Health, Inc. has caused these presents to be signed by _____, its _____, at _____, Wisconsin, ____ day of _____, 2023.

In the presence of:

Froedert Health, Inc.

_____
(print name)

STATE OF WISCONNSIN)
): SS
SHEBOYGAN COUNTY)

Personally came before me this ____ day of _____,2023,_____, of the above named corporation, to me known as the person who executed the foregoing instrument, and to me known to be the _____ of the corporation, and acknowledged that they executed the foregoing instrument as such officers as the deed of the company, by its authority.

(Notary Seal)

_____
Notary Public State of Wisconsin
My commission expires,
My commission is permanent.

CITY PLAN COMMISSION CERTIFICATE OF APPROVAL

APPROVED by the Planning Commission of the City of Sheboygan on this ___ day of _____, 2023.

_____
Ryan Sorenson, Chairperson

_____
Meredith DeBruin, City Clerk

COMMON COUNCIL CERTIFICATE OF APPROVAL AND ACCEPTANCE OF DEDICATION

APPROVED by the Common Council of the City of Sheboygan on this ___ day of _____, 2023.

_____
Ryan Sorenson, Mayor

_____
Meredith DeBruin, City Clerk

WISCONSIN
DANIEL
BEDNAR
S-2812
GERMANTOWN
WI
LAND SURVEYOR

CHAPUT
LAND SURVEYS
234 W. Florida Street
Milwaukee, WI 53204
414-224-8068
www.chaputlandsurveys.com

This instrument was drafted by Daniel Bednar
Registered Land Surveyor S-2812

Date: January 25, 2023
Sheet 3 OF 3 SHEETS
Drawing No. 1729-SWC

CLK322B

City Of Sheboygan
City Clerk's Office

** General Receipt **

Receipt No: 230177
License No: 0000
Date: 02/15/2023
Received By: MMD
Received From: RYAN COMPANIES US, INC
Memo: LOT 3 - FROEDTERT REZONE
Method of Payment: $200.00 Check No. 889032
Total Received: $200.00

Fee Description	Fee
Zoning Change	200.00

This document signifies receipt of fees in the amount indicated above.

II

R. O. No. 114 - 22 - 23. By CITY PLAN COMMISSION. March 6, 2023.

Your Commission to whom was referred Gen. Ord. No. 27-22-23 by Alderperson Mitchell amending Section 15.207 of the City of Sheboygan Zoning Ordinance, Nonconforming Use Regulations, and Section 15.934, Zoning Board of Appeals, so as to streamline and expedite the process of reviewing nonconforming use applications; recommends adopting the Ordinance.

_____

CITY PLAN COMMISSION

Gen. Ord. No. 27 - 22 - 23. By Alderperson Mitchell. February 20, 2023.

AN ORDINANCE amending Section 15.207 of the City of Sheboygan Zoning Ordinance, Nonconforming Use Regulations, and Section 15.934, Zoning Board of Appeals, so as to streamline and expedite the process of reviewing nonconforming use applications.

THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Section 15.207 of the City of Sheboygan Zoning Ordinance entitled "Nonconforming Use Regulations" is hereby amended to read as follows:

"Sec. 15.207. *Nonconforming Use Regulations*

. . .

(7) Change: A nonconforming use of a building or other structure, all or substantially all of which was originally designed or intended for a use which is permitted in the district in which it is located shall not be changed to any use other than a use permitted in the district in which the land is located or to another nonconforming use of similar characteristics when authorized by the Plan Commission as regulated by Subchapter 15-9 of this Chapter. When a nonconforming use has been changed to a permitted one, it shall not thereafter be changed back to a nonconforming use.

. . ."

Section 2. Section 15.934 of the City of Sheboygan Zoning Ordinance entitled "Zoning Board of Appeals" is hereby amended to read as follows:

"Sec. 15.934. *Zoning Board of Appeals*

. . .

(3) Powers

. . .

(c) In addition to the foregoing powers, the Board of Appeals shall have the following specific powers:

1. To interpret the provisions of this Ordinance in such a way as to carry out the intent and purpose of the plan, as shown on the Zoning Map accompanying and made a part of this Ordinance, where the street layout actually on

CityPlan

the ground varies from the street layout on the aforesaid map.

2. The Board of Appeals shall have the power to call on any other city department for assistance in the performance of its duties and it shall be the duty of such other departments to render such assistance as may be reasonably required.

(d) Except as specifically provided, no action of the Board of Appeals shall have the effect of permitting in any district uses prohibited in such districts.

. . ."

Section 3. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, and this ordinance shall be in effect from and after its passage and publication.

I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated_____ 20____. _____, City Clerk

Approved_____ 20____. _____, Mayor

II

R. O. No. 118 - 22 - 23. By CITY CLERK. March 6, 2023.

Submitting an encroachment request from JB Site Design and Engineering, LLC pursuant to the request of the owner (Sheboygan Self Storage, LLC) of South 13th Street and Kentucky Avenue right of way for the purpose of addressing the existing building structure, emergency egress, and adding a sun shade.

CITY CLERK

CityPlan

SITE DESIGN AND ENGINEERING, LLC

January 4, 2023

Mayor Ryan Sorenson
City of Sheboygan, City Hall
828 Center Avenue, Suite 300
Sheboygan, WI 53081

RE: South 13th Street and Kentucky Avenue Right of Way Encroachment Request
Sheboygan Self Storage, LLC
1234 Kentucky Avenue
Sheboygan, WI 53081

Pursuant to the request of the owner, we are formally petitioning the City of Sheboygan to consider the defined **557 square foot encroachment** within South 13th Street and Kentucky Avenue. The petition is being made to address three key components as defined below.

EXISTING BUILDING STRUCTURE

As defined within the boundary survey generated by Cedar Creek Surveying as part of the proposed redevelopment of the property, it was determined that the existing building currently encroaches within the South 13th Street Right of Way and the Kentucky Avenue Right of Way. A portion of the proposed Encroachment petition would address the current building being within the both Right of Way.

PROPOSED EMERGENCY EGRESS

The existing (4) story building will be broken into multiple uses. The topography of the site defines Kentucky Avenue as being one story higher than the City of Sheboygan alleyway on the north side of the building. The grade transition occurs along the east and west sides of the building. The first floor, which is below the existing Kentucky Avenue grade line, will be self-storage which only requires access from the existing loading dock area at the northeast corner of the building. The second and fourth floors are designated for office space use and the third floor is designated for additional self-storage. Two internal stair towers have been constructed, one on the east side of the building and one on the west. The east stair tower allows for access 'at grade' through an existing man-door at the southeast corner of the building (Kentucky Avenue). Due to the grade transition along South 13th Street, the existing grade outside of the west second floor stair toward is approximately 3-feet lower. The encroachment petition includes a 5-foot x 5-foot poured concrete landing and stairs directed south down to existing grade.

PROPOSED SUN SHADE

As part of the proposed exterior architectural finishes to upgrade/enhance the overall appearance of the building, a four foot wide sun shade feature is being added. The proposed sun shade would be located at the southwest corner of the building, extending 34-foot east along Kentucky Avenue and 44-foot north along South 13th Street. It is to be constructed at the approximate third floor. That would translate to being approximately 13-feet above the existing Kentucky Avenue sidewalk

If any additional information is required, please feel free to contact our office to discuss.

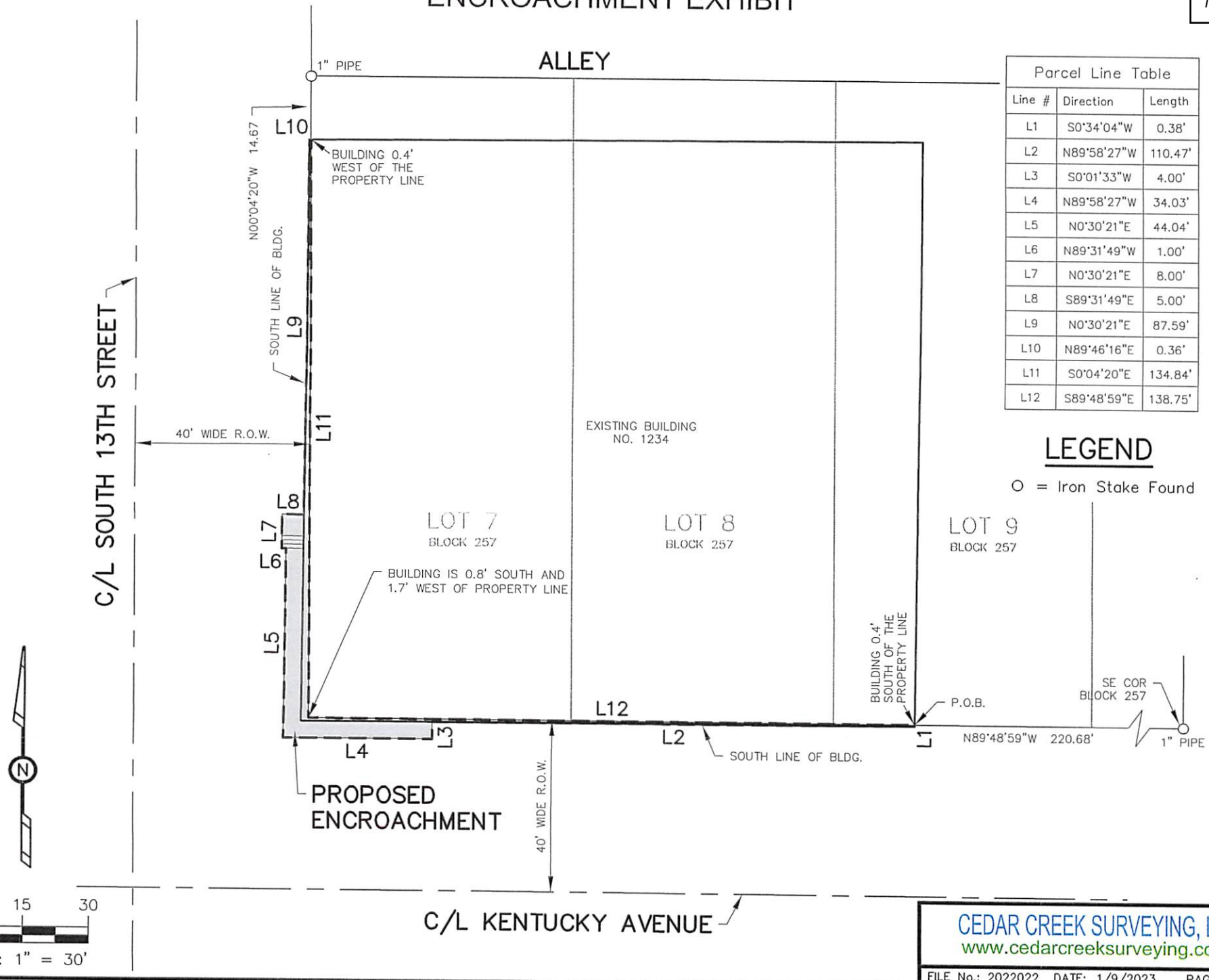
Sincerely,

Joseph Bronoski

JB Site Design and Engineering, LLC
PO Box 1067 Woodruff, Wisconsin 54568 jbsitedesign1@gmail.com (920) 207-8977

1129 Kentucky Avenue Sheboygan, Wisconsin jbronoski@jbsitedesign.net (920) 207-8977

ENCROACHMENT EXHIBIT



Parcel Line Table		
Line #	Direction	Length
L1	S0°34'04"W	0.38'
L2	N89°58'27"W	110.47'
L3	S0°01'33"W	4.00'
L4	N89°58'27"W	34.03'
L5	N0°30'21"E	44.04'
L6	N89°31'49"W	1.00'
L7	N0°30'21"E	8.00'
L8	S89°31'49"E	5.00'
L9	N0°30'21"E	87.59'
L10	N89°46'16"E	0.36'
L11	S0°04'20"E	134.84'
L12	S89°48'59"E	138.75'

LEGEND

O = Iron Stake Found

CEDAR CREEK SURVEYING, LLC
www.cedarcreeksurveying.com

FILE No.: 2022022 DATE: 1/9/2023 PAGE

Legal Description of Encroachment Area adjacent to Parcel #59281507730

A Part of the South 13th Street Right-of-way and Kentucky Avenue Right-of-way adjacent to Block 257 of the Original Plat of Sheboygan, being part of the Southeast 1/4 of the Northeast 1/4, Section 27, T15N, R23E, City of Sheboygan, Sheboygan County, Wisconsin described as follows:

Commencing at the Southeast Corner of Block 257 of the Original Plat of Sheboygan; thence N89°48'59"W 220.68 feet along the South line of said Block 257 to the POINT OF BEGINNING of this description; thence S00°34'04"W 0.38 feet along the East wall of said Building No. 1234; thence N89°58'27"W 110.47 feet along the South Wall of said Building; thence S00°01'33"W 4.00 feet; thence N89°58'27"W 34.03 feet; thence N00°30'21"E 44.04 feet; thence N89°31'49"W 1.00 feet; thence N00°30'21"E 8.00 feet; thence S89°31'49"E 5.00 feet; thence N00°30'21"E 87.59 feet along the West Wall of said Building No. 1234; thence N89°46'16"E 0.36 feet; thence S00°04'20"E 134.84 feet along the West line of Lot 7 of said Block 257; thence S89°48'59"E 138.75 feet along the South line of said Block 257 to the point of beginning.

This described portion contains 557 square feet or 0.013 acres.

II

R. O. No. 120 - 22 - 23. By CITY CLERK. March 6, 2023.

Submitting a notice of claim and claim on behalf of Jamie Haack, by her attorneys, Diane M. Welsh and Eduardo E. Castro of Pines Bach LLP, for alleged damages.

FTP

CITY CLERK

claim #23-22

MAR 2'23 PM

NOTICE OF CLAIM & CLAIM PURSUANT TO WIS. STAT. § 893.80

TO: City of Sheboygan
City Hall
828 Center Avenue
Sheboygan, WI 53081

Todd Wolf, Former City Administrator
c/o Charles C. Adams, City Attorney
City Hall, Suite 210
828 Center Avenue
Sheboygan, WI 53081

Process Server
Date 3/2/23 Time 2:40 am/pm
( ) Personal ( ) Substitute
( ) Posted (X) Corporate

CLAIMANT:

Jamie Haack
1722 N. 25th Street
Sheboygan, WI 53081

NATURE OF CLAIM:

This is a Notice of Claim and Claims made on behalf of Jamie Haack, by her attorneys, Diane M. Welsh and Eduardo E. Castro of Pines Bach LLP, pursuant to Wis. Stats. § 893.80(1d) (a) & (b). Ms. Haack has claims for damages against the City of Sheboygan and former City Administrator Todd Wolf, who at all times relevant to Ms. Haack's claims, acted in his official capacity as City Administrator for the City of Sheboygan. Ms. Haack has been repeatedly defamed by Mr. Wolf. Ms. Haack has authorized Pines Bach to file and serve the Notice of Claim and Claim on her behalf.

Jamie Haack is a resident of the City of Sheboygan, a community activist, and member of the Sheboygan Diversity, Equity, Inclusion, and Belonging group

("Sheboygan DEIB"). On or about October 5, 2022, at former City Administrator Todd Wolf's invitation, Ms. Haack attended a lunch meeting with Mr. Wolf to discuss diversity, equity, and inclusion efforts at the City. At no point during their October 5 lunch meeting did Ms. Haack: 1) represent that she or any other member of Sheboygan DEIB could offer DEI training or consultation to City officials or employees; 2) request that the City of Sheboygan pay her, Sheboygan DEIB, or any person affiliated with Sheboygan DEIB; or 3) threaten or insinuate that she or Sheboygan DEIB would publicly "oppose" Mr. Wolf in any way.

On or about November 7, 2022, Mr. Wolf sent correspondence to members of the City of Sheboygan Common Council. (Exhibit A, attached hereto). In this correspondence, Mr. Wolf accused Ms. Haack and fellow member of Sheboygan DEIB Ale Guevara of "threats, bribery, and potential extortion." (Exh. A at 1). Further, Mr. Wolf accused Ms. Haack and Ms. Guevara of:

- Demanding to know "how much money [the city/Mr. Wolf] had to spend on them," and that they needed money "up front"
- Threatening that, "if you do not pay us, we will publicly oppose you…we will oppose any expert or group regarding DEIB initiatives that you try to institute or support unless you pay us now for us to give you the groups"
- Claiming that Ms. Guevara and Ms. Haack demanded to be paid $70,000.00 by the City of Sheboygan.

Exh. A at 2.

Mr. Wolf sent this correspondence on City of Sheboygan letterhead and from the Office of the City Administrator. (Exh. A at 1.). Since November 7, 2022, Mr. Wolf and others have repeated these allegations widely, including on local radio, in the press, on

fundraising platforms, and at local political events. Mr. Wolf began spreading these allegations in his official capacity as the City Administrator for the City.[1]

These allegations are undeniably false and constitute defamation. As an internal investigation conducted at the behest of the City revealed, "there was evidence that Todd Wolf had a fictional manifestation of blackmail (not credible)." (Exhibit B at 5, attached hereto). The City Common Council has also acknowledged the harm that Mr. Wolf's has caused to the "reputation of [Ms. Haack] and [Ms. Guevara]." (Exh. B at 5).

As a result of Mr. Wolf's defamatory statements, Ms. Haack has suffered damage. Of particular concern are the allegations, by a public official, accusing her of committing criminal acts. The reckless, defamatory statements have forced Ms. Haack to retain and expend resources on legal counsel. Further, her reputation has been tarnished by these false allegations.

Accordingly, Ms. Haack claims $20,000.00 for her damages from the defamatory statements made by Mr. Wolf. Ms. Haack also seeks a public retraction of Mr. Wolf's allegations and an apology from the City of Sheboygan.

[1] The defamatory statements have not ceased. Since Mr. Wolf was terminated from his position as City Administrator, he has now repeated these allegations in a publicly available filing in the Eastern District of Wisconsin, Case No. 23-cv-149, *Wolf v. City of Sheboygan, et. al.* The focus of this claim, however, is only on remarks Mr. Wolf made while Administrator.

Dated this 2nd day of March, 2023

PINES BACH LLP

Diane M. Welsh, SBN 1030940
Eduardo E. Castro, SBN 1117805
122 W. Washington Ave., Ste. 900
Madison, WI 53703
Telephone: 608-251-0101
Facsimile: 608-251-2883
dwelsh@pinesbach.com
ecastro@pinesbach.com

Attorneys for Claimant

HEIDI K. BUTTCHEN NOTARY PUBLIC STATE OF WISCONSIN

Subscribed and sworn to before me this 2nd day of March, 2023.

Heidi K. Buttchen
Notary Public, State of Wisconsin
My Commission Expires: 9/1/25

cc: Attorney Charles C. Adams, City Attorney
City Hall, Suite 210
828 Center Avenue
Sheboygan, WI 53081

EXH
A

City of Sheboygan
spirit on the lake

November 7, 2022

RE: CONFIDENTIAL: NOTICE TO COMMON COUNCIL OF CONCERNS RELATED TO THREATS AND POLITICAL INFLUENCE AT CITY HALL

Dear Honorable Common Council Members for the City of Sheboygan,

I know that I have briefly mentioned some of these troubling issues to you in other forums as well as to other officials within the City, but I wanted to provide this Notice to each of you with factual details for your convenience. I believe this information is vitally important for the City, and it goes directly to the safety and security of the City of Sheboygan, the citizens and taxpayers, and to the City's employees, staff, and personnel.

I was appointed and hired to this position in July of 2020 and have been honored and privileged to serve in this important role under the oversight and leadership of Sheboygan's Common Council. As you know, the position of City Administrator was created and passed into law in 2011 for this wonderful City because of the lawful measures taken by its Alderpersons to ensure that political influence or facets of corruption would be a minor threat to taxpayer dollars, contracts, partnerships, employment decisions or City business. I was honored to be selected for this position based on my extensive qualifications in previous multi-million-dollar business management roles, project oversight, compliance and the utmost of integrity, honesty, and business acumen.

Since I started as Sheboygan's City Administrator just over two years ago, with your support and the help of my excellent staff and the employees of the City, we have accomplished immeasurable tasks—all of which has exponentially helped the City by saving millions of taxpayer dollars, ensuring vast processes of oversight over City contracts and partnerships, building and creating an environment of trust and investment in the development of City employees, bringing in diversity training, and overseeing guidelines to aid the community and our strategic partnerships therein; as well as instituting processes and plans that protect the City from any litigation pursuant to local, state, or federal law. While it is impossible to avoid any litigation, the job of the City Administrator is to ensure the processes, systems, reports, and guidelines best protect the City from such actions.

For the convenience of yourselves and the Common Council as a body, I have drafted a list of my main accomplishments as City Administrator to date and I can provide that to the Common Council upon request.

As part of my duties in reporting directly to the Common Council on matters within the duties and guidelines of the City Administrator to date, there are a few highly crucial issues that I am bringing to your attention in this letter. Please note, that while I have previously shared with some of you and the Mayor much of the information in this letter within compliance of applicable policies, for your benefit and convenience, I felt it necessary to outline my main concerns so that Council, in their exclusive authority, may have the resources and information to act in the best interests of the citizens and the City:

1. **Threats, bribery and potential extortion from politically tied activists that affect the City, citizens, and employees specifically from August 2022 – November 2022.**

OFFICE OF THE CITY ADMINISTRATOR

CITY HALL
828 CENTER AVENUE
SUITE 300
SHEBOYGAN, WI 53081

920-459-3315
todd.wolf@sheboyganwi.gov

www.sheboyganwi.gov

As you know, on August 16, 2022, an unknown citizen came to a neighborhood meeting and made a racial slur at the public forum. The meeting took place under the Department of Planning & Development, but Director Pelishek was not in attendance per his duties and employee protocol. Director Pelishek's employee that was present informed him of her concerns in seeking guidance on how to handle these situations and Director Pelishek immediately emailed myself and Mayor Ryan Sorenson to ask for guidance and advice on how our City employees could handle such a meeting. Mayor Sorenson never replied to Director Pelishek, and I allowed him to raise the issue at our closed management meeting on August 22, 2022 based on the Mayor's failure to respond to him. Director Pelishek never repeated the racial slur at that meeting until another Director demanded that he explain what was stated—which he did in response to the other director's request.

It came to my attention that this other Director immediately left the 8/22 meeting to contact multiple persons outside of City government to inform them that a "racial slur" was used by Director Pelishek—something that this Director has now admitted to on multiple occasions and has been documented. ALL of this occurred between August 22 – 23, 2022. The article published by Maya Hilty of the Sheboygan Press came out on October 11, 2022. Maya Hilty implied that her "source" for the information from this meeting did not come forward to her until roughly 1 week prior to the publication of her article.

In late August and September 2022, I made several calls with DEIB leaders in the community and was referred to the "Sheboygan DEIB" group, where a City employee set up a meeting with "Sheboygan DEIB" reps Jamie Haack and Ale Guevara. Director Pelishek came with me as the officer charged with grant proposals and development. I expected at this meeting to be provided with solutions, a business proposal, strategies or a list of trusted experts to retain for DEIB training. Such paperwork is mandatory when dealing with paying out taxpayer dollars to consultants or other vendors. However, at the October 5 meeting, Ms. Guevara and Haack immediately asked me to tell them "how much money [the city] I had to spend on them" and that they needed that up front to provide me any list and would not provide details related to oversight. They did not give me any number but stated I / City needed to pay them just to provide a list of their approved partners or experts. I told them that I could not write them a check without any oversight or information on any groups they would hire with City money that we had no say over or knowledge of.

Finally, the women stated, "if you do not pay us, we will publicly oppose you....we will oppose any expert or group regarding DEIB initiatives that you try to institute or support unless you pay us now for us to give you the groups." The threats continued briefly, but I politely reiterated that I would not write a check with taxpayer money under such circumstances because there needed to be oversight, and I left the October 5, 2022 meeting with the two Sheboygan DEIB representatives. At the time, I was unsure how they would "oppose me publicly," but I was focused on doing my job for the City rather than worrying about political threats for money from the City. Upon further inspection, I discovered that the "Sheboygan DEIB" has never been a legitimate registered entity in the State of Wisconsin under the Dept of Financial Institutions or in any other legitimate entity fashion. As Such, I am uncertain whether they were demanding upfront checks payable to themselves and still unsure any details in how they wanted to use the money. I have since learned that the amount Ms. Guevara and Ms. Haack are requesting on behalf of the Sheboygan DEIB group to be paid by the City is $70,000.00.

Now, in no way am I saying this issue applies to all persons connected to the Sheboygan DEIB group, and I have many friendly communications with other connected individuals to DEIB initiatives that are unaware of what I am stating herein.

Had I written a check to the two women on October 5, that would have been an egregious violation of the taxpayer and City's trust in the mismanagement of its taxes, finances, and City budgetary concerns —especially since there would have been zero oversight or accountability for the funds or how they used the City's funds. I did contact several other DEIB-connected experts after that meeting to obtain their feedback and nearly all of the other experts, I contacted stated that Ms. Haack and Ms. Guevara were out of line and wrong to demand money up front without providing any assurances or information on their process.

After I left that October 5 meeting with Director Pelishek following the threats from Ms. Guevara and Ms. Haack, Sheboygan Press's Maya Hilty immediately was informed of the August 22 meeting involving Director Pelishek responding to Director Rendall-Araujo's request that he tell her was said ("racial slur"). Featured prominently in Ms. Hilty's article was Ale Guevara, who called out both myself and Director

Pelishek fervently. This came out less than 1 week after the meeting where I was threatened along with Director Pelishek to write this 'Sheboygan DEIB" group a blank check.

Then, at the Open Session of Council's October 17 meeting, Jamie Haack—the other person at the October 5 meeting—spoke to Council and stated, "I urge the Council to seriously evaluate the personnel placements of Mr. Pelishek and Mr. Wolf and their current and future abilities to serve in their roles with the knowledge, transparency and values of equity and respect that are so needed in their positions."

Clearly, both the initial article (and the follow ups) as well as the speech before council by the two women who threatened me to write them a check with taxpayer money were them making good on their threats and following through because I refused to pay them a blank check without any information—knowing now that had I done so, neither of them would have publicly been involved in the Hilty article or spoken to demand my termination before Council.

At this time, I am uncertain of further measures that certain representatives with the Sheboygan DEIB group have done in continuing to follow through with their threats; but I wanted to inform the Council that I do not regret my decision on October 5 in any way.

I will never cave to political threats, bribes, or extortion efforts from political activists when it comes to City partnerships and City money because I am tasked with ensuring the fullest transparency, accountability, and lawful actions with managing the budget, vendors, and hiring decisions for the City.

I am asking that Council support me in my decision on October 5 and support my statements, even if a young journalist took those out of context. I have been informed that larger media networks in Sheboygan intentionally chose to ignore Ms. Hilty's article because it seemed like an unsubstantiated "smear piece."

Next, related to some of the false accusations against me in the press or publicly, I wanted to address one faction of the October 11 article in the Sheboygan press that was misconstrued and falsely characterized. During my my time as City Administrator, I have instituted training and guidance for the staff and offices of the City that comply with law while building a positive team environment. The approved experts that have aided in these seminars use the term "safe space" to connote positive work environments, but this term also relates to laws involving sharing of confidential government matters that are not subject to public disclosure—namely personnel information.

Breaching such confidential government protocols that are meant to protect internal audits, investigations and *mainly personnel information* is is a violation of law and City policies; especially when done for the purpose of providing *false* confidential personnel information about another employee for a political purpose. Specifically, one of the key justifications for instituting confidentiality within personnel meetings and communications is to protect the City, the employees, and the taxpayers from the high potential of such information to be "intentionally distorted" for political reasons that can lead to a chain-of-events—which I believe has happened in this matter. All of this has led to severe health and stress on myself, many City employees and Director Pelishek in something that should have been completely avoided. I was rightfully concerned by this breach because (1) it incited a false story by a politically-motivated groups without any factual justification; (2) it led to punishing the one Director (Pelishek) who was actually requesting more diversity and legal guidance for his staff from the Mayor and others, which the City should not punish; and (3) it opened the door to political blackmail and threats including the October 5 meeting, despite the fact that it all started because Mr. Pelishek was concerned about racism and wanted to report that and help City staff deal with it and address it.

Because of some of the statements, threats, and attacks against myself and my reputation over the previous few months with false accusations, I have not yet written up the other director responsible for demanding that Mr. Pelishek repeat the statement and who leaked that statement in a false light after that; but I have every justification to still do so at this time. I would like Council's support in doing this without my fear of further action against me or my position. As of now, because of the "political pressure" on me and recent threats and directives that I "not speak to this matter at all," we have now sent the proverbial "message" to City personnel that leaking any confidential information such as personnel records, confidential closed

meeting information, and especially lies about confidential meetings is acceptable to the City; and those who oppose it (myself, etc) will be punished or defamed. I would like the Council's help in avoiding that messaging to our City personnel and the City as whole.

AS the day-to-day manager over most City employees, I am very aware of their health issues, concerns, and stress related specifically to how items are being addressed by political factions. These political matters do not involve my role; and should never be a threat to our employees who work so hard. Because my hands have been tied in some of these political situations, the employees feel as though I am powerless to support them as City Administrator given the attacks and now introduced legislation to reduce some of my duties and ability to speak directly to government matters.

2. Respectful Request for the City Administrator to have regular meetings with the Common Council with regular weekly or monthly written updates (from the City Administrator) on any general issues, personnel matters, or political concerns known to the City Administrator that only the Common Council in their exclusive authority should be handling.

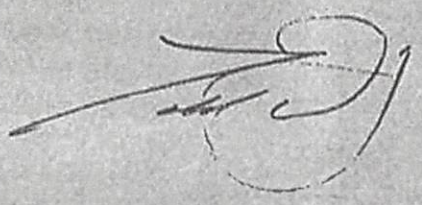
I do believe that it would benefit the Council and the City to allow me regular meetings with the Council or written updates with any confidential concerns of a political nature (such as those referenced herein) to help you, the Council, and the City, in doing my job to the best of my ability; and allowing the Council to handle all politically-motivated issues that are or may affect the City or my duties—all of which are not part of my job duties since I am not a political player nor a politician, and I defer to your oversight on all such matters.

Although I have kept detailed confidential records related to the prior Director of Human Resources, I do have more information on that situation that I believe Council should be apprised of and I am respectfully requesting the opportunity to do that with Council in a confidential meeting to protect the individual wherein I can provide detailed information to Council and explain fully my positions on the current role and vacancy. In general, not only must the city comply with laws related to the use, distribution and management of public monies ("taxpayer dollars"), but also to how employees, officers, and other roles within the City are filled.

I have been denied the opportunity to speak to you, the media, or many others; and I wanted to ensure that the Council has more information related to my duties in my role as City Administrator, the current situation, and other concerning information that I believe Council should be made aware of. Again, I have further details, documentation, and records available to you upon request related to this communication and reporting to you; as well as details of other matters that I would like the opportunity to raise with Council.

I do thank all of you fervently for your time and careful consideration of this important notice and communication.

Sincerely,



Todd Wolf
City Administrator

Closed session 10-17-22 called to order at 7:06 p.m.

Alderpersons present: Felde, Ackley, Salazar, Perrella, Filicky-Peneski, Rust Dekker, Mitchell, Heidemann, Ramey – 10.

Present: Mayor Ryan Sorenson, City Attorney Chuck Adams, and City Clerk Meredith DeBruin

Council President and Vice President in City Hall on Thursday and Friday of previous week talking to employees and Mayor and City Administrator.

Council presented timeline of events. Discussion on why the City has an Administrator. Review of Municipal Code with regards to duties of City Administrator.

Discussed options:

Reprimand – public vs private

Direct to get training and/or mentor

Performance Improvement plan

There was not a sense if there should be a public reprimand (not in agreement).

Sense of council that the following should happen:

1. Mayor should talk to Todd and tell him he is responsible for any reprimands associated with Chad.
2. Mayor should talk to Chad that Todd is his boss and the council will not be acting on anything regarding Chad (they only oversee Todd).
3. Direct City Attorney office to draft Resolution that Todd should not participate in the hiring of the HR Director (all ayes, Mitchell indifferent) – with this to be submitted next Monday.
4. Direct Todd officially not to participate in any more PR

Adjourn at 9:15 p.m. in closed session Rust/Dekker

10/24/22

Called to order at 6:08 p.m.

Present:

Mayor Ryan Sorenson, Asst City Attorney Liz, City Clerk Meredith DeBruin and 10 Alders (Felde, Filicky-Peneski, Salazar, Ackley, Ramey, Dekker, Perrella, Rust, Mitchell, Heidemann).

Several job descriptions from the City Administrators position were distributed (one updated in 2020 removed Council and Mayor from some wording – did not have council approval).

Council address 3 things –

1- What is correct job description?
2- Performance review (not related to current situation – just needs to be completed)
3- Performance Improvement plan for City Administrator

Questions to be addressed:

Who is decider of action taken if Todd presses back?

See if comments re: Library was in Todd's file?

Review contract with Alonzo to see if report was to be given/taken.

Reviewed that if disciplinary action is not public – need to have common message.

Review retaliation policy from the City Handbook.

Assistant City Attorney Liz took notes regarding the description of the events and questions to ask Todd for his part of the performance review.

Adjourn at 8:42 p.m.

Notes from Closed Session 11-7-22

Start: 6:18pm

25.MOTION TO CONVENE IN CLOSED SESSION pursuant to Wis. Stat. § 19.85(1)(e) for deliberating or negotiating the investing of public funds or conducting other specified public business whenever competitive or bargaining reasons require a closed session; to wit: discussions regarding possible development incentives for affordable housing projects currently known as the former Koepsell property redevelopment and the S. 14th and Illinois Avenue projects

[redacted]

AND under the exemption provided in Wis. Stat. § 19.85(1)(f) for preliminary consideration of specific personnel problems which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of the person involved in such problems or investigations.

PRESENT: Mayor Ryan Sorenson, Attorney Charles Adams, Attorney Liz Majerus, Alderperson Dean Dekker, Alderperson Joe Heidemann, Alderperson Amanda Salazar, Alderperson Angela Ramey, Alderperson Zach Rust, Alderperson Trey Mitchell, Alderperson Grazia Perrella, Alderperson Betty Ackley, Alderperson Barb Felde, Alderperson Roberta Filicky-Peneski (appeared remotely)

Alderperson Heidemann requests to make a motion, Mayor states that he is not accepting motions at this time. Chuck explains that most motions need to be made in open session. Mayor said he would open it up to motion discussion once he introduced a few things.

Mayor Sorenson: All should have received the letter from Administrator Wolf via email and I believe it was placed on your chair. Mayor is concerned about City employees and morale at City Hall. There is a continued strain of public records requests being placed on various offices and that there is a question of trust in City leadership.

Attorney Adams: If there are any questions, we are here to answer them. There is a performance improvement plan placed in your binders if you wish to consider that. We're not here to direct you in any certain way or decision but to act as a guide for decisions you are considering but know that our liability concerns have changed.

Mayor Sorenson: the issues are starting to spiral and that is based on an administrative issue.

Alderperson Heidemann: wants to make a motion to give Administrator Wolf a verbal warning and place in his personnel file. If he is good for 6 months, we remove it from his personnel file.

Attorney Adams: that's a motion for open session as it's an act of discipline which needs to be made in open session.

Discussion is had about possible courses of action regarding Administrator Wolf. Attorney Adams explained that there are 3 levels to which that the council can/should act tonight.

1) Performance Improvement Plan
2) Vote of No Confidence
3) Actual Action being Suspension/Termination

More discussion is had between council on which course of action to take.

Consensus of council: place on 6-month Administrative leave.

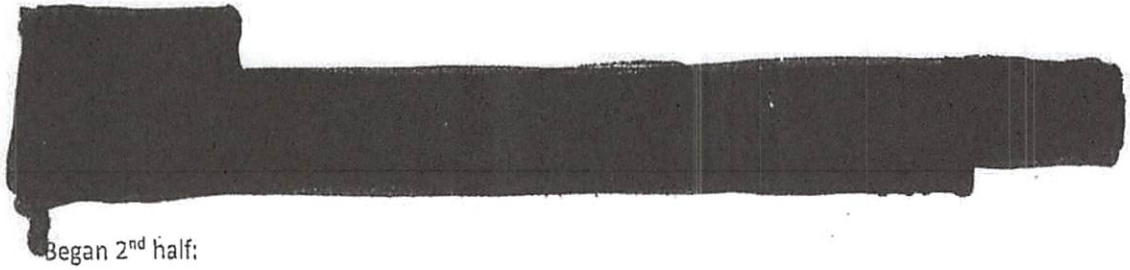
Motion to Reconvene in Open session made by Alderperson Dekker, 2nd by Alderperson Ackley

All Aye, Motion Passed 8:25pm

Closed Session 1-4-23

6:24 p.m.

Finance Director Krueger, Fire Chief Montellano, Director of Public Works Biebel, City Engineer Sazama. IT Director Bushman, Assistant City Attorney Majerus, Director of Planning and Development Pelishek, City Attorney Adams, City Clerk DeBruin, Mayor Sorenson, Ald. Mitchell, Heidemann, Ackley, Salazar, Ramey, Rust, Filicky-Peneski, Felde, Dekker, Perrella.



Began 2nd half:

City Attorney Adams, Assistant City Attorney Majerus, City Clerk DeBruin, Mayor Sorenson, Ald. Mitchell, Heidemann, Ackley, Salazar, Ramey, Rust, Filicky-Peneski, Felde, Dekker, Perrella, Jim and Jill (attorneys)

Jim gave brief overview of what should/should not be discussed – advised council that this was not a decision on what outcome there should be. Also advised that this is a high liability situation and told everyone not to discuss outside of room.

Jill gave brief synopsis of the investigation, stating that there was significant evidence that Todd Wolf violated policies and the law and failed to comply with council directives. Also, stated there was evidence that Todd Wolf had a fictional manifestation of blackmail (not credible). Todd Wolf stated there were "different levels of law". Also, there was significant evidence of communications belittling the mayor and assertions against female council members. Significant evidence for a hearing.

Council 3 options:

1. Hearing? City draft allegations and evidence and witnesses and Todd would do the same (determine cause). Usually in closed session, however Todd can request it be in open session.
2. Terminate with no cause – 6 months pay and benefits
3. Do not pursue and bring Todd back

Discussion occurred, not limited to the impact on employees, the cost to the City, Todd's rights, asking Todd to follow a nondisclosure, City's reputation, reputation of Jamie and Ali (cease and desist from their lawyers).

Council

Mitchell and Heidemann for number 1

Other 8 – for number 2

Decision to hold Special council meeting where all council members could be present. Monday, January 9 immediately following Finance and Personnel.

Attorney's office will draft Resolution and agenda will be posted by Friday.

Adjourn at 9:06 Ackley/Filicky-Peneski. All ayes.

II

R. O. No. 119 - 22 - 23. By CITY CLERK. March 6, 2023.

Submitting a notice of claim and claim on behalf of Alexandra Guevara, by her attorneys, Diane M. Welsh and Eduardo E. Castro of Pines Bach LLP, for alleged damages.

FTP

CITY CLERK

Claim #22-22

MAR 2 '23 PM 2

NOTICE OF CLAIM & CLAIM PURSUANT TO WIS. STAT. § 893.80

TO: City of Sheboygan
c/o Charles C. Adams, City Attorney
City Hall
828 Center Avenue
Sheboygan, WI 53081

Todd Wolf, Former City Administrator
c/o Charles C. Adams, City Attorney
City Hall, Suite 210
828 Center Avenue
Sheboygan, WI 53081

Process Server
Date 3/2/23 Time 2:40 am/pm
( ) Personal ( ) Substitute
( ) Posted (/) Corporate

CLAIMANT:

Alexandra Guevara
4020 Lakeshore Road
Sheboygan, WI 53083

NATURE OF CLAIM:

This is a Notice of Claim and Claims made on behalf of Alexandra Guevara, by her attorneys, Diane M. Welsh and Eduardo E. Castro of Pines Bach LLP, pursuant to Wis. Stats. § 893.80(1d) (a) & (b). Ms. Guevara has claims for damages against the City of Sheboygan and former City Administrator Todd Wolf, who at all times relevant to Ms. Guevara's claims, acted in his official capacity as City Administrator for the City of Sheboygan. Ms. Guevara has been repeatedly defamed by Mr. Wolf. Ms. Guevara has authorized Pines Bach to file and serve the Notice of Claim and Claim on her behalf.

Alexandra Guevara is a resident of the City of Sheboygan, a community activist, and member of the Sheboygan Diversity, Equity, Inclusion, and Belonging group

("Sheboygan DEIB"). On or about October 5, 2022, at former City Administrator Todd Wolf's invitation, Ms. Guevara attended a lunch meeting with Wolf to discuss diversity, equity, and inclusion efforts at the City of Sheboygan (the "City"). At no point during their October 5 lunch meeting did Ms. Guevara 1) represent that she or any other member of Sheboygan DEIB could offer DEI training or consultation to City officials or employees; 2) request that the City of Sheboygan pay her, Sheboygan DEIB, or any person affiliated with Sheboygan DEIB; or 3) threaten or insinuate that she or Sheboygan DEIB would publicly "oppose" Mr. Wolf in any way.

On or about November 7, 2022, Mr. Wolf sent correspondence to members of the City of Sheboygan Common Council. (Exhibit A, attached hereto). In this correspondence, Mr. Wolf accused Ms. Guevara and fellow member of Sheboygan DEIB Jamie Haack of "threats, bribery, and potential extortion." (Exh. A at 1). Further, Mr. Wolf accused Ms. Haack and Ms. Guevara of:

- Demanding to know "how much money [the city/Mr. Wolf] had to spend on them," and that they needed money "up front"
- Threatening that, "if you do not pay us, we will publicly oppose you…we will oppose any expert or group regarding DEIB initiatives that you try to institute or support unless you pay us now for us to give you the groups"
- Claiming that Ms. Guevara and Ms. Haack demanded to be paid $70,000.00 by the City of Sheboygan

Exh. A at 2.

Mr. Wolf sent this correspondence on City of Sheboygan letterhead and from the Office of the City Administrator. (Exh. A at 1.). Since November 7, 2022, Mr. Wolf and others have repeated these allegations widely, including on local radio, in the press, on

fundraising platforms, and at local political events. Mr. Wolf began spreading these allegations in his official capacity as the City Administrator for the City.[1]

These allegations are undeniably false and constitute defamation. As an internal investigation conducted at the behest of the City revealed, "there was evidence that Todd Wolf had a fictional manifestation of blackmail (not credible)." (Exhibit B at 5, attached hereto). The City Common Council has also acknowledged the harm that Mr. Wolf's has caused to the "reputation of [Ms. Haack] and [Ms. Guevara]." (Exh. B at 5).

As a result of Mr. Wolf's defamatory statements, Ms. Guevara has suffered damage. Of particular concern are the allegations, by a public official, accusing her of committing criminal acts. The reckless, defamatory statements have forced Ms. Guevara to retain and expend resources on legal counsel. Further, her reputation has been tarnished by these false and defamatory allegations.

Accordingly, Ms. Guevara claims $20,000.00 for her damages from the defamatory statements made by Mr. Wolf. Ms. Guevara also seeks a public retraction of Mr. Wolf's allegations and an apology from the City.

[1] The defamatory statements have not ceased. Since Mr. Wolf was terminated from his position as City Administrator, he has now repeated these allegations in a publicly available filing in the Eastern District of Wisconsin, Case No. 23-cv-149, *Wolf v. City of Sheboygan, et. al.* The focus of this claim, however, is only on remarks Mr. Wolf made while Administrator.

Dated this 2nd day of March, 2023

PINES BACH LLP

Diane M. Welsh, SBN 1030940
Eduardo E. Castro, SBN 1117805
122 W. Washington Ave., Ste. 900
Madison, WI 53703
Telephone: 608-251-0101
Facsimile: 608-251-2883
dwelsh@pinesbach.com
ecastro@pinesbach.com

Attorneys for Claimant

HEIDI K BUTTCHEN NOTARY PUBLIC STATE OF WISCONSIN

Subscribed and sworn to before me this 2nd day of March, 2023.

Heidi K Buttchen
Notary Public, State of Wisconsin
My Commission Expires: 9/1/25

cc: Attorney Charles C. Adams, City Attorney
City Hall, Suite 210
828 Center Avenue
Sheboygan, WI 53081

EXHIBIT A

City of Sheboygan
spirit on the lake

November 7, 2022

RE: CONFIDENTIAL: NOTICE TO COMMON COUNCIL OF CONCERNS RELATED TO THREATS AND POLITICAL INFLUENCE AT CITY HALL

Dear Honorable Common Council Members for the City of Sheboygan,

I know that I have briefly mentioned some of these troubling issues to you in other forums as well as to other officials within the City, but I wanted to provide this Notice to each of you with factual details for your convenience. I believe this information is vitally important for the City, and it goes directly to the safety and security of the City of Sheboygan, the citizens and taxpayers, and to the City's employees, staff, and personnel.

I was appointed and hired to this position in July of 2020 and have been honored and privileged to serve in this important role under the oversight and leadership of Sheboygan's Common Council. As you know, the position of City Administrator was created and passed into law in 2011 for this wonderful City because of the lawful measures taken by its Alderpersons to ensure that political influence or facets of corruption would be a minor threat to taxpayer dollars, contracts, partnerships, employment decisions or City business. I was honored to be selected for this position based on my extensive qualifications in previous multi-million-dollar business management roles, project oversight, compliance and the utmost of integrity, honesty, and business acumen.

Since I started as Sheboygan's City Administrator just over two years ago, with your support and the help of my excellent staff and the employees of the City, we have accomplished immeasurable tasks—all of which has exponentially helped the City by saving millions of taxpayer dollars, ensuring vast processes of oversight over City contracts and partnerships, building and creating an environment of trust and investment in the development of City employees, bringing in diversity training, and overseeing guidelines to aid the community and our strategic partnerships therein; as well as instituting processes and plans that protect the City from any litigation pursuant to local, state, or federal law. While it is impossible to avoid any litigation, the job of the City Administrator is to ensure the processes, systems, reports, and guidelines best protect the City from such actions.

For the convenience of yourselves and the Common Council as a body, I have drafted a list of my main accomplishments as City Administrator to date and I can provide that to the Common Council upon request.

As part of my duties in reporting directly to the Common Council on matters within the duties and guidelines of the City Administrator to date, there are a few highly crucial issues that I am bringing to your attention in this letter. Please note, that while I have previously shared with some of you and the Mayor much of the information in this letter within compliance of applicable policies, for your benefit and convenience, I felt it necessary to outline my main concerns so that Council, in their exclusive authority, may have the resources and information to act in the best interests of the citizens and the City:

1. **Threats, bribery and potential extortion from politically tied activists that affect the City, citizens, and employees specifically from August 2022 – November 2022.**

OFFICE OF THE CITY ADMINISTRATOR

CITY HALL
828 CENTER AVENUE
SUITE 300
SHEBOYGAN, WI 53081

920-459-3315
todd.wolf@sheboyganwi.gov

www.sheboyganwi.gov

As you know, on August 16, 2022, an unknown citizen came to a neighborhood meeting and made a racial slur at the public forum. The meeting took place under the Department of Planning & Development, but Director Pelishek was not in attendance per his duties and employee protocol. Director Pelishek's employee that was present informed him of her concerns in seeking guidance on how to handle these situations and Director Pelishek immediately emailed myself and Mayor Ryan Sorenson to ask for guidance and advice on how our City employees could handle such a meeting. Mayor Sorenson never replied to Director Pelishek, and I allowed him to raise the issue at our closed management meeting on August 22, 2022 based on the Mayor's failure to respond to him. Director Pelishek never repeated the racial slur at that meeting until another Director demanded that he explain what was stated—which he did in response to the other director's request.

It came to my attention that this other Director immediately left the 8/22 meeting to contact multiple persons outside of City government to inform them that a "racial slur" was used by Director Pelishek—something that this Director has now admitted to on multiple occasions and has been documented. ALL of this occurred between August 22 – 23, 2022. The article published by Maya Hilty of the Sheboygan Press came out on October 11, 2022. Maya Hilty implied that her "source" for the information from this meeting did not come forward to her until roughly 1 week prior to the publication of her article.

In late August and September 2022, I made several calls with DEIB leaders in the community and was referred to the "Sheboygan DEIB" group, where a City employee set up a meeting with "Sheboygan DEIB" reps Jamie Haack and Ale Guevara. Director Pelishek came with me as the officer charged with grant proposals and development. I expected at this meeting to be provided with solutions, a business proposal, strategies or a list of trusted experts to retain for DEIB training. Such paperwork is mandatory when dealing with paying out taxpayer dollars to consultants or other vendors. However, at the October 5 meeting, Ms. Guevara and Haack immediately asked me to tell them "how much money [the city] I had to spend on them" and that they needed that up front to provide me any list and would not provide details related to oversight. They did not give me any number but stated I / City needed to pay them just to provide a list of their approved partners or experts. I told them that I could not write them a check without any oversight or information on any groups they would hire with City money that we had no say over or knowledge of.

Finally, the women stated, "if you do not pay us, we will publicly oppose you....we will oppose any expert or group regarding DEIB initiatives that you try to institute or support unless you pay us now for us to give you the groups." The threats continued briefly, but I politely reiterated that I would not write a check with taxpayer money under such circumstances because there needed to be oversight, and I left the October 5, 2022 meeting with the two Sheboygan DEIB representatives. At the time, I was unsure how they would "oppose me publicly," but I was focused on doing my job for the City rather than worrying about political threats for money from the City. Upon further inspection, I discovered that the "Sheboygan DEIB" has never been a legitimate registered entity in the State of Wisconsin under the Dept of Financial Institutions or in any other legitimate entity fashion. As Such, I am uncertain whether they were demanding upfront checks payable to themselves and still unsure any details in how they wanted to use the money. I have since learned that the amount Ms. Guevara and Ms. Haack are requesting on behalf of the Sheboygan DEIB group to be paid by the City is $70,000.00.

Now, in no way am I saying this issue applies to all persons connected to the Sheboygan DEIB group, and I have many friendly communications with other connected individuals to DEIB initiatives that are unaware of what I am stating herein.

Had I written a check to the two women on October 5, that would have been an egregious violation of the taxpayer and City's trust in the mismanagement of its taxes, finances, and City budgetary concerns —especially since there would have been zero oversight or accountability for the funds or how they used the City's funds. I did contact several other DEIB-connected experts after that meeting to obtain their feedback and nearly all of the other experts, I contacted stated that Ms. Haack and Ms. Guevara were out of line and wrong to demand money up front without providing any assurances or information on their process.

After I left that October 5 meeting with Director Pelishek following the threats from Ms. Guevara and Ms. Haack, Sheboygan Press's Maya Hilty immediately was informed of the August 22 meeting involving Director Pelishek responding to Director Rendall-Araujo's request that he tell her was said ("racial slur"). Featured prominently in Ms. Hilty's article was Ale Guevara, who called out both myself and Director

Pelishek fervently. This came out less than 1 week after the meeting where I was threatened along with Director Pelishek to write this 'Sheboygan DEIB" group a blank check.

Then, at the Open Session of Council's October 17 meeting, Jamie Haack—the other person at the October 5 meeting—spoke to Council and stated, "I urge the Council to seriously evaluate the personnel placements of Mr. Pelishek and Mr. Wolf and their current and future abilities to serve in their roles with the knowledge, transparency and values of equity and respect that are so needed in their positions."

Clearly, both the initial article (and the follow ups) as well as the speech before council by the two women who threatened me to write them a check with taxpayer money were them making good on their threats and following through because I refused to pay them a blank check without any information—knowing now that had I done so, neither of them would have publicly been involved in the Hilty article or spoken to demand my termination before Council.

At this time, I am uncertain of further measures that certain representatives with the Sheboygan DEIB group have done in continuing to follow through with their threats; but I wanted to inform the Council that I do not regret my decision on October 5 in any way.

I will never cave to political threats, bribes, or extortion efforts from political activists when it comes to City partnerships and City money because I am tasked with ensuring the fullest transparency, accountability, and lawful actions with managing the budget, vendors, and hiring decisions for the City.

I am asking that Council support me in my decision on October 5 and support my statements, even if a young journalist took those out of context. I have been informed that larger media networks in Sheboygan intentionally chose to ignore Ms. Hilty's article because it seemed like an unsubstantiated "smear piece."

Next, related to some of the false accusations against me in the press or publicly, I wanted to address one faction of the October 11 article in the Sheboygan press that was misconstrued and falsely characterized. During my my time as City Administrator, I have instituted training and guidance for the staff and offices of the City that comply with law while building a positive team environment. The approved experts that have aided in these seminars use the term "safe space" to connote positive work environments, but this term also relates to laws involving sharing of confidential government matters that are not subject to public disclosure—namely personnel information.

Breaching such confidential government protocols that are meant to protect internal audits, investigations and *mainly personnel information* is is a violation of law and City policies; especially when done for the purpose of providing *false* confidential personnel information about another employee for a political purpose. Specifically, one of the key justifications for instituting confidentiality within personnel meetings and communications is to protect the City, the employees, and the taxpayers from the high potential of such information to be "intentionally distorted" for political reasons that can lead to a chain-of-events—which I believe has happened in this matter. All of this has led to severe health and stress on myself, many City employees and Director Pelishek in something that should have been completely avoided. I was rightfully concerned by this breach because (1) it incited a false story by a politically-motivated groups without any factual justification; (2) it led to punishing the one Director (Pelishek) who was actually requesting more diversity and legal guidance for his staff from the Mayor and others, which the City should not punish; and (3) it opened the door to political blackmail and threats including the October 5 meeting, despite the fact that it all started because Mr. Pelishek was concerned about racism and wanted to report that and help City staff deal with it and address it.

Because of some of the statements, threats, and attacks against myself and my reputation over the previous few months with false accusations, I have not yet written up the other director responsible for demanding that Mr. Pelishek repeat the statement and who leaked that statement in a false light after that; but I have every justification to still do so at this time. I would like Council's support in doing this without my fear of further action against me or my position. As of now, because of the "political pressure" on me and recent threats and directives that I "not speak to this matter at all," we have now sent the proverbial "message" to City personnel that leaking any confidential information such as personnel records, confidential closed

meeting information, and especially lies about confidential meetings is acceptable to the City; and those who oppose it (myself, etc) will be punished or defamed. I would like the Council's help in avoiding that messaging to our City personnel and the City as whole.

AS the day-to-day manager over most City employees, I am very aware of their health issues, concerns, and stress related specifically to how items are being addressed by political factions. These political matters do not involve my role; and should never be a threat to our employees who work so hard. Because my hands have been tied in some of these political situations, the employees feel as though I am powerless to support them as City Administrator given the attacks and now introduced legislation to reduce some of my duties and ability to speak directly to government matters.

2. Respectful Request for the City Administrator to have regular meetings with the Common Council with regular weekly or monthly written updates (from the City Administrator) on any general issues, personnel matters, or political concerns known to the City Administrator that only the Common Council in their exclusive authority should be handling.

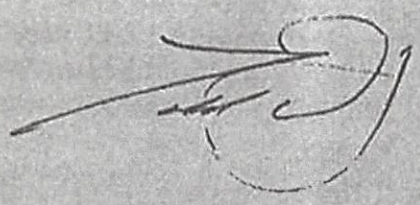
I do believe that it would benefit the Council and the City to allow me regular meetings with the Council or written updates with any confidential concerns of a political nature (such as those referenced herein) to help you, the Council, and the City, in doing my job to the best of my ability; and allowing the Council to handle all politically-motivated issues that are or may affect the City or my duties—all of which are not part of my job duties since I am not a political player nor a politician, and I defer to your oversight on all such matters.

Although I have kept detailed confidential records related to the prior Director of Human Resources, I do have more information on that situation that I believe Council should be apprised of and I am respectfully requesting the opportunity to do that with Council in a confidential meeting to protect the individual wherein I can provide detailed information to Council and explain fully my positions on the current role and vacancy. In general, not only must the city comply with laws related to the use, distribution and management of public monies ("taxpayer dollars"), but also to how employees, officers, and other roles within the City are filled.

I have been denied the opportunity to speak to you, the media, or many others; and I wanted to ensure that the Council has more information related to my duties in my role as City Administrator, the current situation, and other concerning information that I believe Council should be made aware of. Again, I have further details, documentation, and records available to you upon request related to this communication and reporting to you; as well as details of other matters that I would like the opportunity to raise with Council.

I do thank all of you fervently for your time and careful consideration of this important notice and communication.

Sincerely,



Todd Wolf
City Administrator

Closed session 10-17-22 called to order at 7:06 p.m.

Alderpersons present: Felde, Ackley, Salazar, Perrella, Filicky-Peneski, Rust Dekker, Mitchell, Heidemann, Ramey – 10.

Present: Mayor Ryan Sorenson, City Attorney Chuck Adams, and City Clerk Meredith DeBruin

Council President and Vice President in City Hall on Thursday and Friday of previous week talking to employees and Mayor and City Administrator.

Council presented timeline of events. Discussion on why the City has an Administrator. Review of Municipal Code with regards to duties of City Administrator.

Discussed options:

Reprimand – public vs private

Direct to get training and/or mentor

Performance Improvement plan

There was not a sense if there should be a public reprimand (not in agreement).

Sense of council that the following should happen:

1. Mayor should talk to Todd and tell him he is responsible for any reprimands associated with Chad.
2. Mayor should talk to Chad that Todd is his boss and the council will not be acting on anything regarding Chad (they only oversee Todd).
3. Direct City Attorney office to draft Resolution that Todd should not participate in the hiring of the HR Director (all ayes, Mitchell indifferent) – with this to be submitted next Monday.
4. Direct Todd officially not to participate in any more PR

Adjourn at 9:15 p.m. in closed session Rust/Dekker

10/24/22

Called to order at 6:08 p.m.

Present:

Mayor Ryan Sorenson, Asst City Attorney Liz, City Clerk Meredith DeBruin and 10 Alders (Felde, Filicky-Peneski, Salazar, Ackley, Ramey, Dekker, Perrella, Rust, Mitchell, Heidemann).

Several job descriptions from the City Administrators position were distributed (one updated in 2020 removed Council and Mayor from some wording – did not have council approval).

Council address 3 things –

1- What is correct job description?
2- Performance review (not related to current situation – just needs to be completed)
3- Performance Improvement plan for City Administrator

Questions to be addressed:

Who is decider of action taken if Todd presses back?

See if comments re: Library was in Todd's file?

Review contract with Alonzo to see if report was to be given/taken.

Reviewed that if disciplinary action is not public – need to have common message.

Review retaliation policy from the City Handbook.

Assistant City Attorney Liz took notes regarding the description of the events and questions to ask Todd for his part of the performance review.

Adjourn at 8:42 p.m.

Notes from Closed Session 11-7-22

Start: 6:18pm

25.MOTION TO CONVENE IN CLOSED SESSION pursuant to Wis. Stat. § 19.85(1)(e) for deliberating or negotiating the investing of public funds or conducting other specified public business whenever competitive or bargaining reasons require a closed session; to wit: discussions regarding possible development incentives for affordable housing projects currently known as the former Koepsell property redevelopment and the S. 14th and Illinois Avenue projects

[redacted]

AND under the exemption provided in Wis. Stat. § 19.85(1)(f) for preliminary consideration of specific personnel problems which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of the person involved in such problems or investigations.

PRESENT: Mayor Ryan Sorenson, Attorney Charles Adams, Attorney Liz Majerus, Alderperson Dean Dekker, Alderperson Joe Heidemann, Alderperson Amanda Salazar, Alderperson Angela Ramey, Alderperson Zach Rust, Alderperson Trey Mitchell, Alderperson Grazia Perrella, Alderperson Betty Ackley, Alderperson Barb Felde, Alderperson Roberta Filicky-Peneski (appeared remotely)

Alderperson Heidemann requests to make a motion, Mayor states that he is not accepting motions at this time. Chuck explains that most motions need to be made in open session. Mayor said he would open it up to motion discussion once he introduced a few things.

Mayor Sorenson: All should have received the letter from Administrator Wolf via email and I believe it was placed on your chair. Mayor is concerned about City employees and morale at City Hall. There is a continued strain of public records requests being placed on various offices and that there is a question of trust in City leadership.

Attorney Adams: If there are any questions, we are here to answer them. There is a performance improvement plan placed in your binders if you wish to consider that. We're not here to direct you in any certain way or decision but to act as a guide for decisions you are considering but know that our liability concerns have changed.

Mayor Sorenson: the issues are starting to spiral and that is based on an administrative issue.

Alderperson Heidemann: wants to make a motion to give Administrator Wolf a verbal warning and place in his personnel file. If he is good for 6 months, we remove it from his personnel file.

Attorney Adams: that's a motion for open session as it's an act of discipline which needs to be made in open session.

Discussion is had about possible courses of action regarding Administrator Wolf. Attorney Adams explained that there are 3 levels to which that the council can/should act tonight.

1) Performance Improvement Plan
2) Vote of No Confidence
3) Actual Action being Suspension/Termination

More discussion is had between council on which course of action to take.

Consensus of council: place on 6-month Administrative leave.

Motion to Reconvene in Open session made by Alderperson Dekker, 2nd by Alderperson Ackley

All Aye, Motion Passed 8:25pm

Closed Session 1-4-23

6:24 p.m.

Finance Director Krueger, Fire Chief Montellano, Director of Public Works Biebel, City Engineer Sazama. IT Director Bushman, Assistant City Attorney Majerus, Director of Planning and Development Pelishek, City Attorney Adams, City Clerk DeBruin, Mayor Sorenson, Ald. Mitchell, Heidemann, Ackley, Salazar, Ramey, Rust, Filicky-Peneski, Felde, Dekker, Perrella.

Began 2nd half:

City Attorney Adams, Assistant City Attorney Majerus, City Clerk DeBruin, Mayor Sorenson, Ald. Mitchell, Heidemann, Ackley, Salazar, Ramey, Rust, Filicky-Peneski, Felde, Dekker, Perrella, Jim and Jill (attorneys)

Jim gave brief overview of what should/should not be discussed – advised council that this was not a decision on what outcome there should be. Also advised that this is a high liability situation and told everyone not to discuss outside of room.

Jill gave brief synopsis of the investigation, stating that there was significant evidence that Todd Wolf violated policies and the law and failed to comply with council directives. Also, stated there was evidence that Todd Wolf had a fictional manifestation of blackmail (not credible). Todd Wolf stated there were "different levels of law". Also, there was significant evidence of communications belittling the mayor and assertions against female council members. Significant evidence for a hearing.

Council 3 options:

1. Hearing? City draft allegations and evidence and witnesses and Todd would do the same (determine cause). Usually in closed session, however Todd can request it be in open session.
2. Terminate with no cause – 6 months pay and benefits
3. Do not pursue and bring Todd back

Discussion occurred, not limited to the impact on employees, the cost to the City, Todd's rights, asking Todd to follow a nondisclosure, City's reputation, reputation of Jamie and Ali (cease and desist from their lawyers).

Council

Mitchell and Heidemann for number 1

Other 8 – for number 2

Decision to hold Special council meeting where all council members could be present. Monday, January 9 immediately following Finance and Personnel.

Attorney's office will draft Resolution and agenda will be posted by Friday.

Adjourn at 9:06 Ackley/Filicky-Peneski. All ayes.

II

R. O. No. 121 - 22 - 23. By CITY CLERK. March 6, 2023.

Submitting various license applications.

City Clerk

CHANGE OF PREMISE

No.	Name	Address
3404	Scenic Bar	1635 Indiana Avenue - One day event to be held 4/8/23: to include 20 x 40 area of the parking lot. The North part of the parking lot and the South part of the building. In addition to current premises.

LHPS

III

Res. No. 148 - 22 - 23. By Alderpersons Felde and Filicky-Peneski.
March 6, 2023.

A RESOLUTION authorizing the appropriate City officials to execute a License Agreement and Addendum with the Sheboygan County Register of Deeds regarding online access to real estate records maintained in the Register of Deeds Office.

WHEREAS, the rules are being suspended so that this Resolution may be adopted immediately due to the fact that the City of Sheboygan will lose access to these online real estate records effective March 31, 2023 if the signed License Agreement is not submitted by the March 10, 2023 deadline imposed by the County of Sheboygan.

NOW, THEREFORE, BE IT RESOLVED: That the Director of Development and Planning is hereby authorized to execute the License Agreement and Addendum with the Sheboygan County Register of Deeds, copies of which are attached hereto.

Suspend Rules
Adopt Res

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is hereby entered into this 6th day of March, 2023 by and between **SHEBOYGAN COUNTY**, a municipal corporation being a political subdivision of the State of Wisconsin, having its principal offices located at 508 New York Avenue, Sheboygan, WI 53081 (hereinafter referred to as **COUNTY**), and, **CITY OF SHEBOYGAN**, a municipal corporation being a political subdivision of the State of Wisconsin, having its principal offices located at 828 Center Avenue, Sheboygan, WI 53081 (hereinafter **PURCHASER**).

WHEREAS, **COUNTY** maintains a Register of Deeds' Office as required by Wisconsin Statutes, and

WHEREAS, **REGISTER OF DEEDS** has authority to enter into this agreement on behalf of **COUNTY** pursuant to Sheboygan County Board Resolution No. 42 (1997/98), adopted March 17, 1998 and pursuant to Wisconsin State Statute s.59.43(2)(c) to enter into On-line access contracts to provide access to the documents pertaining to real property recorded in the Register of Deeds office to individuals and private companies; and

WHEREAS, **PURCHASER is** desirous of obtaining On-line access pertaining to real property, as permitted by s.59.43(2)(c), Wis.Stats.at a price sufficient to permit **COUNTY** to recover its costs of labor and material as well as a reasonable allowance for depreciation of equipment used.

NOW, THEREFORE, in consideration of the above premises and the mutual covenants of the parties hereinafter set forth, **COUNTY** and **PURCHASER** do agree as follows:

1. The term of this agreement shall commence upon signing. Either party may terminate at any time without cause upon thirty (30) calendar days advance written notice during the original term or any renewal. Cancellation shall not relieve a party of its obligations incurred prior to the effective date of the cancellation. Unless cancelled by either party as provided herein, this agreement shall be automatically renewed upon like terms for successive calendar year periods.

2. If during the term of this agreement, the Sheboygan County Board of Supervisors shall fail to appropriate sufficient funds to carry out **COUNTY'S** obligations under this agreement, this agreement shall be automatically terminated as of the date funds are no longer available and without further notice or obligation of any kind to **PURCHASER**.

3. **COUNTY** agrees to furnish to **PURCHASER** On-line access to real estate records maintained in Register of Deeds office. The Grantor- grantee index (Deed/Probate/Records) is available from December 27, 1955 forward (this date changes as back-indexing continues); **Note:** This does not include all contract and miscellaneous books at this time. Tract index starting July 19, 1996; ALL Certified Survey Maps, and ALL Plat Maps. Newly recorded documents are usually available within two to three business days. The obligation to provide such access is subject at all times to the obligation of the Register of Deeds to fulfill the office's statutory duties and **COUNTY's** obligations. **PURCHASER**'s rights under this agreement are secondary to the statutory duties of the Register of Deeds.

4. The index is not represented to be true and complete; rather it is a working copy, subject to error, omission and future modifications. **PURCHASER** shall receive notice via email of any computer problems that may affect this access. Failure of **COUNTY** to provide any notice of computer problems that may affect this access shall not be considered a breach of this agreement, nor shall it subject **COUNTY** or the Register of Deeds to

any liability, express or implied.

5. In exchange for being provided access to the Index. **PURCHASER** agrees to; Set up an escrow account with **COUNTY. PURCHASER** agrees to pay an advance fee (security deposit) to **COUNTY** in an amount equal to one month of their chosen plan rate. **COUNTY** will automatically deduct Laredo plan fees on the first business day of each month. **PURCHASER** shall monitor the escrow balance and make deposits accordingly. **PURCHASER** shall set up an online "Laredo Connect" profile to view account balance, invoice and activity information. All overage charges for additional minutes used during a calendar month will automatically be withdrawn at the same time as the Laredo plan fee. All image print fees will be automatically withdrawn from **PURCHASER'S** escrow account every 15 minutes. **PURCHASER** must always maintain an escrow balance that is more than one (1) month of the monthly fee rate for the Plan chosen (security deposit).

If the escrow balance is at or below the minimum escrow account balance (security deposit). The account will automatically be locked out until sufficient funds are replenished. All funds must be submitted to **COUNTY** in the form of paper check/money order, ACH/electronic payments or credit card.

The escrow account shall be available to **COUNTY** to draw payment if **PURCHASER** does not pay usage fees pursuant to above paragraph. The use of escrow account shall be at the sole discretion of **COUNTY** and is in addition to other remedies available to **COUNTY**. At the termination of this agreement, any remaining sums in **PURCHASER'S** escrow account shall be returned to **PURCHASER**.

PURCHASER shall be solely responsible for its own expenses incurred to implement and perform this agreement, including by way of illustration, computer hardware, software, peripherals, telephone lines, internet service provider (ISP) and staff training.

6. **PURCHASER** may select a different Plan from the Addendum before the 5th day of the month. If **PURCHASER** elects to change said Plan, the new rate will become effective the first day of the following calendar month. Plans will not be prorated within the monthly cycle – any portion of a month will be billed at the rate of a full month. After the first year of the Initial Term, **COUNTY** may change the fees upon sixty (60) days advance Notice to **PURCHASER**.

7. This agreement shall not be construed to impose any penalty, obligation or loss on **COUNTY** for its failure to transmit a copy of any particular document, unless through willfulness, and **PURCHASER** shall indemnify, defend and hold harmless **COUNTY**, its boards, commissions, agencies, officers, employees and representatives against any and all liability, loss, damages, costs or expenses, including attorney fees, which **PURCHASER**, its officers, employees agencies, boards, commissions and representatives, or any third-party, may sustain, incur or be required to pay by reason of **COUNTY** failing to transmit a copy of any document required to be provided under this agreement.

8. **PURCHASER** shall not assign or transfer any interest or obligation in this agreement, whether by assignment or novation, without the prior written consent of **COUNTY**. This agreement shall not be construed to either authorize or prevent **PURCHASER** from making duplicates or copies of any material received pursuant to this agreement and any such copies or duplicates so made by **PURCHASER** shall be at **PURCHASER'S** risk and expense and **EXCLUSIVELY for PURCHASER'S** sole use. **PURCHASER** may not wholesale or retail copies of any materials received nor provide them free of charge to any person, firm, company, association, corporation, business, partnership or any other individual or entity of any nature whatsoever.

9. It is expressly understood and agreed by the parties that in the event of any disagreement or controversy between the parties, Wisconsin law shall be controlling and any said disagreement or controversy shall be

resolved in Sheboygan County Circuit Court.

10. Notices, invoices, payments, and reports required by this agreement shall be deemed delivered as of posting in Laredo Connect. It shall be the duty of the **PURCHASER** to access invoices in Laredo Connect.

11. In no event shall the acceptance of any payment required by this agreement constitute or be construed as a waiver by **COUNTY** of any breach of the covenants of this agreement or a waiver of any default of **PURCHASER** and the acceptance of any such payment by **COUNTY** while any such default or breach shall exist shall in no way impair or prejudice the right of **COUNTY** with respect to recovery of damages or other remedy as a result of such breach or default.

12. **PURCHASER** warrants that it has complied with all necessary requirements to do business in the State of Wisconsin, that the persons executing this agreement on its behalf are authorized to do so, and if a corporation, Limited Liability Company or other impersonal entity, that the name and address of **PURCHASER'S** registered agent is its Director of Planning and Development. If a corporation, Limited Liability Company or other impersonal entity, **PURCHASER** shall notify **COUNTY** immediately, in writing, of any change in its registered agent. **PURCHASER** shall notify **COUNTY** immediately in writing of any change in his, her, or its address, and **PURCHASER'S** legal status.

13. **PURCHASER** agrees that it will not access any **COUNTY** information or data available through the Laredo software except by means of the Laredo client user interface. **PURCHASER** agrees that it will not utilize **ANY** form of robotic software, screen scrapers, harvesting software, internet protocol sniffers, attempt to identify IP addresses or use any software or process designed to circumvent the human being use of the Laredo software. Such activity will be monitored by Laredo software vendor and such activity, if detected will immediately terminate this Agreement. The above may be viewed as theft under applicable Wisconsin State Statutes and subject to criminal penalties.

14. The parties agree that there shall be no assignment of transfer of this Agreement, nor of any interests, rights or responsibilities herein contained, except as agreed to in writing.

15. The entire agreement of the parties is contained herein and this agreement supersedes any and all oral agreements and negotiations between the parties relating to the subject matter hereof.

16. DISCLAIMER ON ACCURACY AND COMPLETENESS OF INFORMATION;

While the **COUNTY** uses reasonable efforts to provide accurate and up-to-date information, some of the information provided is gathered by third parties and has not been independently verified by the **COUNTY**. **PURCHASER** agrees that all use of these services is at **PURCHASER'S** own risk and that the **COUNTY** will not be held liable for any errors or omissions contained in the content of its services.

Although the information found on this system has been produced and processed from sources believed to be reliable, no warranty, express or implied, is made regarding accuracy, adequacy, completeness, legality, reliability or usefulness of any information. This disclaimer applies to both isolated and aggregate uses of information. **COUNTY** provides this information on an "as is" basis and expressly disclaims any and all warranties, express and implied, including but not limited to any warranties of accuracy, reliability, title, merchantability, fitness for a particular purpose, freedom from contamination by computer viruses and non-infringement of proprietary rights, or any other warranty, condition, guarantee or representation, whether oral, in writing or in electronic form, including but not limited to the accuracy and completeness of any information. **COUNTY** does not represent or warrant that access to the service will be uninterrupted or that there will be no failures, errors or omissions or loss of transmitted information. **COUNTY** assumes no liability or responsibility for the quality, content, accuracy, or completeness of the information, text, graphics, links and any other items contained on this service or any other system or service.

In no event shall the **COUNTY** be liable for any special, indirect or consequential damages or any damages whatsoever, whether direct, indirect, consequential, incidental or special, or any claim for attorney's fees resulting from loss of use, data or profits, whether in an action of contract, negligence or other tortuous action, arising out of, or in connection with, the use of information available from the **COUNTY**, or the inability to use the information on this service, even if **COUNTY** is advised of the possibility of such damages.

The information, documents and related graphics published on this service could include technical inaccuracies or typographical errors. Changes are periodically made to the information herein. The **COUNTY** may make improvements and/or changes in the services and/or the content(s) described herein at any time.

17. The materials contained on this service have been compiled from a variety of sources and are subject to change without notice. Commercial use or sale of the materials contained on this service is prohibited without the express written consent of **COUNTY**. Changes may periodically be made to the information and these changes may or may not be incorporated in any new version of the publication. If you have obtained information from a source other than this site, be aware that electronic data can be altered subsequent to original distribution. Data can also quickly become out of-date.

18. If any provision of this agreement is held to be illegal, invalid or unenforceable, such provision shall be fully severable and this agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of the agreement. The remaining provisions shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance.

COUNTY and **PURCHASER**, each by their authorized agents, hereto having read and understood the entirety of this agreement consisting of five typewritten pages which includes the addendum page, have executed this agreement as of the day and date by which all parties hereto have affixed their respective signatures.

Signed at Sheboygan, Wisconsin, on the dates indicated after the signatures.

COUNTY	**PURCHASER**
_____	_____
Ellen R. Schleicher, Register of Deeds	Chad Pelishek, Director of Planning and Development
Dated: _____	_____
	Printed Name & Date

License Agreement approved by the Sheboygan County Finance Committee on April 1, 2005. word - Laredo license agreement (4-12-05) (00065509).doc revised 11-2008, revised 04-20-2012, revised 2-2013, Revised 10-2014, Revised 10/16/2018, revised 11-2022.

Signature above and on the addendum is authorized as to the City of Sheboygan pursuant to Res. ____-22-23.

ADDENDUM TO LICENSE AGREEMENT WITH SHEBOYGAN COUNTY REGISTER OF DEEDS

USER shall pay **COUNTY** fees based on the service plan selected as follows:

	Plan	Monthly Fee	Overage Charge	Print Charge
A.	0-150 min.	$ 60.00	$.40/minute	$.50/print
B.	151-250 min.	$ 90.00	$.40/minute	$.50/print
C.	251-500 min.	$150.00	$.40/minute	$.50/print
D.	501-1000 min.	$240.00	$.40/minute	$.50/print
E.	1001-2000 min.	$350.00	$.40/minute	$.50/print
F.	Unlimited min.	$475.00	0	$.50/print

PURCHASER selects Plan: (circle one) A B C D E F

PURCHASER must always maintain an escrow balance that is more than one (1) month of the monthly fee rate for the Plan chosen. (security deposit).

_____ _____

Name of Business **COUNTY** Issued User Name

_____

Business Address

_____

Dated

_____

Contact Person

_____

E-mail of Contact Person

_____

Phone number of Contact Person(s)

Please deliver this form and payment to:
Ellen R. Schleicher, Sheboygan County Register of Deeds
508 New York Avenue, Room 218
Sheboygan, WI 53081

Revised 10/16/2018
Revised 11/2022

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6. **PURCHASER** may select a different Plan from the Addendum before the 5th day of the month. If **PURCHASER** elects to change said Plan, the new rate will become effective the first day of the following calendar month. Plans will not be prorated within the monthly cycle – any portion of a month will be billed at the rate of a full month. After the first year of the Initial Term, **COUNTY** may change the fees upon sixty (60) days advance Notice to **PURCHASER**.

7. This agreement shall not be construed to impose any penalty, obligation or loss on **COUNTY** for its failure to transmit a copy of any particular document, unless through willfulness, and **PURCHASER** shall indemnify, defend and hold harmless **COUNTY**, its boards, commissions, agencies, officers, employees and representatives against any and all liability, loss, damages, costs or expenses, including attorney fees, which **PURCHASER**, its officers, employees agencies, boards, commissions and representatives, or any third-party, may sustain, incur or be required to pay by reason of **COUNTY** failing to transmit a copy of any document required to be provided under this agreement.

8. **PURCHASER** shall not assign or transfer any interest or obligation in this agreement, whether by assignment or novation, without the prior written consent of **COUNTY**. This agreement shall not be construed to either authorize or prevent **PURCHASER** from making duplicates or copies of any material received pursuant to this agreement and any such copies or duplicates so made by **PURCHASER** shall be at **PURCHASER'S** risk and expense and **EXCLUSIVELY for PURCHASER'S** sole use. **PURCHASER** may not wholesale or retail copies of any materials received nor provide them free of charge to any person, firm, company, association, corporation, business, partnership or any other individual or entity of any nature whatsoever.

9. It is expressly understood and agreed by the parties that in the event of any disagreement or controversy between the parties, Wisconsin law shall be controlling and any said disagreement or controversy shall be

resolved in Sheboygan County Circuit Court.

10. Notices, invoices, payments, and reports required by this agreement shall be deemed delivered as of posting in Laredo Connect. It shall be the duty of the **PURCHASER** to access invoices in Laredo Connect.

11. In no event shall the acceptance of any payment required by this agreement constitute or be construed as a waiver by **COUNTY** of any breach of the covenants of this agreement or a waiver of any default of **PURCHASER** and the acceptance of any such payment by **COUNTY** while any such default or breach shall exist shall in no way impair or prejudice the right of **COUNTY** with respect to recovery of damages or other remedy as a result of such breach or default.

12. **PURCHASER** warrants that it has complied with all necessary requirements to do business in the State of Wisconsin, that the persons executing this agreement on its behalf are authorized to do so, and if a corporation, Limited Liability Company or other impersonal entity, that the name and address of **PURCHASER'S** registered agent is its Director of Planning and Development. If a corporation, Limited Liability Company or other impersonal entity, **PURCHASER** shall notify **COUNTY** immediately, in writing, of any change in its registered agent. **PURCHASER** shall notify **COUNTY** immediately in writing of any change in his, her, or its address, and **PURCHASER'S** legal status.

13. **PURCHASER** agrees that it will not access any **COUNTY** information or data available through the Laredo software except by means of the Laredo client user interface. **PURCHASER** agrees that it will not utilize **ANY** form of robotic software, screen scrapers, harvesting software, internet protocol sniffers, attempt to identify IP addresses or use any software or process designed to circumvent the human being use of the Laredo software. Such activity will be monitored by Laredo software vendor and such activity, if detected will immediately terminate this Agreement. The above may be viewed as theft under applicable Wisconsin State Statutes and subject to criminal penalties.

14. The parties agree that there shall be no assignment of transfer of this Agreement, nor of any interests, rights or responsibilities herein contained, except as agreed to in writing.

15. The entire agreement of the parties is contained herein and this agreement supersedes any and all oral agreements and negotiations between the parties relating to the subject matter hereof.

16. DISCLAIMER ON ACCURACY AND COMPLETENESS OF INFORMATION;

While the **COUNTY** uses reasonable efforts to provide accurate and up-to-date information, some of the information provided is gathered by third parties and has not been independently verified by the **COUNTY**. **PURCHASER** agrees that all use of these services is at **PURCHASER'S** own risk and that the **COUNTY** will not be held liable for any errors or omissions contained in the content of its services.

Although the information found on this system has been produced and processed from sources believed to be reliable, no warranty, express or implied, is made regarding accuracy, adequacy, completeness, legality, reliability or usefulness of any information. This disclaimer applies to both isolated and aggregate uses of information. **COUNTY** provides this information on an "as is" basis and expressly disclaims any and all warranties, express and implied, including but not limited to any warranties of accuracy, reliability, title, merchantability, fitness for a particular purpose, freedom from contamination by computer viruses and non-infringement of proprietary rights, or any other warranty, condition, guarantee or representation, whether oral, in writing or in electronic form, including but not limited to the accuracy and completeness of any information. **COUNTY** does not represent or warrant that access to the service will be uninterrupted or that there will be no failures, errors or omissions or loss of transmitted information. **COUNTY** assumes no liability or responsibility for the quality, content, accuracy, or completeness of the information, text, graphics, links and any other items contained on this service or any other system or service.

In no event shall the **COUNTY** be liable for any special, indirect or consequential damages or any damages whatsoever, whether direct, indirect, consequential, incidental or special, or any claim for attorney's fees resulting from loss of use, data or profits, whether in an action of contract, negligence or other tortuous action, arising out of, or in connection with, the use of information available from the **COUNTY**, or the inability to use the information on this service, even if **COUNTY** is advised of the possibility of such damages.

The information, documents and related graphics published on this service could include technical inaccuracies or typographical errors. Changes are periodically made to the information herein. The **COUNTY** may make improvements and/or changes in the services and/or the content(s) described herein at any time.

17. The materials contained on this service have been compiled from a variety of sources and are subject to change without notice. Commercial use or sale of the materials contained on this service is prohibited without the express written consent of **COUNTY**. Changes may periodically be made to the information and these changes may or may not be incorporated in any new version of the publication. If you have obtained information from a source other than this site, be aware that electronic data can be altered subsequent to original distribution. Data can also quickly become out of-date.

18. If any provision of this agreement is held to be illegal, invalid or unenforceable, such provision shall be fully severable and this agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of the agreement. The remaining provisions shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance.

COUNTY and **PURCHASER**, each by their authorized agents, hereto having read and understood the entirety of this agreement consisting of five typewritten pages which includes the addendum page, have executed this agreement as of the day and date by which all parties hereto have affixed their respective signatures.

Signed at Sheboygan, Wisconsin, on the dates indicated after the signatures.

COUNTY

_____

Ellen R. Schleicher, Register of Deeds

Dated: _____

PURCHASER

Chad Pelishek

Chad Pelishek, Director of Planning and Development

Chad Pelishek 3/7/23

Printed Name & Date

License Agreement approved by the Sheboygan County Finance Committee on April 1, 2005. word - Laredo license agreement (4-12-05) (00065509).doc revised 11-2008, revised 04-20-2012, revised 2-2013, Revised 10-2014, Revised 10/16/2018, revised 11-2022.

Signature above and on the addendum is authorized as to the City of Sheboygan pursuant to Res. 148-22-23.

ADDENDUM TO LICENSE AGREEMENT WITH SHEBOYGAN COUNTY REGISTER OF DEEDS

USER shall pay **COUNTY** fees based on the service plan selected as follows:

	Plan	Monthly Fee	Overage Charge	Print Charge
A.	0-150 min.	$ 60.00	$.40/minute	$.50/print
B.	151-250 min.	$ 90.00	$.40/minute	$.50/print
C.	251-500 min.	$150.00	$.40/minute	$.50/print
D.	501-1000 min.	$240.00	$.40/minute	$.50/print
E.	1001-2000 min.	$350.00	$.40/minute	$.50/print
F.	Unlimited min.	$475.00	0	$.50/print

PURCHASER selects Plan: (circle one) A (B) C D E F

PURCHASER must always maintain an escrow balance that is more than one (1) month of the monthly fee rate for the Plan chosen. (security deposit).

City of Sheboygan
Name of Business

City Acct 35
COUNTY Issued User Name

828 Center Ave, Suite 208
Business Address

3/7/23
Dated

Chad Pelishek
Contact Person

Chad.pelishek@sheboygan wi. gov
E-mail of Contact Person

920-459-3383
Phone number of Contact Person(s)

Please deliver this form and payment to:
Ellen R. Schleicher, Sheboygan County Register of Deeds
508 New York Avenue, Room 218
Sheboygan, WI 53081

Revised 10/16/2018
Revised 11/2022

III

Res. No. 152 - 22 - 23. By Alderpersons Felde and Filicky-Peneski.
March 6, 2023.

A RESOLUTION ordering a hearing on the vacation and discontinuance of the east-west alley between South 10th Street and the former South Commerce Street, located in Block 243 of the Original Plat.

WHEREAS, a Resolution has been introduced wherein the City of Sheboygan has designated that it is to the best interest of the City of Sheboygan and public convenience and necessity requires the vacation and discontinuance of the east-west alley between South 10th Street and the former South Commerce Street, located in Block 243 of the Original Plat.

NOW, THEREFORE, BE IT RESOLVED: That the Common Council will hear and act upon said Resolution at a regular meeting of the Common Council to be held in the Council Chambers of City Hall in the City of Sheboygan, Wisconsin, on the 17th day of April, 2023 at 6:00 p.m.

BE IT FURTHER RESOLVED: That the City Clerk is hereby authorized and directed to give public notice of time and place of said hearing as required by law.

Suspend Rules
Adopt Res.

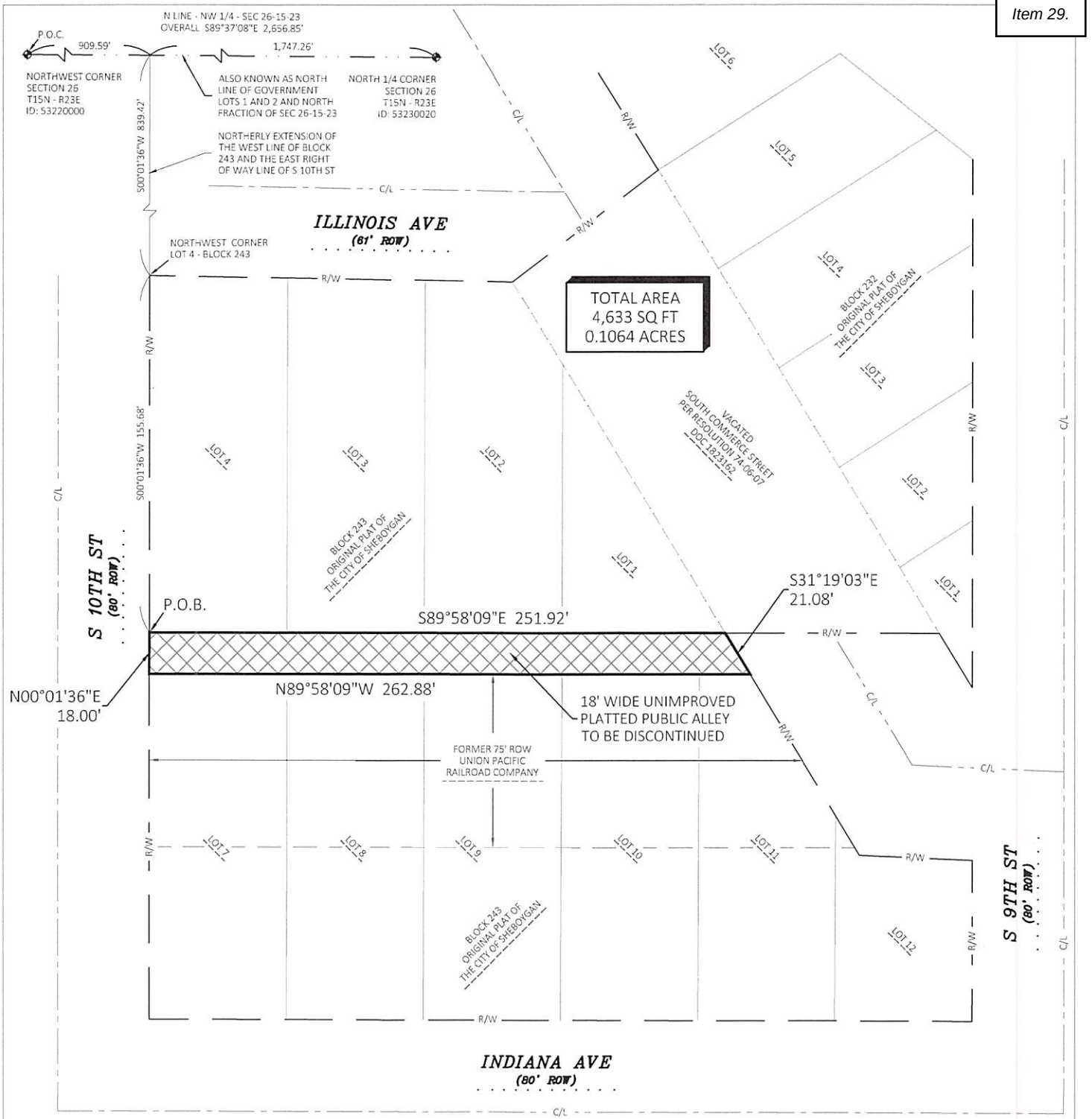
_____

_____

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20 . _____, City Clerk

Approved _____ 20 . _____, Mayor



GENERAL NOTE

ALLEY LOCATION BASED OFF SIGMA GROUP
ALTA /NSPS LAND TITLE SURVEY
PROJECT NO: 20764 - DATED: 2/6/2023 (REV 2)
BY: KEVIN A. SLOTTKE (S-2503)

MAP PREPARED BY: MICHAEL P. BORN, PLS DATED: 02/21/2023 REV: N/A
MAP REVIEWED BY: TYLER D. HILL, CST

LEGEND

RECORDED SHEBOYGAN COUNTY MONUMENT

0 60 120 FEET

BEARINGS ARE REFERENCED TO THE NORTH LINE OF THE NORTHWEST 1/4 OF SECTION 26-15-23 RECORDED AS S89°37'08"E (SHEBOYGAN COUNTY COORDINATES - NAD83 (1991))

CITY OF SHEBOYGAN
PUBLIC WORKS
City of Sheboygan
Department of Public Works
Engineering Division
2026 New Jersey Avenue
Sheboygan, WI 53081

EXHIBIT A - PROPOSED ALLEY DISCONTINUANCE

PART OF BLOCK 243 OF THE ORIGINAL PLAT OF THE CITY OF SHEBOYGAN LOCATED IN GOVERNMENT LOT 2 OF SECTION 26, TOWN 15 NORTH, RANGE 23 EAST CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN

Designed By	N/A
Drawn By	MPB
Checked By	TDH
Plot Date	2/21/2023
Project Date	FEB 2023
Sheet No.	1 OF

FILE NAME : P:\ENGINEERING\LAND RECORDS\VACATIONS - DEDICATIONS\2023\VALLEY VACATION - OP - BLOCK 243\VALLEY VACATION - OP - BLOCK 243.DWG
PLOT DATE - 2/21/2023 PLOTTED BY - Born, Michael

PROPOSED ALLEY DISCONTINUANCE LEGAL DESCRIPTION

PART OF BLOCK 243 OF THE ORIGINAL PLAT OF THE CITY OF SHEBOYGAN LOCATED IN GOVERNMENT LOT 2 OF SECTION 26, TOWN 15 NORTH - RANGE 23 EAST, CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN

All of an 18 foot wide unimproved platted public alley being part of Block 243 of the Original Plat of the City of Sheboygan located in Government Lot 2 of Section 26, Town 15 North - Range 23 East, City of Sheboygan, Sheboygan County, Wisconsin and being more particularly described as follows:

Commencing at the Northwest corner of said Section 26, thence South 89°37'08" East along the North line of said Government Lot 2 of Section 26, and its Easterly extension, a distance of 909.59 feet to the Northerly extension of the West line of said Block 243 and the East right of way line of South 10th Street;
thence South 00°01'36" West along said Northerly extension, a distance of 839.42 feet to the Northwest corner of Lot 4 of said Block 243 and the South right of way line of Illinois Avenue;
thence continuing South 00°01'36" West along the West line of said Lot 4 and said East right of way line of South 10th Street, a distance of 155.68 feet to the Southwest corner of said Lot 4, the North right of way line of said alley, and the Point of Beginning for this description;
thence South 89°58'09" East along the North right of way line of said alley and the South lines of Lots 4, 3, 2, and 1 of said Block 243, a distance of 251.92 feet to the Southeast corner of said Lot 1, the Northeasterly right of way line of said alley, and the Southwesterly right of way line of South Commerce Street;
thence South 31°19'03" East along the Northeasterly right of way line of said alley and said Southwesterly right of way line of South Commerce Street, a distance of 21.08 feet to the South right of way line of said alley and the North line of Lot 11 of said Block 243;
thence North 89°58'09" West along the South right of way line of said alley and the North lines of Lots 11, 10, 9, 8, and 7 of said Block 243, a distance of 262.88 feet to the Northwest corner of said Lot 7, the West right of way line of said alley, and said East right of way line of South 10th Street;
thence North 00°01'36" East along the West right of way line of said alley and said East right of way line of South 10th Street, a distance of 18.00 feet to said Southwest corner of Lot 4, the North right of way line of said alley, and the Point of Beginning.

The land described above contains 0.1064 acres (4,633 square feet) of land, more or less.

End of description.

LEGAL DESCRIPTION PREPARED BY: MICHAEL P. BORN, PLS DATED: 2/21/2023 REV: N/A
LEGAL DESCRIPTION CHECKED BY: TYLER D. HILL, CST

CITY OF SHEBOYGAN
PUBLIC WORKS
City of Sheboygan
Department of Public Works
Engineering Division
2026 New Jersey Avenue
Sheboygan, WI 53081

EXHIBIT B - PROPOSED ALLEY DISCONTINUANCE
PART OF BLOCK 243 OF THE ORIGINAL PLAT OF THE CITY OF SHEBOYGAN LOCATED IN GOVERNMENT LOT 2 OF SECTION 26, TOWN 15 NORTH, RANGE 23 EAST
CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN

Designed By	N/A
Drawn By	MPB
Checked By	TDH
Plot Date	2/21/2023
Project Date	FEB 2
Sheet No.	2 O

FILE NAME : P:\ENGINEERING\LAND RECORDS\VACATIONS - DEDICATIONS\2023\VALLEY VACATION - OP - BLOCK 243\VALLEY VACATION - OP - BLOCK 243.DWG
PLOT DATE - 2/21/2023 PLOTTED BY - Born, Michael

III

Res. No. 154 - 22 - 23. By Alderpersons Felde and Filicky-Peneski.
March 6, 2023.

A RESOLUTION vacating the east-west alley between South 10th Street and the former South Commerce Street, located in Block 243 of the Original Plat.

RESOLVED: That by and through the passage of this Resolution it is the declared judgment and finding of the Common Council of the City of Sheboygan that the public interest requires the vacation of the hereinafter described alley, with a legal description as attached hereto and incorporated by reference.

BE IT FURTHER RESOLVED: That the portion of roadway in the City and County of Sheboygan, State of Wisconsin, described as:

The east-west alley between South 10th Street and the former South Commerce Street, located in Block 243 of the Original Plat

be and it is hereby vacated and discontinued under the provisions of Wis. Stat. § 66.296(2).

BE IT FURTHER RESOLVED: That the City Clerk is hereby authorized and directed to cause the recording of a certified copy hereof together with a map of such vacated alley in the office of the Register of Deeds for Sheboygan County, Wisconsin.

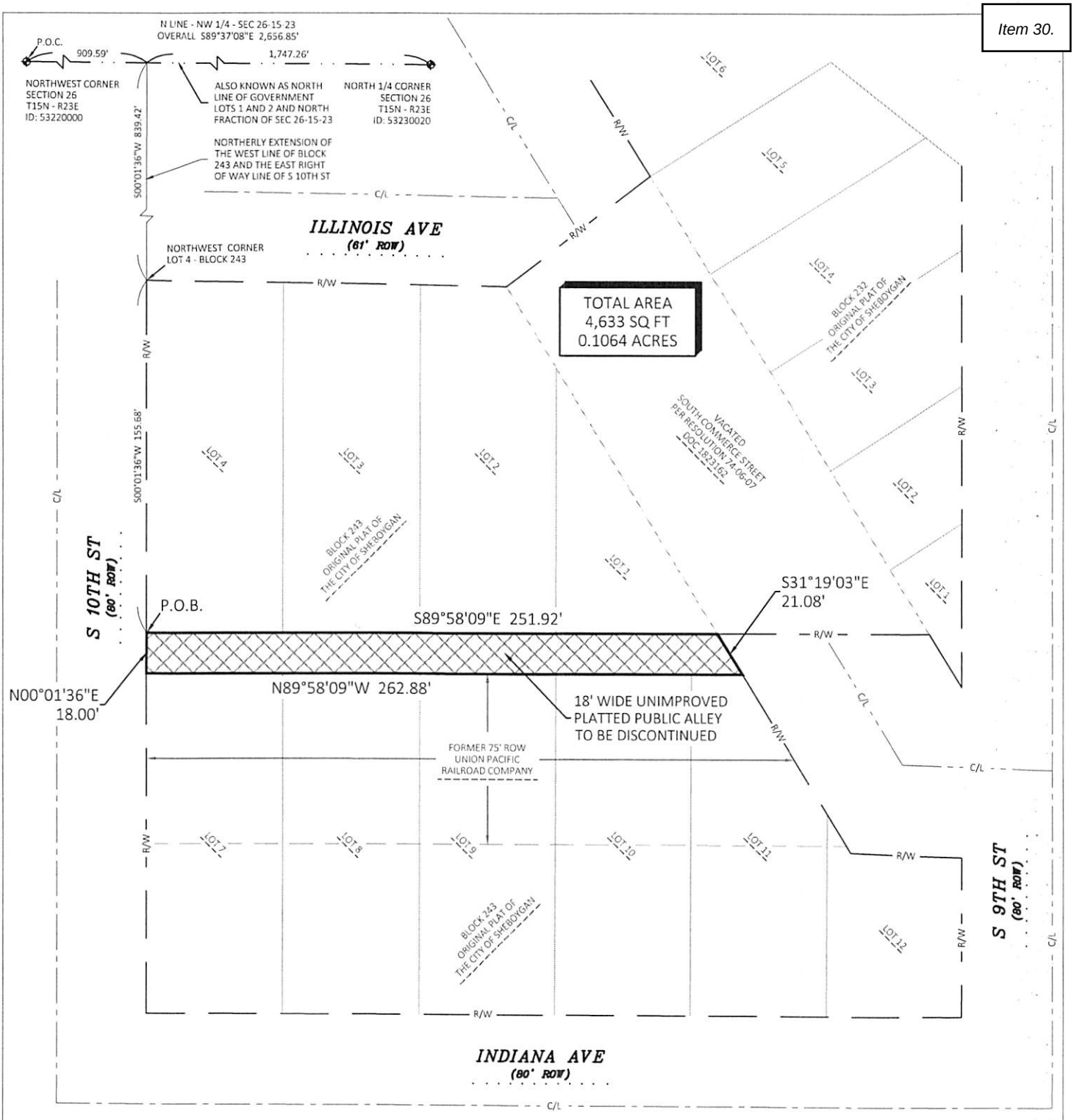
_____

_____

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20 . _____, City Clerk

Approved _____ 20 . _____, Mayor



GENERAL NOTE

ALLEY LOCATION BASED OFF SIGMA GROUP
ALTA /NSPS LAND TITLE SURVEY
PROJECT NO: 20764 - DATED: 2/6/2023 (REV 2)
BY: KEVIN A. SLOTTKE (S-2503)

LEGEND

RECORDED SHEBOYGAN COUNTY MONUMENT

0 60 120 FEET

BEARINGS ARE REFERENCED TO THE NORTH LINE OF THE NORTHWEST 1/4 OF SECTION 26-15-23 RECORDED AS S89°37'08"E (SHEBOYGAN COUNTY COORDINATES - NAD83 (1991))

MAP PREPARED BY: MICHAEL P. BORN, PLS DATED: 02/21/2023 REV: N/A
MAP REVIEWED BY: TYLER D. HILL, CST

CITY OF SHEBOYGAN
PUBLIC WORKS
City of Sheboygan
Department of Public Works
Engineering Division
2026 New Jersey Avenue
Sheboygan, WI 53081

EXHIBIT A - PROPOSED ALLEY DISCONTINUANCE

PART OF BLOCK 243 OF THE ORIGINAL PLAT OF THE CITY OF SHEBOYGAN LOCATED IN GOVERNMENT LOT 2 OF SECTION 26, TOWN 15 NORTH, RANGE 23 EAST CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN

Designed By	N/A
Drawn By	MPB
Checked By	TDH
Plot Date	2/21/2023
Project Date	FEB 2023
Sheet No.	1 O

FILE NAME: P:\ENGINEERING\LAND RECORDS\VACATIONS - DEDICATIONS\2023\ALLEY VACATION - OP - BLOCK 243\ALLEY VACATION - OP - BLOCK 243.DWG
PLOT DATE - 2/21/2023 PLOTTED BY - Born, Michael

PROPOSED ALLEY DISCONTINUANCE LEGAL DESCRIPTION

PART OF BLOCK 243 OF THE ORIGINAL PLAT OF THE CITY OF SHEBOYGAN LOCATED IN GOVERNMENT LOT 2 OF SECTION 26, TOWN 15 NORTH - RANGE 23 EAST, CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN

All of an 18 foot wide unimproved platted public alley being part of Block 243 of the Original Plat of the City of Sheboygan located in Government Lot 2 of Section 26, Town 15 North - Range 23 East, City of Sheboygan, Sheboygan County, Wisconsin and being more particularly described as follows:

Commencing at the Northwest corner of said Section 26, thence South 89°37'08" East along the North line of said Government Lot 2 of Section 26, and its Easterly extension, a distance of 909.59 feet to the Northerly extension of the West line of said Block 243 and the East right of way line of South 10th Street;
thence South 00°01'36" West along said Northerly extension, a distance of 839.42 feet to the Northwest corner of Lot 4 of said Block 243 and the South right of way line of Illinois Avenue;
thence continuing South 00°01'36" West along the West line of said Lot 4 and said East right of way line of South 10th Street, a distance of 155.68 feet to the Southwest corner of said Lot 4, the North right of way line of said alley, and the Point of Beginning for this description;
thence South 89°58'09" East along the North right of way line of said alley and the South lines of Lots 4, 3, 2, and 1 of said Block 243, a distance of 251.92 feet to the Southeast corner of said Lot 1, the Northeasterly right of way line of said alley, and the Southwesterly right of way line of South Commerce Street;
thence South 31°19'03" East along the Northeasterly right of way line of said alley and said Southwesterly right of way line of South Commerce Street, a distance of 21.08 feet to the South right of way line of said alley and the North line of Lot 11 of said Block 243;
thence North 89°58'09" West along the South right of way line of said alley and the North lines of Lots 11, 10, 9, 8, and 7 of said Block 243, a distance of 262.88 feet to the Northwest corner of said Lot 7, the West right of way line of said alley, and said East right of way line of South 10th Street;
thence North 00°01'36" East along the West right of way line of said alley and said East right of way line of South 10th Street, a distance of 18.00 feet to said Southwest corner of Lot 4, the North right of way line of said alley, and the Point of Beginning.

The land described above contains 0.1064 acres (4,633 square feet) of land, more or less.

End of description.

LEGAL DESCRIPTION PREPARED BY: MICHAEL P. BORN, PLS DATED: 2/21/2023 REV: N/A
LEGAL DESCRIPTION CHECKED BY: TYLER D. HILL, CST

CITY OF SHEBOYGAN
PUBLIC WORKS
City of Sheboygan
Department of Public Works
Engineering Division
2026 New Jersey Avenue
Sheboygan, WI 53081

EXHIBIT B - PROPOSED ALLEY DISCONTINUANCE
PART OF BLOCK 243 OF THE ORIGINAL PLAT OF THE CITY OF SHEBOYGAN LOCATED IN GOVERNMENT LOT 2 OF SECTION 26, TOWN 15 NORTH, RANGE 23 EAST
CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN

Designed By	N/A
Drawn By	MPB
Checked By	TDH
Plot Date	2/21/2023
Project Date	FEB 2023
Sheet No.	2 O

FILE NAME: P:\ENGINEERING\LAND RECORDS\VACATIONS - DEDICATIONS\2023\ALLEY VACATION - OP - BLOCK 243\ALLEY VACATION - OP - BLOCK 243.DWG
PLOT DATE - 2/21/2023 PLOTTED BY - Born, Michael

III

Res. No. 149 - 22 - 23. By Alderpersons Mitchell and Filicky-Peneski.
March 6, 2023.

A RESOLUTION authorizing the Director of Public Works to issue purchase orders for the purchase of six mobile column hoists at the Municipal Services Building and authorizing an adjustment to the 2023 budget to fund the unanticipated purchase.

WHEREAS, mobile column hoists are frequently utilized by the Motor Vehicle Department to lift heavy equipment and vehicles for routine and emergency repairs and maintenance; and

WHEREAS, the existing column hoists were more than twenty-five years old and recently stopped operating as necessary; and

WHEREAS, without functioning column hoists, necessary repairs to the City's snowplows, garbage trucks, and fire vehicles, etc., cannot be made; and

WHEREAS, City staff has determined that it is best to replace the column hoists because repair is not a possible option; and

WHEREAS, having the column hoists immediately replaced is essential to keeping the City's vehicle and heavy equipment fleet in functional order; and

WHEREAS, the purchase of equipment is not considered a "public contract" pursuant to Wis. Stat. § 66.0901(1)(c) and, therefore, is not required to be publicly bid; and

WHEREAS, the Motor Vehicle Department had excess revenue in 2022 from equipment sales to fund the cost of the column hoist replacement.

NOW, THEREFORE, BE IT RESOLVED: That the Director of Public Works is hereby authorized to purchase six mobile column hoists at a price that shall not exceed $75,445.00.

FAP(2/3)

BE IT FURTHER RESOLVED: That the Finance Director is hereby authorized to complete a budget amendment for the above purchase from Motor Vehicle Fund fund balance utilizing excess 2022 equipment sale revenue in the amount of $75,445.00 via the following budget adjustments:

INCREASE by $75,445 - Motor Vehicle Fund - Motor Vehicle Fund - Other Operating Equipment (Account No. 730399-651700)

INCREASE by $75,445- Motor Vehicle Fund - Motor Vehicle Fund - Fund Equity Applied (Account No. 730-493000)

_____

_____

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

Owner Name	Jeff Wildenberg	Web Site	http://www.uspetroleumequipment.com
Phone	(920) 735-8237	Billing Address	425 Better Way, Appleton, WI 54915
Email	jwildenberg@usoil.com	Shipping Address	558 Carter Ct, Kimberly, WI 54136

PROPOSAL

Quote Name	City of Sheboygan DPW MCHW619	Date of Quote	1/11/2023 12:14 PM
Account Name	CITY OF SHEBOYGAN (PE)	Quote Number	00004217
Phone	920-459-0246	On-Site Contact	Rick Ney
Email	rick.ney@sheboyganwi.gov	Ship To	2026 New Jersey Avenue Sheboygan, WI 53081 United States
Bill To	2026 New Jersey Avenue Sheboygan, WI 53081 United States		

Quantity	Description	Unit Price	Extended Price
1	U.S. Petroleum Equipment is pleased to provide a proposal to complete the following work: Provide and install the following Rotary lift equipment. ROTARY HEAVY DUTY BATTERY POWERED LIFT		$0.00
1	MCHFLEX619 Mach Rotary portable truck lift, Wheel pick-up, Remote control Wireless communication between columns, Electro Hydraulic 6 unit system with movable forks, 24VDC battery operated, 112,800# capacity, Lock light, Digital weight gauge, 110 volt single phase battery charger built onto each column, and 69" rise. Painted Black MCHM619U100BK	$74,945.00	$74,945.00
1	ROTARY CERTIFIED INSTALLATION - Provide a Rotary Authorized Installer to set up & train on use of the MCH lift.	$500.00	$500.00
1	PROPOSAL NOTES: ◊ Lift will be direct shipped to your location once lift is delivered ◊ You will need a fork truck to offload lifts when delivered. ◊ USPE will come to site and set up units for service. ◊ If any installation or delivery delays are encountered due to unexpected site problems, a change order may be required to offset labor & shipping cost. ◊ Price Increase. U.S. Petroleum Equipment reserves the right to pass-along unforeseen price increases from Vendors which occur after contract signing and before the completion of the project. Written notice will be given to the Customer and the charge will be reflected on the Customer's invoice. Documentation of the increase from the Vendor will be provided upon request for customer. Any price increases in proposed components, parts, materials, or subcontractors are considered a price change. This includes any increases in pricing (i.e. 'surcharge', 'adjustment', 'equalization charge', 'compliance charge', 'recovery charge', freight / shipping / handling / transportation fee increases, etc.), are also considered to be price changes. ITEMS NOT INCLUDED WITH THIS PROPOSAL: ◊ Any equipment or services not listed in the above scope of work. ◊ Electrical services or material Thank you for considering U.S. Petroleum Equipment for your service and equipment needs.		$0.00

Tax NOT Included In Quote	☑
Tax Details	Tax Exempt
Payment Terms	100% Due Net 10 Days from Delivery/Completion

SubTotal	$75,445.00
Total	$75,445.00

OWNER'S ACCEPTANCE _____ DATE _____

U.S. PETROLEUM EQUIPMENT STANDARD TERMS & CONDITIONS APPLY TO ALL.

PLEASE SIGN AND RETURN. THANK YOU.

This proposal may be withdrawn by us if not accepted in 15 days or a result of inventory changes.

TERMS & CONDITIONS OF
U.S. PETROLEUM EQUIPMENT, a division of U.S. Venture, Inc.

Acceptance of Proposal. The accompanying Proposal, when accepted by Customer, will constitute a contract between U.S. Venture, Inc. d/b/a U.S. Petroleum Equipment ("USPE") and Customer, subject to all terms and conditions that follow herein and the approval of USPE's credit manager. Delivery of the materials/equipment herewith, installation of the specified equipment, Customer's acceptance in writing, and/or the issuance of an invoice, constitutes a binding acceptance by the Customer of the proposal herein. It is expressly agreed that there are no promises, agreements, or understandings, oral or written, not specified in the Proposal and these Terms and Conditions.

Scope of Work and Payment. All equipment and services shall be provided as set forth in the Proposal. USPE shall be paid for work performed as follows:

1. Terms for services are specified in the Proposal. Terms on the invoice apply unless otherwise specified in the Proposal. Current terms on the invoice are net Ten (10) days from Customer's receipt of the invoice.
2. Terms on the invoice unless otherwise specified in the Proposal, are net ten (10) days from Customer's receipt of invoice.
3. In the event USPE has not received payment for all fees and cost according to the terms of the invoice, Customer agrees to pay a late payment fee on the unpaid invoice balance at the rate of 2% per month commencing upon the expiration of the invoice terms and continuing until paid.
4. Customer also agrees that if payments are not received according to the terms of the invoice, a stoppage in completing a project may occur without USPE incurring any nonperformance or other legal liability.
5. Customer agrees to pay all costs incurred by USPE in enforcing the terms of this Agreement, including but not limited to, costs of its collection agency and reasonable attorney's fees.
6. Credit card payments are subject to 3% card processing fees.

Prices. Prices quoted are expressly contingent upon all conditions being observed, represented, and warranted at the time of bid. Prices quoted cover only those items which are specifically set forth in the Proposal. All other items will be billed to Customer on a time and materials basis. The prices quoted are for acceptance within fifteen (15) days of the date of Proposal, unless otherwise specified, and are subject to change without notice after that date. Prices quoted do not include soil analysis or clean-up of contamination, unless specifically stated. Labor, materials, and outside services for electrical, concrete, blacktop, excavating or sewer work, and such work not included in the Proposal unless specified. Additionally, required local permits are not included in the Proposal unless specified. Prices quoted on equipment and repair parts are subject to federal, state, and municipal taxes and licenses, which may be in effect, or which may be imposed prior to the actual shipment of materials and equipment. All such taxes and license costs are the responsibility of Customer.

Rights of Offset. Customer acknowledges that U.S. Petroleum Equipment is a division of U.S. Venture, Inc. Customer acknowledges that U.S. Venture, Inc. and its divisions, subsidiaries, and affiliated entities ("U.S. Venture") may set-off any amounts that U.S. Venture owes to Customer, or to any of Customer's parent entities of any tier, affiliated entities of any nature, and subsidiaries of any tier, divisions, successors, and assigns, and any surviving, resulting, or transferee corporation, partnership, or other business entity of any one or more of them ("Customer Entities") against any amounts owed to U.S. Venture by any of the Customer Entities, whether such setoff arose before, concurrently with, or after the date for which U.S. Venture owes money to Customer.

Delivery. USPE will endeavor to maintain delivery dates and schedules but cannot guarantee them. USPE shall not be liable for any costs or damages of Customer under this provision, including, but not limited to, loss of profits or business.

Limited Warranty. All materials and equipment, whether new or used, are purchased "AS IS" from USPE. Products sold may be warranted by the manufacturer of the product but only to the extent of any warranty offered by the manufacturer. Unless specifically stated in the Proposal, Customer shall register the equipment with the manufacturer. Any manufacturer warranties existing on new equipment furnished as part of the Proposal are passed through from USPE to Customer according to each manufacturer's policy, and in such cases, Customer's warranty shall be limited to that provided by the manufacturer(s). Ordinary use; wear and tear; or damage from abuse, neglect, accident, maladjustment, or failure by Customer to maintain equipment properly is excluded from coverage.

For a period of one (1) year from the date of completion of the project, USPE will at its sole discretion, install any equipment or materials covered by a manufacturer's warranty. If an item(s) is not covered by manufacturer's warranty, Customer may at its sole cost, pay for the equipment and materials and USPE (at its sole discretion) will install at no charge to the Customer. This labor warranty from USPE is null and void in the event the Customer or third party performs subsequent work on the equipment installed or repaired by USPE.

CUSTOMER AGREES TO RELEASE, INDEMNIFY, HOLD HARMLESS, AND DEFEND USPE FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITY, AND CAUSES OF ACTION AT LAW OR EQUITY FOR LOSS, DAMAGE, INJURY OR DEATH TO PERSONS AND PROPERTY, INCLUDING BUT NOT LIMITED TO ENVIRONMENTAL CONTAMINATION, LEAKS, SPILLS, RELEASES, OR DISCHARGES BY WHATSOEVER OR HOWSOEVER CAUSE OR SOURCE, ARISING OR OCCURRING FROM ANY NEW OR USED EQUIPMENT RECEIVED FROM BY CUSTOMER FROM USPE.

THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE EQUIPMENT AND SERVICES DESCRIBED IN THE PROPOSAL.

Limitation of Liability. USPE shall be liable only for damages that are the sole negligence of USPE and that USPE's total liability (if caused by USPE's sole negligence) shall not exceed $50,000.00, or the total fees payable to USPE for the particular project, whichever is less. USPE shall not be liable for any special, punitive, incidental, or consequential damages (including without limitation, loss of profits or income, loss of use of property, business interruption, cost of replacing goods or services, or third party claims).

Any claims, demands, or cause of action against USPE arising from or related to in any way to the Proposal, or to work, services, or goods or products provided by USPE pursuant to the Proposal, must be brought within one (1) year from the date the work, service or provision of goods or products has been completed.

Compliance with Laws. Environmental compliance is Customer's responsibility. Its failure to comply strictly with applicable federal, state or local requirements, duels and/or regulations (including but not limited to those applicable to notice) shall completely void all warranties of USPE. Customer agrees to hold USPE harmless from and indemnify and defend against any claims or liability relating to Customer's failure to comply strictly with any federal, state or local requirements, duels and/or regulations (including but not limited to those applicable to notice)

Insurance/ownership/registration. Customer is responsible for maintaining (or ensuring that the owner of the property maintains if Customer is not the owner), evidence of ownership of the property on which the Project is taking place, insurance on the property and equipment purchased from USPE, and registration of any such equipment as may be required to comply with any local, state and federal laws, regulations or industry standards.

Termination. USPE may, without prejudice to any right or remedy, terminate its relationship with Customer and suspend all work or delivery of goods upon notice to Customer.

Unforeseen Conditions. If unforeseen conditions arise that affect the scope of services, time for performance, or the risk involved, USPE shall notify Customer. USPE may then, at its sole discretion, modify the scope of work, modify the price, stop work until arrangements satisfactory to USPE have been made, or terminate the services by notifying Customer in writing. USPE shall be entitled to compensation for its services performed through the time of termination. If abnormal soil conditions or weather conditions or other unforeseen conditions result in additional cost, those additional costs will be billed on a time and materials basis.

Jurisdiction and Venue. Customer agrees that this Proposal shall be governed by Wisconsin law and jurisdiction and venue will be the Outagamie County District Court of Wisconsin, or the Federal District Court Eastern District of Wisconsin (Green Bay Division).

Waiver of Right to Jury Trial. USPE AND CUSTOMER WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE PROPOSAL OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS PROPOSAL. USPE AND CUSTOMER ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE TRANSACTION CONTEMPLATED HEREBY. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Utilities and Underground Structures. USPE will take reasonable precautions to avoid damage to utilities or other underground structures. Customer shall indemnify, defend, and hold USPE harmless for any damage to utilities or underground structures, and from any claims, liability, or damages resulting from utilities or underground structures that were not property called to USPE's attention. Such indemnity shall include payment of litigation costs, expert's fees, and attorney's fees incurred by USPE.

Duties of the Customer. Customer warrants that it has disclosed all adverse or unfavorable site conditions which may affect this Proposal. Customer represents and warrants that all information provided to USPE is complete and accurate. Customer represents and warrants it has and will comply with all applicable local, state, and federal laws. Customer shall protect the site against damage, injury, or loss and shall carry insurance in an amount sufficient to cover replacement values, naming USPE as loss payee and additional insured. Customer is responsible for providing Builder's Risk insurance coverage. Customer is responsible for providing liquid ballast for filling underground storage tanks immediately upon setting the tanks during excavation. USPE shall not be liable for damage to the ballast, including without limitation, damage due to contamination or loss of product. Customer shall keep accurate, daily inventory records on products stored in tanks, lines, and dispensing equipment and shall promptly notify USPE of all shortages or losses. Precision testing procedures performed on any portion of the underground storage tank systems are designed to detect leaks and USPE shall not be responsible for any contamination resulting from spills or releases which may occur before, during or after such tests.

PCI/EMV Security Standard Requirements. This Proposal may include components to assist with implementing a program to maintain compliance with PCI security standard requirements, but may not provide the entire solution. Additional items such as software, network gateways, and secure routers may be needed to provide full compliance. Periodic inspection of devices and components, along with tracking these assets, and ensuring a secure network with limited access is also an important part of maintaining compliance with the standards. If additional components, software or equipment are required, those additions will be billed on a time and materials basis along with the labor necessary to install, program and setup. Components supplied by the Customer must be approved prior to scheduling upgrades. USPE does not guarantee compliance as compliance with the PCI security standard is the sole responsibility of the owner/operator of the facility. **CUSTOMER AGREES TO RELEASE, INDEMNIFY, HOLD HARMLESS, AND DEFEND USPE FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITY, AND CAUSES OF ACTION AT LAW OR EQUITY ARISING OR OCCURRING FROM THE REMOVAL AND DISPOSAL OF CUSTOMER'S EQUIPMENT.**

Hardware/software compatibility. In connection with this Proposal, the parties assume that any fueling system hardware and software supplied by Customer is inherently compatible and required only routine start-up programming. If on start-up, it is discovered that the hardware and/or software is not compatible or has innate deficiencies that require additional configuration or upgrading, USPE shall be entitled to full payment of the Contract Price under the Proposal including any extra charges to complete changes to customer equipment.

Digging/excavating clause. Digging and excavating quotations are based on normal soil conditions. Should any digging or excavating be included in the USPE Proposal, and any heavy rock, shale, water frost or unusual doffing be encountered, the Proposal price shall be increased at USPE's normal labor hourly rate except that any outside contract work required shall be charged at USPE's cost plus its customary administrative charge. In the event of cave-ins, and the necessity to shore or slope hole, all associated cost with the removal of the excess soil and replacement with either sand or gravel will be considered an extra and all such cost shall be borne by Customer. In the event underground structures, cables, conduit, debris, rick, water, utilities, or running sand are encountered, destroyed or damaged during the performance of the work, USPE shall not be held responsible, and Customer shall indemnify and save harmless USPE and its contractors, agents and employees from all suits, actions, or claims brought about by such encounter, destruction or damage. Should dewatering be required, the USPE shall not be responsible for disruption of adjacent backfill materials whether known or unknown at the time of excavation, repairs to paving, concrete, structures shall be borne by Customer. USPE is not responsible for removal/disposal of waste water if de-watering of the sump is necessary. Finished grades are to be established and verified by Customer.

Tank Floating Clause. Customer shall fill all underground storage tanks installed by USPE with liquid for ballast immediately upon notification from USPE that a tank(s) has been set into an excavation ("filling notification"). USPE shall not be responsible for any contamination or loss of product used for ballast. If any tank floats after Customer receives filling notification, USPE shall not be liable for any damages to equipment, and labor and materials cost to reinstall tanks, if floating occurs, costs shall be borne by Customer.

Cold weather Concrete. In the event that concrete is poured during cold weather, USPE is not responsible for chipping, cracking, or spaulding of concrete, due to cold weather pours. Furthermore, USPE is not responsible for additional cost of heated concrete, unless otherwise specified in the contract. It is highly recommended that salt or any chemical based deicer is NOT used for a period of at least 24 months after installation to prevent concrete related problems.

Notice of Lien Rights. As required by the Wisconsin construction lien law, USPE hereby notifies owner/customer that persons or companies performing, furnishing, or procuring labor, services, materials, plans or specifications for the construction on owner's/customer's land may have lien rights on owner/customer's land and buildings if not paid. Those entitled to lien rights, in addition to USPE are those who give the owner/customer notice within sixty (60) days after they first perform, furnish, or procure labor, services, materials, plans or specifications for the construction. Accordingly, owner/customer probably will receive notices from those who perform, furnish, or procure labor, services, materials, plans, or specifications for the construction, and should give a copy of each notice received to the mortgage lender, if any. USPE agrees to cooperate with owner/customer and owner's/customer's lender, if any, to see that all potential lien claimants are duly paid. This notice is given for purpose of identification, and is not a claim to you or your lender for payment.

Mobile Column

HEAVY DUTY LIFTING SYSTEMS

Dependable
Ergonomic
FLEET
Versatile
Reliable
Performance
Productive
FAST
Mobile
Buy America
World
LEADER
Best Techs
Legendary
RedFire™
Remote controlled
MACH™
HEAVY DUTY
Patented
Battery
Efficient
Career Extender
ENVIRONMENTALLY FRIENDLY
Wireless
Innovative
Employee Retention
Adjustable
Flex™

Rotary®

www.rotarylift.com

Shown: MCHM419U1A00 / Wireless remote-controlled model

POWERED BY RedFire

WIRELESS CONTROLS
NO CABLES / NO CORDS

FLEX**MAX419**
18,800 lbs. capacity column

Shown: MCHM419U100

FLEXMAX™

REMOTE-CONTROLLED LIFTING

Unmatched lifting versatility and flexibility with the mobility to monitor and adjust your columns anywhere in your shop.

POWERED BY RedFire
LIFT UP TO 150,400 LBS.

Premium FLEXMAX™ **lifts** provide wireless, remote-controlled flexibility plus added operational controls at each column giving technicians the choice to work in the most comfortable, productive and efficient way possible.

Ergonomic, wireless hand-held remote control walks the technician through the system set up. Status lights indicate standby or paired columns.

Controller features include:

- On/off power button with info screen
- 2-speed joystick control with auto resume
- Single lower-to-lock button with E-stop control
- Remote battery indicator
- Press Protect™ eliminates accidental button presses
- Audible warning when operator is out of range
- 99 system IDs eliminate communication interference
- Height and weight digital display gauge displays
- Software upgrades can be made wirelessly

WATCH THE PRODUCT VIDEO
See how fast and easy it is to set up and operate FLEX lifts

FLEXMAX™ **single column controls** allow user with remote to select and change column groups and cycle lifts from any column. Includes large screen designed for the toughest shop.

Exclusive LOCK LIGHT™ indicates when a column is on its locks

Rotary FLEXMAX™ feature column capacities at 18,800 lbs. and 14,000 lbs. in multiple configurations. Service everything from light-duty passenger vehicles to heavy-duty trucks. This electro-hydraulic system with adjustable lifting forks can be operated in both odd and even groups of columns.

Battery operated with on-board charger - no power cords to clutter up the service bay. 24V DC batteries with 110V charging system. Group of 2. Batteries purchased separately for international use.

Inverted hydraulic cylinder rod located inside the carriage, protects chrome piston rod from debris and damage.

Easy to move adjustable forks improve set up time.

Spring loaded steering and braking system eliminates the need to manually operate the jacks. Automatically prevents movement on sloped floors.

Digital column gauges display vehicle height and weight

Forklift pockets provide convenient way to relocate columns within your shop.

All models are **ALI Gold Certified**

Environmentally-friendly benefits:

- Surface mounted - no excavation or site prep
- Optional LED lighting
- More than 98% recyclable
- Compatible with all bio fluid hydraulic oils

18,800 LBS. COLUMN CAPACITIES

MCHM19 | FLEX MAX™

Group of 2 columns / 37,600 lbs. Capacity
Group of 4 columns / 75,200 lbs. Capacity
Group of 6 columns / 112,800 lbs. Capacity
Group of 8 columns / 150,400 lbs. Capacity

Rise	70” (1778 mm)
Column width	45.5” (1156 mm)
Wheel Rim Size	9”to 24” (228 to 610 mm)
Clearance / fork to column	10” (254 mm)
Speed of rise	78 seconds
Charging voltage	110v charger* (2.5 amps max.)

14,000 LBS. COLUMN CAPACITIES

MCHM14 | FLEX MAX™

Group of 2 columns / 28,000 lbs. Capacity
Group of 4 columns / 56,000 lbs. Capacity
Group of 6 columns / 84,000 lbs. Capacity
Group of 8 columns / 112,000 lbs. Capacity

Rise	69” (1760 mm)
Column width	43” (1092 mm)
Wheel Rim Size	9”to 24” (228 to 610 mm)
Clearance / fork to column	10” (254 mm)
Speed of rise	68 seconds
Charging voltage	110v charger* (2.5 amps max.)

* Call factory for alternate voltage

MCHW18

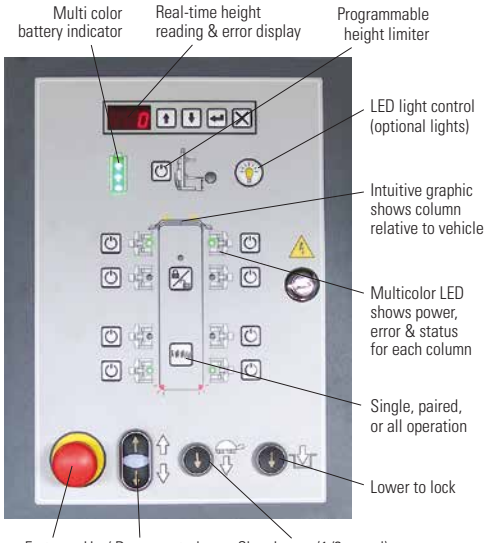
WIRELESS MACH™ SERIES LIFTS

MOBILE LIFTING TECHNOLOGY WITH INTUITIVE CONTROLS AT EACH COLUMN

The MACH SERIES Mobile Column lift system is the faster and easier choice for your maintenance facility. The set-up time and lifting speed beats the competitor hands down with fewer steps required by the technician to put the lift in service.

Industry exclusive intuitive control console
- no master / slave column

WATCH THE PRODUCT VIDEO
Learn more about our industry-leading lift features

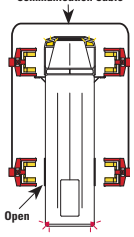


OPTIONAL WIRED / CORDED COLUMN COMMUNICATION

Includes Retractable Cord Reels with Quick Connect Cables

Easy one-handed connectivity between columns, don't waste time handling cables every time you use the lift.

Innovative Horseshoe Wiring
Wired MCH columns use just three cables which form a horseshoe, so the front or back of the lift is always open. Vehicles can be driven in and out of the bay without having to disconnect and reconnect cables saving time with each service.



NOTE: Wired column configuration is a FIELD UPGRADE ONLY.
Consult factory representative for details

AC POWERED LIFT OPTION

Operate your mobile lifting system without the use of batteries.
- 208/230/460 VAC available
- Sold in groups of 2 and 4 configurations

Consult factory representative for details

WIRELESS CONTROLS
NO CABLES / NO CORDS

Shown: MCH618100

MCHW618
18,000 lbs. capacity column

Rotary wireless MACH™ SERIES feature column capacities at 18,000 lbs. in multiple configurations.

Rotary's versatile wireless mobile column lifts give you the option of not being tied to a bay. Easy to use design gives techs the option to control lift from any column.

Take advantage of the power and mobility to make your repairs anywhere in your shop!

Battery operated with on-board charger - no power cords to clutter up the service bay. 24V DC batteries with 110V charging system. Group of 2. Batteries purchased separately for international use.

Inverted hydraulic cylinder rod located inside the carriage, protects chrome piston rod from debris and damage.

Easy to move adjustable forks improve set up time.

Spring loaded steering and braking system eliminates the need to manually operate the jacks. Automatically prevents movement on sloped floors.

Forklift pockets provide convenient way to relocate columns within your shop.

All models are **ALI Gold Certified**

18,000 LBS. COLUMN CAPACITIES

MCHW18 | WIRELESS

Group of 2 columns / 36,000 lbs. Capacity
Group of 4 columns / 72,000 lbs. Capacity
Group of 6 columns / 108,000 lbs. Capacity
Group of 8 columns / 144,000 lbs. Capacity

Rise	70" (1778 mm)
Column width	45.5" (1156 mm)
Wheel Rim Size	9"to 24" (228 to 610 mm)
Clearance / fork to column	10" (254 mm)
Speed of rise	78 seconds
Charging voltage	110v charger* (2.5 amps max.)

* Call factory for alternate voltage

VERSATILE DRIVE-ON CONVERSION

MACH4 PLUS

RUNWAY LIFTING SYSTEMS

36,000 / 60,000 LBS. CAPACITIES

Convert your mobile column series lifts into a heavy duty drive-on lift for vehicle inspection and wheel service.

For MACH and Flex Series Column Lifts

M140015RD
60,000 lbs. capacity lift

Shown: MCH418U100 with M140015 runway system

FEATURES:

Drive on runways accommodate wheelbases up to 33’ (396”)

Fully hydraulic operation with low electrical usage and controls at all 4 columns

Super fast battery operation. No power? No problem.

Fewer moving parts - no cables or sheaves to maintain equals less maintenance and wear

Internal airlines included for optional rolling jacks and air tools

Shown: MCH418U100 with M140015 runway system

M140129
36,000 lbs. capacity
For FlexMAX 14 Mobile Columns
Maximum wheel base 30’

M140015
60,000 lbs. capacity
For MCH418 and FlexMAX 19 Mobile Columns
Maximum wheel base 33’

MACH4 PLUS RUNWAY SYSTEMS

MODELS	M140129CG 414K MOBILE COLUMNS	M140015RD 418K / 419K MOBILE COLUMNS
Lifting Capacity	35,900 lbs. (16,283kg) †	60,000 lbs. (27215kg) † †
Maximum Wheelbase	25’ (300”/ 7,620mm)* 30’ (360”/ 9,144mm)*	33’ (396”/ 10058mm)**
Max. Rise / Floor to top of runway	79” (2,007mm)	78” (1981mm)
Length Overall	33’ 11-3/4” (10,358mm) 38’ 11-3/4” (11,882mm)	40’ 7-1/2” (12382mm)
Width Overall - outside controls	16’ 3-3/8” (4963mm)	15’ 11” (4851mm)
Height of Columns when raised	89” (2260mm)	144 - 3/4” (3677mm)
Width of Runways	28” (711mm)	28” (711mm)
Drive Thru Between Columns	12’-4” (3607mm)	11’-10” (3607mm)
Runway Spacing	45” (1143mm)	45” (1143mm)
Rise Time	68 seconds	78 seconds
Ramp Angle	7 degrees	10 degrees
Power Usage	Battery powered Charges on 110V	Battery powered Charges on 110V

† WITH FLEX MAX 14 SERIES LIFTS † † WITH MCH18 SERIES and FLEX MAX 19 SERIES LIFTS
*Both 25’ and 30’ runway length models are available as 35,900 lbs. capacity lifts
**Both 28’ and 33’ runway length models are available as 60,000 lbs. capacity lifts

OPTIONAL RUNWAY LIFT **ACCESSORIES**

Rolling Bridge Jacks

Air operated rolling bridge jacks can be attached to the runways creating additional lifting options for greater versatility.

FOR 36,000 lbs. CAPACITY LIFTS
RJ14ABK / 14,000 lbs (6350kg) with lock
RJ22ABK / 22,000 lbs (9979kg) with lock

FOR 60,000 lbs. CAPACITY LIFTS
RJ25BK / 25,000 lbs. (11363 kg) with lock

Air operated rolling bridge jacks

Portable Maintenance Jack Stands

RS20YL / Screw-Type Adjustable
56.1”-82.3” / 20,000 lbs. Capacity

RS20WYL / Welded Version of RS20YL

RS2052SYL / Screw-Type Adjustable
34.3 “-55.5” / 20,000 lbs. Capacity

RS36SYL / Screw-Type Adjustable
55.31”-82.28” / 36,000 lbs. Capacity

All jack stands meet the required ASME PASE-2014 safety requirements for portable service equipment.

Always use safety stands when installing or removing heavy components.

Air Operated Tire and Wheel Lifts

Offers maximum maneuverability and adjustable lifting and lowering speeds. Provides technicians with responsive and easy positioning of the tire and wheel, easy alignment of the wheel and hub and a quick transfer to the wheel balancer. Includes air hose and auxiliary air tool connection.

MW-200 / 200 lbs. capacity
MW-500 / 500 lbs. capacity

MW-200

MW-500

LED Runway Lighting Kit
FA5700 / TECH LIGHT™ Line Light 4

Attach the four 54” light wands to runways for effective, efficient lighting where you need it.

Lighting unit includes:
60W power supply unit
16’ cable lengths
8 magnetic suspensions
120V AC input voltage at 60hz

Drive-Thru Ramp Kit
M140099RD / 10’ Ramps

Adding a drive-thru ramp kit creates a quick and easy on-off service operation for service bays.

FORE and AFT END LIFT KIT

M140168YL

FRAME-ENGAGING / WHEELS-FREE

18,000 LBS. CAPACITIES

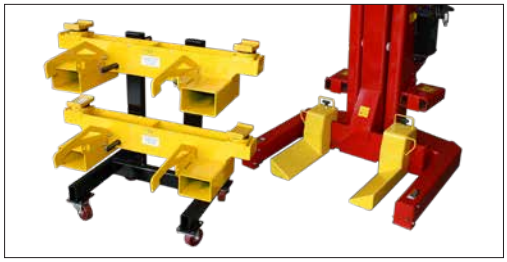
MULTI-FUNCTION LIFT KIT

Features the widest reach in the industry at 43". For use with two MCHW18, MCHM14 or MCHM19 mobile columns on full frame vehicles

Kit comes standard with 3.5", 5", and 10" adapter extensions for greater reach.

Wheels-free, frame-engaging end lift kits enable lifting by the front and rear of the vehicle using stacking adapters.

Shown: MCH418U100 with M140168 frame lift kit
18,000 lbs. capacity lift



M110108BK
Optional storage cart for lifting kit

M130242
Ball Hitch Adapter for use with M140168YL

M120651
Wide center adapter for use with M140168YL

SERVICE TWO VEHICLES AT ONCE USING A SINGLE SET OF 4 COLUMNS

FORE / AFT END LIFT KIT #M140168

SPECIFICATIONS	
Column Configuration	2 columns
Capacity per set	18,000 lbs.
Rise	69"
Fork to column clearance	10" (254 mm)
Adapter reach	12" Narrow Position 43 1/2" Widest Position 9 1/2" Lowest Pickup Height
Speed of rise	78 seconds / 68 seconds

FRAME-ENGAGING

CROSS BEAM KITS

21,000 TO 32,000 LBS. CAPACITIES

Pick up buses, RVs and more with wheels-free, frame-engaging cross beam kits. Beam vehicle spotting allows technicians to service wheels and tires with ease.

All kits are designed for use with MCHW418 or MCHM419 Series lifts.

WARNING:
Never exceed rated capacity.
Refer to operating instructions supplied with lift for proper lifting procedures.
Operate mobile column lifts to desired height.
Always use safety stands as needed or when installing or removing heavy components.

CAUTION:

Never use a bent or damaged crossbeam. Always have an authorized installer make any repairs or replacements. Crossbeams are not to be used as wheel engagement lifts. Do not change or modify the crossbeam in any manner.

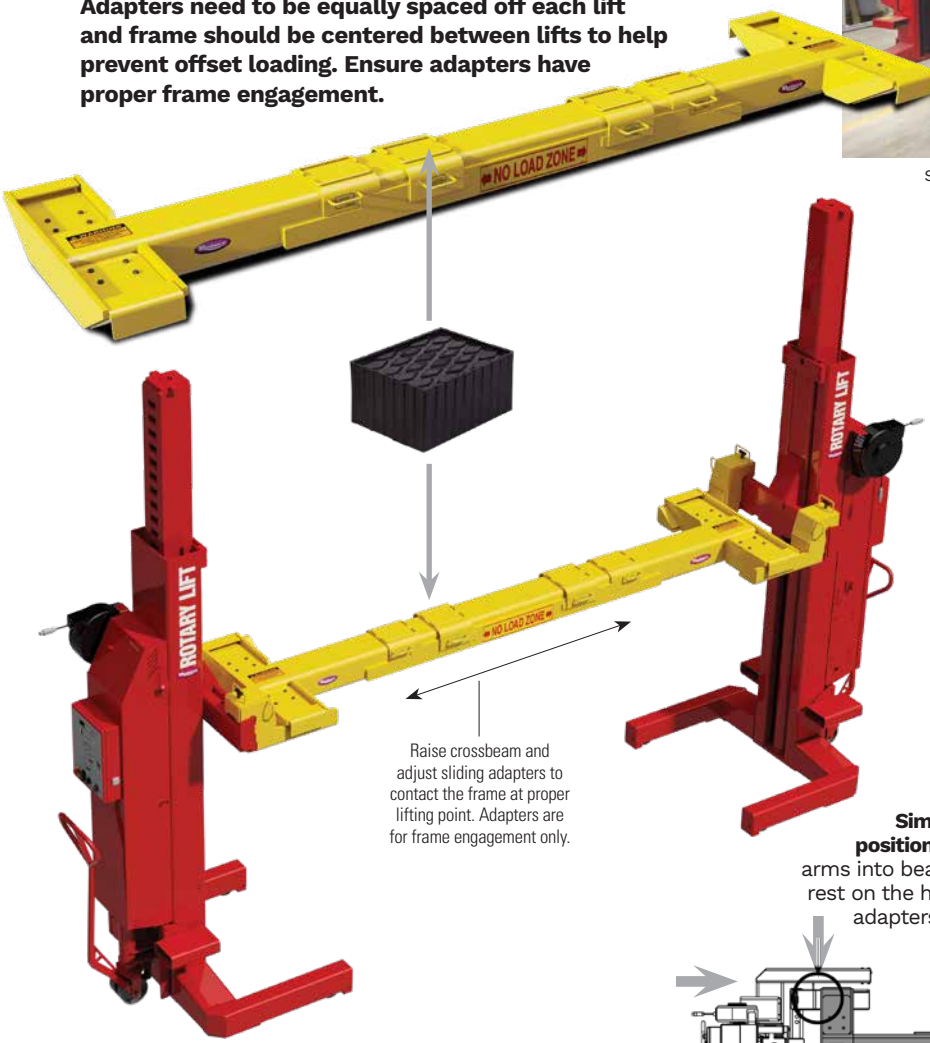
LOW PROFILE

M140070YL

30,000 lbs Capacity at maximum 49" adapter spread
21,000 lbs. Capacity at minimum 25" adapter spread
Kit includes single cross beam and two (2) support blocks per beam

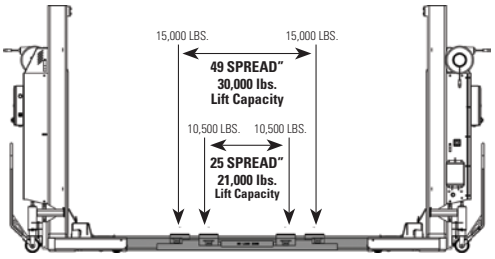
Shown: M140070 low profile cross beam with optional jack stands

Adapters need to be equally spaced off each lift and frame should be centered between lifts to help prevent offset loading. Ensure adapters have proper frame engagement.



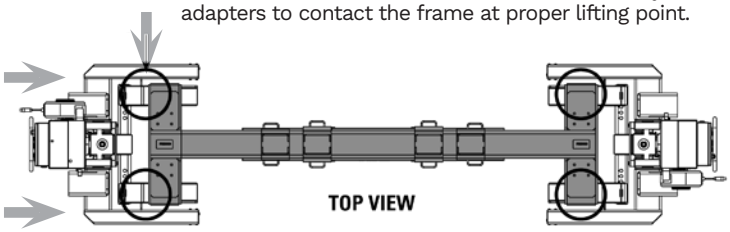
Raise crossbeam and adjust sliding adapters to contact the frame at proper lifting point. Adapters are for frame engagement only.

Shown: MCH418U100 with M140070YL cross-beam kit



CAPACITIES
30,000 lbs. at 49" adapter spread / 15,000 LBS. per adapter
21,000 lbs. at 25" adapter spread / 10,500 LBS. per adapter
ALI THIRD-PARTY GOLD CERTIFIED

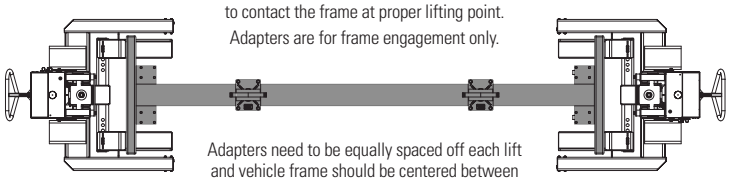
Simply push crossbeam lift adapter into desired position under vehicle. Push the mobile column fork arms into beam ends completely until ends of crossbeam rest on the heel of the forks. Raise crossbeam and adjust adapters to contact the frame at proper lifting point.



SADDLE BEAM
ML41YL

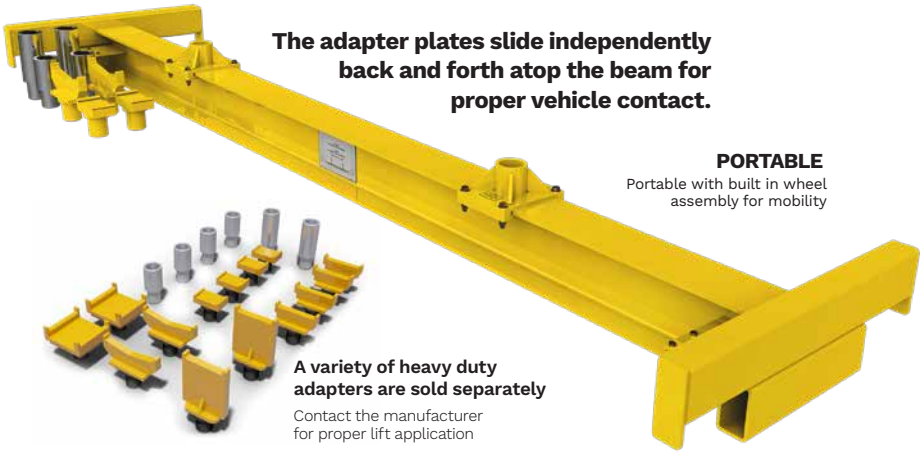
32,000 lbs Capacity at maximum 72” adapter spread
24,000 lbs. Capacity at minimum 49” adapter spread

Kit includes single cross beam, 2 pairs of frame-engaging adapters, two 5” and two 8” aluminum adapter extensions



Raise crossbeam and adjust sliding adapters to contact the frame at proper lifting point.
Adapters are for frame engagement only.

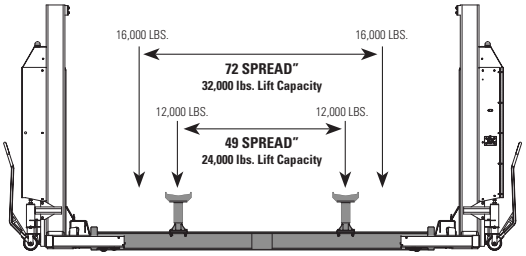
Adapters need to be equally spaced off each lift and vehicle frame should be centered between lifts to help prevent offset loading. Always ensure adapters have proper frame engagement.



The adapter plates slide independently back and forth atop the beam for proper vehicle contact.

PORTABLE
Portable with built in wheel assembly for mobility

A variety of heavy duty adapters are sold separately
Contact the manufacturer for proper lift application



CAPACITIES
32,000 lbs. at 72” adapter spread / 16,000 LBS. per adapter
24,000 lbs. at 49” adapter spread / 12,000 LBS. per adapter
ALI THIRD-PARTY GOLD CERTIFIED

DRIVE-ON RAMP STYLE KITS

EXTRA WIDE
FD2448KITYL

28,000 lbs Capacity / 154” DRIVE-THRU WIDTH

DRIVE-ON, 26” WIDE RAMPS WITH WHEEL CHOCKS

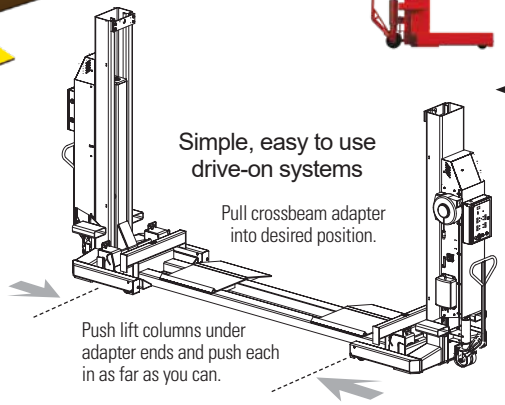
RAMP STYLE KIT DESIGNED TO SERVICE SNOW REMOVAL TRUCKS WITH WINGPLOWS

Kit includes single cross beam with tow handle

SHOWN: FD2448
EXTRA WIDE DRIVE ON CROSS BEAM KIT with TOW HANDLE

EXTRA WIDE
154” DRIVE THRU

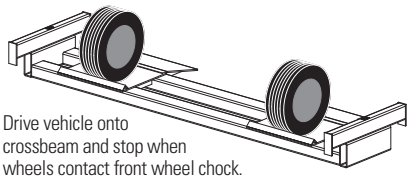
PORTABLE
Built in wheel assembly for mobility



Simple, easy to use drive-on systems

Pull crossbeam adapter into desired position.

Push lift columns under adapter ends and push each in as far as you can.



Drive vehicle onto crossbeam and stop when wheels contact front wheel chock.

RAMP STYLE BEAM
FD2353KITYL

22,000 lbs Capacity / 130” DRIVE-THRU WIDTH

DRIVE-ON, 26” WIDE RAMPS WITH WHEEL CHOCKS

RAMP STYLE KIT DESIGNED FOR RV PICK-UP

Kit includes single cross beam

OPTIONAL LIFT **ACCESSORIES**

Contact the manufacturer for proper lift application

M140112 / Locklight™ Safety Light / MCH Kit
Light indicates when lift is set on its locks
Compatible/retrofitable with DC versions of MCHW columns

M140112

M140115 / Locklight™ Safety Light / MCH Kit
Light indicates when lift is set on its locks
For AC mobile columns and MCHW columns with pre-installed pressure gauges

M140171BK / 24V DC LED Service Lamp Kit
Operates on column's battery power. Includes 2 lamps.
Lights ensure workspace around the lift is well illuminated increasing safety

M140171BK

M140001RD / Long Fork Kit / For recessed wheels
Each kit includes two 22" forks and two 8" leg extensions.
Reduces capacity of column to 12,000 lbs.
For 18K MCH and 19K Flex MAX Models

M140041RD / Long Fork Kit / For recessed wheels
Each kit includes two 20" forks and two 8" leg extensions
Reduces capacity of column to 14,500 lbs.
For 18K MCHW and 19K Flex MAX Models

M140001RD

M120304BK / Large wheel adapter (per column)
Adapter allows lifting of vehicles with extremely large diameter wheels.

M140157 / Analog Weight Gauge Kit
For MCHW / RCH Series Lifts

M140150 / Pallet Jack Assembly
Available on 19k MCHM lift columns. Black only

M140003 / Pendant Control
For MCHW Mobile Column Lift System - With 33' cable

M120304BK

M140014 / Service Chip for standard wired and wireless MCHW lifts

M140144 / Service Chip for FLEX MAX columns only

AC100005 / Rotary programming tool for heavy duty lifts
Software for laptop running Windows XP/7/8/10 (Laptop not included)

M140024 / Wireless Upgrade Kit
Upgrades a single column for older column kits
Not available on RCH18 or MCH13 lifts

M140157

Benefits of Mobile Columns

To put it simply, mobile columns make life easier for you and your technicians.

Want more?

See what our customers have to say.

"We wanted a product that was worth the cost and easy to use and supported our core value of safety. What we found with the Rotary lift system is that it helped reduce the number of knee injuries, back injuries and hand injuries."

- James Enright
  Regional Maintenance Director Schneider National

"After extensive testing of multiple mobile column lifts, I chose Rotary mobile lifts as having the most advanced design, most options and ease of relocating being the best choice for the city. After receiving the lifts, Rotary's customer service and local distributor experience was exceptional."

- Daniel S. Corbin
  Fleet Operations Manager
  Summerville, South Carolina

"The thing that really stood out for us was the remote control. We did not see that anyone else would offer that, I think that its definitely helped us be more efficient. Would I recommend Rotary's FLEX series mobile columns? I absolutely would. The quality is there. The service is there. The parts are available and they're an American company."

- Mitch Corwin
  Transportation Supervisor
  New Albany Floyd County Consolidated School System, New Albany, IN

"Rotary has been a Godsend to us because the main thing is we get vehicles repaired and back on the road quicker. Our down list that we get every day has shrunk to a quarter of the size that is used to be...it makes a huge, huge difference."

- George Jacobs
  President, Windy City Limousine and Bus
  Chicago, IL

Choose the right lift for your shop.

Rotary Lift.

SCAN FOR MOBILE COLUMN INFO

Rotary Lift
2700 Lanier Drive / Madison, IN 47250, USA

rotarylift.com

Sales:
1.812.273.1622 / 800.640.5438
userlink@rotarylift.com

Tech. Support:
800.445.5438
techlink@rotarylift.com

Government Sales: 800.445.5438 X5655

Sourcewell Contract No. 061015-RRL
GSA Advantage! FSS Contract No. GS07F294AA
NASPO ValuePoint formerly WSCA-NASPO Contract No. 05316
HGACBuy TXMAS CMAS COOS KCRPC

For additional information:
rotarylift.com/Government-Purchasing-Assistance/

Lit# MOBILE SERIES Brochure_2021.05
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All Rights Reserved. Unless otherwise indicated, ROTARY LIFT, VEHICLE SERVICE GROUP℠, DOVER and all other trademarks are property of Dover Corporation and its affiliates.

Manufactured using the following patents:
US Patent No. 6983196 / US Patent No. 8083034

BUY AMERICA

Res. No. 143 - 22 - 23. By Alderpersons Mitchell and Filicky-Peneski.
March 6, 2023.

A RESOLUTION confirming the exercise of police power in making an assessment for the benefited properties against which assessments are proposed for Parking Assessment District No. 1.

RESOLVED: That the assessments and schedule for the proposed assessments prepared by the City of Sheboygan for Parking Assessment District No. 1, are hereby confirmed, and the City Clerk is authorized and directed to publish the notices required by law.

FHP

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

III

Res. No. 144- 22 - 23. By Alderpersons Mitchell and Filicky-Peneski.
March 6, 2023.

A RESOLUTION confirming the exercise of police power in making an assessment for the benefited properties against which assessments are proposed for Parking Assessment District No. 2.

RESOLVED: That the assessments and schedule for the proposed assessments prepared by the City of Sheboygan for Parking Assessment District No. 2, are hereby confirmed, and the City Clerk is authorized and directed to publish the notices required by law.

FHP

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

III

Res. No. 145 - 22 - 23. By Alderpersons Mitchell and Filicky-Peneski.
March 6, 2023.

A RESOLUTION confirming the exercise of police power in making an assessment for the benefited properties against which assessments are proposed for Parking Assessment District No. 4.

RESOLVED: That the assessments and schedule for the proposed assessments prepared by the City of Sheboygan for Parking Assessment District No. 4, are hereby confirmed, and the City Clerk is authorized and directed to publish the notices required by law.

FAP

_____

_____

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

III

Res. No. 146 - 22 - 23. By Alderpersons Mitchell and Filicky-Peneski.
March 6, 2023.

A RESOLUTION confirming the exercise of police power in making an assessment for the benefited properties against which assessments are proposed for Parking Assessment District No. 5.

RESOLVED: That the assessments and schedule for the proposed assessments prepared by the City of Sheboygan for Parking Assessment District No. 5, are hereby confirmed, and the City Clerk is authorized and directed to publish the notices required by law.

FHP

_____

_____

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

III

Res. No. 147 - 22 - 23. By Alderpersons Dekker and Rust.
March 6, 2023.

A RESOLUTION authorizing executing a one-year lease for the agricultural property in the City of Sheboygan formerly owned by John Poth, Jr.

RESOLVED: That the Mayor and City Clerk are hereby authorized and directed to execute the attached lease with David L. Gartman for the 2023 agricultural use of approximately 30 acres of the former John Poth, Jr. property in the City of Sheboygan.

PW

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

LEASE AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2023, by and between the City of Sheboygan, Wisconsin, a municipal corporation of the State of Wisconsin, hereinafter referred to as "**LESSOR**," and David L. Gartman, 5509 Moenning Rd., Sheboygan, WI 53081, hereinafter referred to as "**LESSEE**."

IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE LESSOR AND THE LESSEE:

1. That the **LESSOR** does hereby lease and let unto the **LESSEE** approximately 30 acres of tillable land located within certain agricultural property described as follows:

59281470988	S 1/2 OF S.W. S.W., Sec. 10	59281-470988/470989/ 472509 & 472510 Parcel Ident. No.
59281470989	S 1/2 of S.E. S.W., Sec. 10	
59281472509	W 1/2 of N.W. S.E., Sec. 10	
59281472510	N 1/2 of W 1/2 of S.W. S.E., Sec. 10	

All in T.14N., R.23E., City of Sheboygan, County of Sheboygan, State of Wisconsin.

2. That the term of this lease shall be for the period from April January 1, 2023 through December 31, 2023.

3. That the total rental rate for this parcel of land for 2023 shall be at the rate of seventy ($70.00) dollars per acre, for a total of two thousand one hundred ($2,100.00) dollars per year, which shall be due and payable at the office of the Department of Public Works on the fifteenth (15th) day of December, 2023.

4. That the **LESSEE** shall use the plot of land only for agricultural purposes and that no other type of use is permitted thereon.

5. That the **LESSEE** agrees that the **LESSOR** may, at reasonable and proper times, and upon reasonable notice, enter upon the leased property whenever it is deemed to be in the public interest.

6. That the **LESSEE** shall save, protect and conserve the land to the best of his ability and commit no waste thereon.

7. The **LESSEE** hereby agrees that he will not assign, sublease, or otherwise grant or permit any other person to use the plot for any purpose whatsoever.

8. The **LESSEE** agrees to make no improvements of any kind whatsoever in or on the land.

9. The **LESSEE** hereby agrees that he will not encumber the land or crops growing thereon.

10. **LESSEE** shall not erect, install, operate or allow same, in or upon the land, any signs or other similar advertising devices without first having obtained the **LESSOR'S** written consent therefor.

11. **LESSOR** may construct, install and operate one (1) sign on said premises identifying said property.

12. The parties acknowledge that the property is being actively marketed for sale by **LESSOR**. **LESSOR** may remove from the total acreage leased any part thereof upon at least thirty (30) days written notice to **LESSEE**, and **LESSOR** shall not pay any damages for such taking of property from the **LESSEE**.

13. **LESSOR** shall be responsible for any and all taxes upon said land.

14. **LESSEE** shall save **LESSOR** harmless from any loss, cost or damage that may arise out of or in connection with this lease or the use of said premises by **LESSEE**, his agents, employees or any other person using said premises.

15. In the event the **LESSEE** shall become bankrupt or insolvent, or should a trustee or receiver be appointed to administer the **LESSEE'S** business, neither this lease nor any interest herein shall become an asset of such trustee or receiver, and, in the event of the appointment of any such trustee or receiver, this lease shall immediately terminate and end.

16. Waiver by the **LESSOR** of any default in performance by the **LESSEE** of any of the terms, covenants, or conditions contained herein, shall not be deemed a continuing waiver of the same or any subsequent default herein.

17. **LESSEE** shall have no right or interest in the renewal of this lease agreement.

Dated this ____ day of _____, 2023.

LESSEE

BY: _____
David L. Gartman

Dated this ____ day of _____, 2023.

CITY OF SHEBOYGAN (LESSOR)

BY: _____
Ryan Sorenson
Mayor

ATTEST: _____
Meredith DeBruin
City Clerk

Examined and Approved as to Form and Execution this ____ day of _____, 2023.

_____
Charles C. Adams
City Attorney

This document is authorized by and in accordance with Res. No. ___-22-23.

III

Res. No. 150 - 22 - 23. By Alderpersons Dekker and Rust. March 6, 2023.

A RESOLUTION authorizing the appropriate City officials to enter into a contract with Klunck Masonry LLC for the 2023 Sidewalk Program.

WHEREAS, the City of Sheboygan has advertised for bids to construct the 2023 Sidewalk Program (the "Project"); and

WHEREAS, four bids were received in response to that advertisement; and

WHEREAS, the bids were based on the plans and specifications contained in the Project Manual for the Project, a copy of which is attached to this resolution; and

WHEREAS, the low bid was from Klunck Masonry LLC for $76,975.000; and

WHEREAS, the City Engineer has reviewed the bids and determined that the low bid met all of the specifications.

NOW, THEREFORE, BE IT RESOLVED: That the Mayor and City Clerk are hereby authorized to enter into the attached agreement with Klunck Masonry, LLC, for the construction of the Project.

BE IT FURTHER RESOLVED: That the Finance Director is authorized to draw funds, not to exceed $76,975.00, from Account No. 400300-641300 (Capital Project Fund - Sidewalk/Trail Improvements) to pay for the construction done pursuant to the agreement:

PW

_____

_____

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20 . _____, City Clerk

Approved _____ 20 . _____, Mayor

AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between City of Sheboygan ("Owner") and

Klunck Masonry, LLC ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: municipal street and utility construction.

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: removing and reconstructing concrete sidewalks and approaches; removing and reconstructing curb, or curb and gutter; and restoration and clean-up of sites at locations designed by the Engineering Department in various locations throughout the City

2.02 City of Sheboygan Resolution: //Resolution Number//

ARTICLE 3 – ENGINEER

3.01 The part of the Project that pertains to the Work has been designed by the City of Sheboygan.

3.02 The Engineering Division, Department of Public Works, City of Sheboygan, Sheboygan, WI will assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. The Work will be substantially completed on or before August 26, 2023 and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the 14th day following substantial completion.

4.03 *Milestones*

A. Not Used.

4.04 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of

requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner the amount identified in paragraph 19.01 of the Supplementary Conditions for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.

2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner the amount identified in paragraph 19.01 of the Supplementary Conditions for each day that expires after such time until the Work is completed and ready for final payment.

3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

4. Milestones: Contractor shall pay Owner the amount identified in paragraph 19.01 of the Supplementary Conditions for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of each Milestone, until Milestone is achieved.

B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

4.05 *Special Damages*

C. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

D. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item) as stated in Contractor's Bid, attached hereto as an exhibit.

B. The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions,

estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on the third Wednesday of the Month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract

a. 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and

b. 0 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

6.04 *Interest*

A. All amounts not paid when due shall bear interest at the rate of 0 percent per annum.

ARTICLE 7 – CONTRACT DOCUMENTS

7.01 *Contents*

A. The Contract Documents consist of the following:

1. This Agreement.
2. Bonds:
    a. Performance bond (together with power of attorney).
    b. Payment bond (together with power of attorney).
3. Specifications as listed in the table of contents of the project manual (copy of list attached and incorporated by reference).
4. Addenda (not attached but incorporated by reference)
    a. None
5. Exhibits to this Agreement (enumerated as follows):
    a. Contractor's Bid consisting of 1 page.
6. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    a. Notice to Proceed,
    b. Work Change Directives,
    c. Change Orders,
    d. Field Order,
    e. Task Orders.

B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 7.

D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8 – ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 *Contractor's Representations*

A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:

1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.

5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.

6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.

7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

8.02 *Contractor's Certifications*

A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the

standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

(Continued on next page)

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

OWNER:
City of Sheboygan

By: _____
(signature)
Name,
Title: Ryan Sorenson, Mayor

Date: _____

Attest:

By: _____
(signature)
Name,
Title: Meredith DeBruin, City Clerk

Date: _____

Signatures authorized pursuant to Res. ___-22-23.

Address for giving notices:
City of Sheboygan – Engineering Division
2026 New Jersey Avenue
Sheboygan, WI 53081

Approved as to form and Execution:

By: _____
(signature)
Name, Charles C. Adams, City Attorney
Title:

Date: _____

CONTRACTOR:
Klunck Masonry, LLC

By: _____
(signature)
Name,
Title: _____
(printed)

Date: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Address for giving notices:

_____

_____

_____

2480-23 2023 Sidewalk Program (#8389392)
Owner: Sheboygan WI, City of
Solicitor: Sheboygan WI, City of
02/21/2023 10:00 AM CST

						Klunck Masonry LLC		ZR LLC Concrete		Forward		LaLonde Contractors, Inc.	
Section Title	Line Item	Item Code	Item Description	UofM	Quantity	Unit Price	Extension	Unit Price2	Extension3	Unit Price4	Extension5	Unit Price6	Extension7
2023 Sidewalk Program													
	1	2023-1	Remove Concrete Sidewalk and Approaches	SF	7500	$1.00	$7,500.00	$1.75	$13,125.00	$3.00	$22,500.00	$4.00	$30,000.00
	2	2023-2	Remove Concrete Aprons	SF	100	$2.25	$225.00	$2.25	$225.00	$3.00	$300.00	$6.50	$650.00
	3	2023-3	Remove Curb & Gutter	LF	50	$8.00	$400.00	$10.00	$500.00	$15.00	$750.00	$17.00	$850.00
	4	2023-4	Remove Integral Sidewalk/Curb	SF	100	$6.00	$600.00	$7.00	$700.00	$0.01	$1.00	$5.50	$550.00
	5	2023-5	Excessive Cut	CY	50	$25.00	$1,250.00	$30.00	$1,500.00	$0.01	$0.50	$50.00	$2,500.00
	6	2023-6	Excessive Fill/Gravel	Cy	50	$20.00	$1,000.00	$25.00	$1,250.00	$0.01	$0.50	$60.00	$3,000.00
	7	2023-7	Concrete Sidewalk 4-inch	SF	7500	$7.50	$56,250.00	$8.10	$60,750.00	$11.50	$86,250.00	$10.25	$76,875.00
	8	2023-8	Concrete Sidewalk 6-inch	SF	250	$6.00	$1,500.00	$8.25	$2,062.50	$11.50	$2,875.00	$12.50	$3,125.00
	9	2023-9	Concrete Apron 7-inch	SF	100	$6.50	$650.00	$8.25	$825.00	$11.50	$1,150.00	$16.00	$1,600.00
	10	2023-10	Concrete Curb and Gutter 30-inch	LF	50	$26.00	$1,300.00	$33.00	$1,650.00	$62.00	$3,100.00	$50.00	$2,500.00
	11	2023-11	Concrete Curb 6-inch	LF	50	$8.00	$400.00	$28.00	$1,400.00	$45.00	$2,250.00	$50.00	$2,500.00
	12	2023-12	Integral Sidewalk & Curb	SY	200	$6.00	$1,200.00	$7.50	$1,500.00	$0.01	$2.00	$12.00	$2,400.00
	13	2023-13	Concrete Sawing	LF	100	$9.00	$900.00	$9.00	$900.00	$0.01	$1.00	$3.00	$300.00
	14	2023-14	Grading For New Sidewalk	SF	500	$2.00	$1,000.00	$2.50	$1,250.00	$0.01	$5.00	$4.00	$2,000.00
	15	2023-15	4-inch Topsoil, Seed & Fertilizer	SY	60	$20.00	$1,200.00	$25.00	$1,500.00	$20.00	$1,200.00	$22.37	$1,342.20
	16	2023-16	Concrete Sidewalk 6-inch with Panel Finish	SF	100	$6.00	$600.00	$9.10	$910.00	$0.01	$1.00	$12.00	$1,200.00
	17	2023-17	Curb Ramp Detectabel Warning Field	EA	10	$100.00	$1,000.00	$225.00	$2,250.00	$400.00	$4,000.00	$450.00	$4,500.00
Total							**$76,975.00**		**$92,297.50**		**$124,386.00**		**$135,892.20**

PROJECT MANUAL

BID NUMBER:
2480-23

2023 Sidewalk Program

February 2023

CITY OF SHEBOYGAN
PUBLIC WORKS
Engineering Division
2026 New Jersey Ave
Sheboygan, WI 53081

PROJECT MAN				
CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Table of Contents	
		Section:	00 01 10	
		Bid Number:	2480-23	Page: 1 of 1

2022 Sidewalk Program

SECTION	TITLE	Pages
00 00 00	**PROCUREMENT AND CONTRACTING REQUIREMENTS**	
	Introductory Information	
00 01 01	Cover	1
00 01 10	Table of Contents	1
	Procurement Requirements	
00 11 13	Advertisement for Bids	1
00 21 13	Instructions for Bidders	10
00 41 43	Bid Form	6
00 41 44	Unit Price Worksheet	1
00 41 44.1	Quest Unit Price Worksheet	1
00 42 13	Bid Bond	2
00 45 13	Bidder's Proof of Responsibility	5
00 45 20	Proof of Responsibility and Non-Collusion Affidavit - Subcontractor	3
00 45 50	List of Subcontractors	1
	Contracting Requirements	
00 52 00	Agreement	7
00 55 00	Notice to Proceed	1
00 61 13	Performance Bond Form	3
00 61 14	Payment Bond Form	3
00 62 11	Submittal Cover	1
00 62 76	Application for Payment	2
00 63 13	Request for Information	1
00 63 63	Change Order Form	2
00 65 16	Certificate of Substantial Completion	1
00 65 18	Contractor's Affidavit of Compliance Certification and Release	1
00 65 19	Consent of Surety to Final Payment	1
00 72 00	Standard General Conditions of the Construction Contract – 2018	78
00 73 00	Supplementary Conditions	13
01 00 00	**GENERAL REQUIREMENTS**	
01 11 00	Summary of Work	2
01 14 00	Work Restrictions	5
01 43 00	Quality Assurance	2
01 55 26	Traffic Control	2
01 57 19	Temporary Environmental Controls	2
01 78 00	Closeout Requirements	2
01 78 19	Project Record Requirements	2
32 00 00	**EXTERIOR IMPROVEMENTS**	
32 10 50	Concrete Sidewalk Program	9

CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Advertisement for Bids		
		Section:	00 11 13		
		Bid Number:	2480-23	Page:	1 of 1

ADVERTISEMENT FOR BIDS

2023 Sidewalk Program

Bid No. 2480-23

Owner and Work: The City of Sheboygan hereby gives notice that sealed public bids will be received for the 2023 Sidewalk Program. The majority work of this contract is generally described as follows:

> 7,500 SF remove concrete sidewalk and approaches; 100 SF concrete apron removal; 50 LF remove curb and gutter; 100 SF remove integral sidewalk/curb; 50 CY excessive cut; 50 CY excessive fill , gravel; 7,500 SF, 4-inch concrete sidewalk; 250 SF, 6-inch concrete sidewalk; 50 LF, 30-inch curb and gutter; 100 SF, 7 -inch concrete aprons; 50 LF, 6-inch concrete curb; 200 SF, integral sidewalk and curb; 100 LF concrete sawing; 500 SF grading for new sidewalk; 60 SY 4-inch topsoil, seed, fertilizer; 100 SF, 6-inch concrete sidewalk with panel finish; 10 EA, curb ramp detectable warning fields. Root grinding and removal shall be incidental to the contract.

Time and Place of Bid Opening: Bids will be received until 10:00 AM Local Time on Tuesday, February 21, 2023. Bids will be received using the QuestCDN vBid website. No Paper bids will be accepted. Prospective bidders must be on the plan holders list through QuestCDN for bids to be accepted. To access the bid form, download the project documents and select the online bidding button on the online advertisement. As soon as practical, after said closing time, all bids will be opened online and a summary of the bids will be available. A public opening will be held at the Municipal Services Building located at 2026 New Jersey Avenue, Sheboygan, WI.

Bidding Documents: Complete digital project bidding documents are available at www.questcdn.com. You may download the digital plan documents for a non-refundable fee of $42 from the QuestCDN Website.

Quest eBidDoc Number for this project is: 8389392

QuestCDN: Please contact QuestCDN.com at 952-233-1632 or info@questcdninfo.com for assistance in free membership registration, downloading, bidding and working with this digital project information.

Pre-Bid Qualification: All bidders shall be required to file or have on file a valid Bidder's Proof of Responsibility form with the Engineering Division, City of Sheboygan, not less than five (5) days prior to the time of opening of these bids. Only bidders who have demonstrated their qualifications to perform the work will be permitted to bid. Forms are included in the proposed contract documents.

Subcontractors: The apparent Successful Bidder, and any other Bidder so requested, shall within ten (10) days after Bid opening, submit to the City a Bidder's Proof of Responsibility Affidavit and Non-Collusion Affidavit from each Subcontractor. Forms are included in the proposed contract documents.

Bid Security: A satisfactory Bid Bond, payable to the City of Sheboygan, WI, in an amount not less than five (5%) percent of the bid.

Legal Provisions: This contract letting shall be subject to the provisions of Section 62.15, 66.0901, and 779.15 of the Wisconsin Statutes.

Ryan J. Sazama, P.E., A.I.A.
City Engineer

TABLE OF CONTENTS

Page

ARTICLE 1 – DEFINED TERMS 2
ARTICLE 2 – COPIES OF BIDDING DOCUMENTS 2
ARTICLE 3 – QUALIFICATIONS OF BIDDERS 2
ARTICLE 4 – SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE 3
ARTICLE 5 – BIDDER'S REPRESENTATIONS 4
ARTICLE 6 – PRE-BID CONFERENCE 5
ARTICLE 7 – INTERPRETATIONS AND ADDENDA 5
ARTICLE 8 – BID SECURITY 5
ARTICLE 9 – CONTRACT TIMES 6
ARTICLE 10 – LIQUIDATED DAMAGES 6
ARTICLE 11 – SUBSTITUTE AND "OR-EQUAL" ITEMS 6
ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS, AND OTHERS 6
ARTICLE 13 – PREPARATION OF BID 7
ARTICLE 14 – BASIS OF BID 8
ARTICLE 15 – SUBMITTAL OF BID 8
ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID 8
ARTICLE 17 – OPENING OF BIDS 9
ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE 9
ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT 9
ARTICLE 20 – BONDS AND INSURANCE 10
ARTICLE 21 – SIGNING OF AGREEMENT 10

ARTICLE 1 – DEFINED TERMS

1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions.

1.02 QuestCDN has the following meaning:

A. The term "QuestCDN" is used to describe the Quest Construction Data Network website or the Quest vBid online bidding website, available at http://www.questcdn.com//.

ARTICLE 2 – COPIES OF BIDDING DOCUMENTS

2.01 Complete sets of the Bidding Documents may be obtained from the Issuing Office in the number and format stated in the bid advertisement.

2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

2.03 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license for any other use.

ARTICLE 3 – QUALIFICATIONS OF BIDDERS

3.01 Prospective Bidders are required to furnish or have on file a valid Bidder's Proof of Responsibility form (Form 00 45 13) with the City of Sheboygan Engineering Division not less than five (5) days prior to the time of opening of these bids. Forms for filing of such Proof of Responsibility are attached to the contract documents for the use of all interested bidders.

3.02 Said form shall fully develop the bidder's financial ability, adequacy of plant, equipment and organization, prior experience or competency to perform the work contemplated and other pertinent and material facts.

3.03 The City reserves the right to require separate Statements for bidding on each public contract. In no event shall this Statement of Bidder's Qualifications be used to qualify bidders for public contracts after one (1) year from Statement's date.

3.04 The City reserves the right to consider as unqualified any bidder that does not habitually perform, with his own forces, the major portions of the work under this contract and/or has performed unacceptable or substandard work for the City under previous City contracts.

3.05 A Bidder's failure to submit required qualification information within the times indicated will disqualify Bidder from bidding on the Contract.

3.06 No requirement in this Article 3 to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder's qualifications.

3.07 Bidder is advised to carefully review those portions of the Bid Form requiring Bidder's representations and certifications.

ARTICLE 4 – SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE

4.01 Site and Other Areas

A. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by Owner for the use of the Contractor. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by Contractor.

4.02 Existing Site Conditions

A. Subsurface and Physical Conditions; Hazardous Environmental Conditions

1. The Supplementary Conditions identify:

a. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site.

b. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

c. reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.

d. Technical Data contained in such reports and drawings.

2. Engineer will make copies of reports and drawings referenced above available to any Bidder on request. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy Bidder is entitled to rely, as provided in the General Conditions, has been identified and established in the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any Technical Data or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

3. If the Supplementary Conditions do not identify Technical Data, the default definition of Technical Data set forth in Article 1 of the General Conditions will apply.

Underground Facilities: Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or adjacent to the Site are set forth in the Contract Documents and are based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others.

B. Adequacy of Data: Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 5.03, 5.04, and 5.05 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 5.06 of the General Conditions.

4.03 Site Visit and Testing by Bidders

A. Bidder shall conduct the required Site visit during normal working hours, and shall not disturb any ongoing operations at the Site.

B. Bidder is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.

C. On request, and to the extent Owner has control over the Site, and schedule permitting, the Owner will provide Bidder access to the Site to conduct such additional examinations, investigations, explorations, tests, and studies as Bidder deems necessary for preparing and submitting a successful Bid. Owner will not have any obligation to grant such access if doing so is not practical because of existing operations, security or safety concerns, or restraints on Owner's authority regarding the Site.

D. Bidder shall comply with all applicable Laws and Regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by Owner or by property owners or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.

E. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

4.04 Other Work at the Site

A. Reference is made to Specification Section 01 11 00 –Summary of work in the Project Bidding Documents for the identification of the general nature of other work of which Owner is aware (if any) that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) and relates to the Work contemplated by these Bidding Documents. If Owner is party to a written contract for such other work, then on request, Owner will provide to each Bidder access to examine such contracts (other than portions thereof related to price and other confidential matters), if any.

ARTICLE 5 – BIDDER'S REPRESENTATIONS

5.01 It is the responsibility of each Bidder before submitting a Bid to:

A. examine and carefully study the Bidding Documents, and any data and reference items identified in the Bidding Documents;

B. visit the Site, conduct a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfy itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;

C. become familiar with and satisfy itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work;

D. carefully study all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings;

E. consider the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs;

F. agree, based on the information and observations referred to in the preceding paragraph, that at the time of submitting its Bid no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;

G. become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;

H. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder;

I. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work; and

J. agree that the submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 6 – PRE-BID CONFERENCE

6.01 A pre-bid conference will not be conducted for this Project.

ARTICLE 7 – INTERPRETATIONS AND ADDENDA

7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda delivered to all parties recorded as having received the Bidding Documents. Questions received less than three days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

7.02 Addenda may be issued to clarify, correct, supplement, or change the Bidding Documents.

ARTICLE 8 – BID SECURITY

8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of 5 percent of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a Bid bond (on the form included in the Bidding Documents) issued by a surety meeting the requirements of Paragraphs 6.01 and 6.02 of the General Conditions.

8.02 The Bid security of the apparent Successful Bidder will be retained until Owner awards the contract to such Bidder, and such Bidder has executed the Contract Documents, furnished the required contract security, and met the other conditions of the Notice of Award, whereupon the

Bid security will be released. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited. Such forfeiture shall be Owner's exclusive remedy if Bidder defaults.

8.03 The Bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Contract or 91 days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.

8.04 Bid security of other Bidders that Owner believes do not have a reasonable chance of receiving the award will be released within seven days after the Bid opening.

ARTICLE 9 – CONTRACT TIMES

9.01 The number of days within which, or the dates by which, Milestones, if identified are to be achieved and the Work is to be substantially completed, and completed and ready for final payment, are set forth in the Agreement.

ARTICLE 10 – LIQUIDATED DAMAGES

10.01 Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

ARTICLE 11 – SUBSTITUTE AND "OR-EQUAL" ITEMS

11.01 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration during the bidding and Contract award process of possible substitute or "or-equal" items. In cases in which the Contract allows the Contractor to request that Engineer authorize the use of a substitute or "or-equal" item of material or equipment, application for such acceptance may not be made to and will not be considered by Engineer until after the Effective Date of the Contract.

11.02 All prices that Bidder sets forth in its Bid shall be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of "or-equal" or substitution requests are made at Bidder's sole risk.

ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS, AND OTHERS

12.01 A Bidder shall be prepared to retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of the Work if required by the Bidding Documents (most commonly in the Specifications) to do so. If a prospective Bidder objects to retaining any such Subcontractor, Supplier, or other individual or entity, and the concern is not relieved by an Addendum, then the prospective Bidder should refrain from submitting a Bid.

12.02 Subsequent to the submittal of the Bid, Owner may not require the Successful Bidder or Contractor to retain any Subcontractor, Supplier, or other individual or entity against which Contractor has reasonable objection.

12.03 Bidder shall submit with the bid a list of proposed subcontractors in accordance with Wisconsin Statute Section 66.0901(7). The list may not be added to nor altered without the written consent of the City.

12.04 The apparent Successful Bidder, and any other Bidder so requested, shall within ten days after Bid opening, submit to the City a Bidder's Proof of Responsibility and Non-Collusion Affidavit (Document 00 42 20) from each Subcontractor.

If City, after due investigation, has reasonable objection to any proposed Subcontractor, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder shall submit a substitute, Bidder's Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and making the Contract award.

12.05 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors. Declining to make requested substitutions will constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor so listed and against which City makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to subsequent revocation of such acceptance as provided in Paragraph 7.06 of the General Conditions.

ARTICLE 13 – PREPARATION OF BID

13.01 The Electronic Bid Worksheet is available from QuestCDN. To access the electronic bid worksheet, download the project documents, then select online bidding on QuestCDN. A summary of the items and units is included in the documents for reference. The official bid worksheet is only available on QuestCDN

13.02 A Bid by a corporation shall be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation shall be shown.

13.03 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The partnership's address for receiving notices shall be shown.

13.04 A Bid by a limited liability company shall be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the firm's address for receiving notices shall be shown.

13.05 A Bid by an individual shall show the Bidder's name and address for receiving notices.

13.06 A Bid by a joint venture shall be executed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The joint venture's address for receiving notices shall be shown.

13.07 All names shall be printed in ink below the signatures.

13.08 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers and dates of which shall be filled in on the Bid Form.

13.09 Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.

ARTICLE 14 – BASIS OF BID

14.01 Unit Price

A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Worksheet under the required section.

If Alternates are present, include a separate unit price for each Alternate provided on the Bid Form. The price for the Alternates will be the amount added to or deleted from the Base Bid if the Owner selects the Alternate. In the evaluation of Bids, Owner may select any combination of Alternates or Owner may choose not to accept any Alternate Bids.

B. The "Bid Price" (sometimes referred to as the extended price) for each unit price Bid item will be the product of the "Estimated Quantity" (which Owner or its representative has set forth in the Bid Worksheet) for the item and the corresponding "Bid Unit Price" offered by the Bidder. The total of all unit price Bid items will be the sum of these "Bid Prices"; such total will be used by Owner for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions and as modified in the Supplementary Conditions.

C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

14.02 Allowances

A. For cash allowances the Bid price shall include such amounts as the Bidder deems proper for Contractor's overhead, costs, profit, and other expenses on account of cash allowances, if any, named in the Contract Documents, in accordance with Paragraph 13.02.B of the General Conditions.

ARTICLE 15 – SUBMITTAL OF BID

15.01 A Bid shall be received no later than the date and time prescribed in the advertisement or invitation to bid and shall be submitted using QuestCDN as prescribed in the advertisement or invitation to bid.

15.02 Only Bidders qualified in accordance with Article 3 will be allowed to access the Quest Bid Worksheet. Engineer will grant access to online Quest Bid Worksheet on QuestCDN. If bidder is qualified in accordance with Article 3 and needs access to Bid Worksheet, bidder shall contact Engineer.

15.03 Bid Security and other required documents shall be submitted using QuestCDN.

15.04 Paper bids or Bids received after the date and time prescribed for the opening of bids, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the Bidder unopened.

ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID

16.01 Bids may be modified and revised using QuestCDN until the such time the bids are opened as indicated in the advertisement or invitation to bid

16.02 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid,

and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

ARTICLE 17 – OPENING OF BIDS

17.01 Bids will be opened at the time and place indicated in the advertisement or invitation to bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the bids have been reviewed.

ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE

18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT

19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible. If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, then the Owner will reject the Bid as nonresponsive; provided that Owner also reserves the right to waive all minor informalities not involving price, time, or changes in the Work.

19.02 If Owner awards the contract for the Work, such award shall be to the responsible Bidder submitting the lowest responsive Bid. Only after authorization for such award is made by the City of Sheboygan Common Council, to whom all proposals will be referred for consideration, will the contract be awarded.

19.03 Evaluation of Bids

A. In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Worksheet or prior to the Notice of Award.

B. Bids will be evaluated and the low Bidder determined pursuant to Article 19:

1. If no Alternate is present, bids will be compared on the basis of the “Base Bid” and this amount will be the basis for determining the lowest Bidder.

2. If an Alternate is present, bids will be compared on the basis of the “Adjusted Base Bid” and this amount will be the basis for determining the lowest Bidder. The sum of the Total Base Bid and any combination of Alternates accepted by the Owner will determine the “Adjusted Base Bid.”

19.04 In evaluating whether a Bidder is responsible, Owner will consider the qualifications of the Bidder and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.

19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers.

ARTICLE 20 – BONDS AND INSURANCE

20.01 Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the Agreement (executed by Successful Bidder) to Owner, it shall be accompanied by required bonds and insurance documentation.

ARTICLE 21 – SIGNING OF AGREEMENT

21.01 When Owner issues a Notice of Award to the Successful Bidder, it shall be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 15 days thereafter, Successful Bidder shall execute and deliver the required number of counterparts of the Agreement (and any bonds and insurance documentation required to be delivered by the Contract Documents) to Owner. Within ten days thereafter, Owner shall deliver one fully executed counterpart of the Agreement to Successful Bidder, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.

ARTICLE 1 – THE PROJECT

The Project, of which the Work under the Bid is a part, is generally described as follows: **2023 Sidewalk Program** for the City of Sheboygan, Wisconsin, City Bid Number: **2480-73.**

ARTICLE 2 – BID RECIPIENT

2.01 This Bid is submitted to:

City of Sheboygan
2026 New Jersey Ave
Sheboygan, WI 53081

2.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 3 – BIDDER'S ACKNOWLEDGEMENTS

3.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 4 – BIDDER'S REPRESENTATIONS

4.01 *In submitting this Bid, Bidder represents that:*

A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

Addendum No.	Addendum, Date
_____	_____
_____	_____
_____	_____
_____	_____

B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent

to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.

F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.

G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.

H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.

I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.

J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 5 – BIDDER'S CERTIFICATION

5.01 *Bidder certifies that:*

A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;

B. Bidder is fully informed respecting the preparation and contents of the attached Bid and all of the pertinent circumstances respecting such Bid

C. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;

D. Bidder has not solicited or induced any individual or entity to refrain from bidding; and

E. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 5.01.D:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at

artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

F. The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the bidder or any of its agents, representatives, owners, employees or parties in interest, including this affiant.

ARTICLE 6 – BASIS OF BID

6.01 Bidder will complete the Work in accordance with the Contract Documents for the price submitted on the QuestCDN website.

6.02 Bidder acknowledges that (1) each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and (2) estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

ARTICLE 7 – TIME OF COMPLETION

7.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates indicated in the Agreement.

7.02 Bidder accepts the provisions of the Agreement and paragraph 19.01 of the Supplementary Conditions as to liquidated damages.

ARTICLE 8 – ATTACHMENTS TO THIS BID

8.01 The following documents are submitted using QuestCDN and made a condition of this Bid:

A. QuestCDN Bid Unit Price Worksheet as submitted on QuestCDN.

B. Required Bid security;

C. List of Subcontractors (Document 00 45 50).

ARTICLE 9 – DEFINED TERMS

9.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 10 – BIDDER'S PROOF OF RESPONSIBILY AFFIDAVIT

10.01 *Bidder certifies that*:

A. The bidder maintains a permanent place of business.

B. The bidder is authorized to do business in the State of Wisconsin.

C. The bidder possesses all valid, effective licenses, registrations, or certificates required for the bidder or its employees by federal, state, county or local law, necessary for the type of work it seeks to perform, including, but not limited to, licenses, registrations or certifications for any type of trade work or specialty work.

D. For projects funded in whole or in part by federal or state funding, that the bidder, or any agent, partner, employee or officer of the bidder, is not debarred, suspended, proposed for debarment or declared ineligible from contracting with any unit of federal, state or local government.

E. The bidder complies with 42 U.S.C. § 2000e and Federal Executive Order No. 11246 as amended by Executive Order No. 11375 (known as the Equal Opportunity Employer provision).

F. The bidder has general liability, workers' compensation and automobile insurance at levels sufficient to protect the city given the size of the project.

G. The bidder has complied with 40 U.S.C §§ 3141-3148 (Federal Davis-Bacon related Acts), and all rules and regulation therein, for projects undertaken by the contactor that are covered by these laws, for the past five (5) years.

H. For projects funded in whole or in part by federal or state funding, and where the contract amount exceeds $100,000, the bidder participates in a Registered Apprenticeship Program.

I. For projects funded in whole or in part by federal or state funding, that the Bidder has a written substance abuse prevention program meeting the requirements of Wis. Stat § 103.503.

J. The employees who will perform work on the project are properly classified as employees or independent bidders under all applicable state and federal laws.

K. The bidder has not been the subject of any investigation, order or judgment from any state or federal agency or court concerning an employment practice, including but not limited to, classification of employees, unemployment insurance, wage and hour laws, discrimination. If the bidder has been the subject of any investigation, order or judgment from any state or federal agency or court concerning an employment practice, the contactor must provide copies of the investigation, order or judgment.

L. Within the last five (5) years, the bidder has not been found by a final decision of a court or government agency in violation of any other law relating to its contracting business, including but not limited to environmental laws, bid-rigging or price fixing, antitrust or tax laws, where the penalty for such violation resulted in the imposition of fine, back pay damages or any other type of penalty in the amount of more than $10,000.

M. The bidder's employees who will perform work on the project are:

1. Covered under a current workers' compensation policy; and

2. Properly classified under such policy.

N. The bidder complies with all laws regarding health insurance coverage for employees.

O. The bidder has adequate financial resources to complete the public contract, as well as all other work the bidder is presently under contract to complete.

P. The bidder is bondable for the terms of the proposed public works contract.

Q. If required in the Director's discretion, the bidder has a record, viewable by the City upon request, of satisfactorily completing at least five projects of similar size and complexity within the last five years. Criteria that will be considered in determining satisfactory completion of projects may include, but is not limited to:

1. Completion of contracts in accordance with drawing and specifications;
2. Diligent execution of the work and completed contracts according to the established time schedules unless extensions are granted by the owner; and
3. Fulfilled guarantee requirements of the contract documents.

R. The bidder has, and diligently maintains, a written safety program.

S. The bidder has not received a serious, willful or repeated violation from OSHA in the last ten (10) years.

T. The bidder has not defaulted on any project in the past three (3) years.

ARTICLE 11 – SUBCONTRACTORS

11.01 Bidder agrees that Successful Bidder, and any other Bidder so requested, shall within ten (10) days after Bid opening, submit to the City a Proof of Responsibility Affidavit and Non-Collusion Affidavit from each Subcontractor (Document 00 45 20).

(Continued on Next Page)

ARTICLE 12 – BID SUBMITTAL

BIDDER: *[Indicate correct name of bidding entity]*

_____

By:
[Signature] _____

[Printed name] _____
(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:
[Signature] _____

[Printed name] _____

Title: _____

Submittal Date: _____

Address for giving notices:

_____

_____

_____

Telephone Number: _____

Fax Number: _____

Contact Name and e-mail address: _____

_____

CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Unit Price Worksheet		
		Section:	00 41 44		
		Bid Number:	2480-73	Page:	1 of 1

PART 1 – GENERAL

1.01 SUMMARY

A. The bid worksheet on the following page(s) is representative of the official bid worksheet located on the QuestCDN website.

B. The bid worksheet located on the QuestCDN website takes precedence over the bid worksheet in this section.

PART 2 – PRODUCTS

(NOT USED)

PART 3 – EXECUTION

(NOT USED)

END OF SECTION

Section Title	Line Item	Item Code	Item Description	UofM	Quantity	Unit Price	Extension
2023 Sidewalk Program	Required						
	1	2023-1	Remove Concrete Sidewalk and Approaches	SF	7500		
	2	2023-2	Remove Concrete Aprons	SF	100		
	3	2023-3	Remove Curb & Gutter	LF	50		
	4	2023-4	Remove Integral Sidewalk/Curb	SF	100		
	5	2023-5	Excessive Cut	CY	50		
	6	2023-6	Excessive Fill/Gravel	Cy	50		
	7	2023-7	Concrete Sidewalk 4-inch	SF	7500		
	8	2023-8	Concrete Sidewalk 6-inch	SF	250		
	9	2023-9	Concrete Apron 7-inch	SF	100		
	10	2023-10	Concrete Curb and Gutter 30-inch	LF	50		
	11	2023-11	Concrete Curb 6-inch	LF	50		
	12	2023-12	Integral Sidewalk & Curb	SY	200		
	13	2023-13	Concrete Sawing	LF	100		
	14	2023-14	Grading For New Sidewalk	SF	500		
	15	2023-15	4-inch Topsoil, Seed & Fertilizer	SY	60		
	16	2023-16	Concrete Sidewalk 6-inch with Panel Finish	SF	100		
	17	2023-17	Curb Ramp Detectabel Warning Field	EA	10		

BID BOND

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER *(Name and Address)*:

SURETY *(Name, and Address of Principal Place of Business)*:

OWNER *(Name and Address)*:

BID

Bid Due Date:

Description *(Project Name— Include Location)*:

BOND

Bond Number:

Date:

Penal sum _____ $ _____

(Words) (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER	**SURETY**
_____ (Seal)	_____ (Seal)
Bidder's Name and Corporate Seal	Surety's Name and Corporate Seal
By: _____	By: _____
Signature	Signature (Attach Power of Attorney)
_____	_____
Print Name	Print Name
_____	_____
Title	Title
Attest: _____	Attest: _____
Signature	Signature
Title	Title

Note: Addresses are to be used for giving any required notice.
Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.

2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.

3. This obligation shall be null and void if:

3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or

3.2 All Bids are rejected by Owner, or

3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).

4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.

5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.

6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after the Bid due date.

7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.

8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.

9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.

10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

ARTICLE 1 – PROOF OF RESPONSIBILY AFFIDAVIT

1.01 *Subcontractor certifies that*:

A. The Subcontractor maintains a permanent place of business.

B. The Subcontractor is authorized to do business in the State of Wisconsin.

C. The Subcontractor possesses all valid, effective licenses, registrations, or certificates required for the Subcontractor or its employees by federal, state, county or local law, necessary for the type of work it seeks to perform, including, but not limited to, licenses, registrations or certifications for any type of trade work or specialty work.

D. For projects funded in whole or in part by federal or state funding, that the Subcontractor, or any agent, partner, employee or officer of the Subcontractor, is not debarred, suspended, proposed for debarment or declared ineligible from contracting with any unit of federal, state or local government.

E. The Subcontractor complies with 42 U.S.C. § 2000e and Federal Executive Order No. 11246 as amended by Executive Order No. 11375 (known as the Equal Opportunity Employer provision).

F. The Subcontractor has general liability, workers' compensation and automobile insurance at levels sufficient to protect the city given the size of the project.

G. The Subcontractor has complied with 40 U.S.C §§ 3141-3148 (Federal Davis-Bacon related Acts), and all rules and regulation therein, for projects undertaken by the contactor that are covered by these laws, for the past five (5) years.

H. For projects funded in whole or in part by federal or state funding, and where the contract amount exceeds $100,000, the Subcontractor participates in a Registered Apprenticeship Program.

I. For projects funded in whole or in part by federal or state funding, that the Subcontractor has a written substance abuse prevention program meeting the requirements of Wis. Stat § 103.503.

J. The employees who will perform work on the project are properly classified as employees or independent Subcontractors under all applicable state and federal laws.

K. The Subcontractor has not been the subject of any investigation, order or judgment from any state or federal agency or court concerning an employment practice, including but not limited to, classification of employees, unemployment insurance, wage and hour laws, discrimination. If the Subcontractor has been the subject of any investigation, order or judgment from any state or federal agency or court concerning an employment practice, the contactor must provide copies of the investigation, order or judgment.

L. Within the last five (5) years, the Subcontractor has not been found by a final decision of a court or government agency in violation of any other law relating to its contracting business, including but not limited to environmental laws, bid-rigging or price fixing, antitrust or tax laws, where the penalty for such violation resulted in the imposition of fine, back pay damages or any other type of penalty in the amount of more than $10,000.

M. The Subcontractor's employees who will perform work on the project are:

1. Covered under a current workers' compensation policy; and
2. Properly classified under such policy.

N. The Subcontractor complies with all laws regarding health insurance coverage for employees.

O. The Subcontractor has adequate financial resources to complete the public contract, as well as all other work the Subcontractor is presently under contract to complete.

P. The Subcontractor is bondable for the terms of the proposed public works contract.

Q. If required in the Director's discretion, the Subcontractor has a record, viewable by the City upon request, of satisfactorily completing at least five projects of similar size and complexity within the last five years. Criteria that will be considered in determining satisfactory completion of projects may include, but is not limited to:

1. Completion of contracts in accordance with drawing and specifications;
2. Diligent execution of the work and completed contracts according to the established time schedules unless extensions are granted by the owner; and
3. Fulfilled guarantee requirements of the contract documents.

R. The Subcontractor has, and diligently maintains, a written safety program.

S. The Subcontractor has not received a serious, willful or repeated violation from OSHA in the last ten (10) years.

T. The Subcontractor has not defaulted on any project in the past three (3) years.

ARTICLE 2 – NON-COLLUSION AFFIDAVIT

A. Subcontractor is fully informed respecting the preparation and contents of the subcontractor's Proposal submitted by the subcontractor to the Contractor, listed above, for certain work in connection with the contract pertaining to the Project in City of Sheboygan, Wisconsin

B. Such subcontractor's Proposal is genuine and is not a collusive or sham proposal:

C. Neither the subcontractor nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm, or person to submit a collusive or sham proposal in connection with such Contract or to refrain from submitting a proposal in connection with such Contract, or has in any manner, directly or indirectly, sought by unlawful agreement or connivance with any other Bidder, firm or person to fix the price or prices in said subcontractor's Proposal or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the (Local Public Agency) or any person interested in the proposed Contract; and

D. The price or prices quoted in the subcontractor's Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees or parties in interest, including this affiant.

(Continued on Next Page)

Subcontractor: *[Indicate correct name of entity]*

_____

By:
[Signature] _____

[Printed name] _____
(If Subcontractor is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:
[Signature] _____

[Printed name] _____

Title: _____

Submittal Date: _____

PROJECT MAN...					
CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	List of Subcontractors		
		Section:	00 45 50		
		Bid Number:	2480-23	Page:	1 of 1

Project Name: **2023 Sidewalk Program**

List proposed subcontractors below. If no subcontractors are proposed check the box next to "No Subcontractors". This form is still required to be submitted if no Subcontractors are proposed. Add Additional sheets as may be necessary.

☐ No Subcontractors.

Name of Proposed Subcontractors			Class of Work
1	Name:		
	Address:		
2	Name:		
	Address:		
3	Name:		
	Address:		
4	Name:		
	Address:		
5	Name:		
	Address:		
6	Name:		
	Address:		
7	Name:		
	Address:		
8	Name:		
	Address:		

AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between City of Sheboygan ("Owner") and //Contractor// ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: municipal street and utility construction.

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: 2023 Sidewalk Program, 2480-23

2.02 City of Sheboygan Resolution: //Resolution Number//

ARTICLE 3 – ENGINEER

3.01 The part of the Project that pertains to the Work has been designed by the City of Sheboygan.

3.02 The Engineering Division, Department of Public Works, City of Sheboygan, Sheboygan, WI will assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. The Work will be substantially completed on or before August 26, 2023 and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the 14th day following substantial completion.

4.03 *Milestones*

A. Not Used.

4.04 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner the amount identified in paragraph 19.01 of the Supplementary Conditions for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.

2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner the amount identified in paragraph 19.01 of the Supplementary Conditions for each day that expires after such time until the Work is completed and ready for final payment.

3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

4. Milestones: Contractor shall pay Owner the amount identified in paragraph 19.01 of the Supplementary Conditions for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of each Milestone, until Milestone is achieved.

B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

4.05 *Special Damages*

C. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

D. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item) as stated in Contractor's Bid, attached hereto as an exhibit.

B. The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on the third Wednesday of the Month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract

a. 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and

b. 0 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

6.04 *Interest*

A. All amounts not paid when due shall bear interest at the rate of 0 percent per annum.

ARTICLE 7 – CONTRACT DOCUMENTS

7.01 *Contents*

A. The Contract Documents consist of the following:

1. This Agreement.

2. Bonds:

a. Performance bond (together with power of attorney).

b. Payment bond (together with power of attorney).

3. Specifications as listed in the table of contents of the project manual (copy of list attached and incorporated by reference).

4. Drawings as listed in the table of contents of the drawings (copy of list attached and incorporated by reference).

5. Addenda (not attached but incorporated by reference)

a. Number **{Number}** dated **{Date}**.

b. Number **{Number}** dated **{Date}**.

c. Number **{Number}** dated **{Date}**.

6. Exhibits to this Agreement (enumerated as follows):

a. Contractor's Bid consisting of **{Total Pages}**.

7. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:

a. Notice to Proceed,

b. Work Change Directives,

c. Change Orders,

d. Field Order,

e. Task Orders.

B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 7.

D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8 – ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 *Contractor's Representations*

A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:

1. Contractor has examined and carefully studied the Contract Documents, including Addenda.

2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.

4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to

existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.

5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.

6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.

7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

8.02 *Contractor's Certifications*

A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

(Continued on next page)

PROJECT MAN...				
CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Agreement	
		Section:	00 52 00	
		Bid Number:	2480-73	Page: 7 of 7

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

OWNER:
City of Sheboygan

By: _____
(signature)
Name,
Title: Ryan Sorenson, Mayor

Date: _____

Attest:

By: _____
(signature)
Name,
Title: Meredith DeBruin, City Clerk

Date: _____

Signatures authorized pursuant to Res. ___-22-23.

Address for giving notices:
City of Sheboygan – Engineering Division
2026 New Jersey Avenue
Sheboygan, WI 53081

Approved as to form and Execution:

By: _____
(signature)
Name, Charles C. Adams, City Attorney
Title:

Date: _____

CONTRACTOR:
{Contractor}_____

By: _____
(signature)
Name,
Title: _____
(printed)

Date: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Address for giving notices:

_____

_____

_____

Project Name: Click here to enter text.

Bid Number: Click here to enter text.

Contractor: Click here to enter text.

TO CONTRACTOR:

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on [_____, 20__]. *[see Paragraph 4.01 of the General Conditions]*

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work shall be done at the Site prior to such date. In accordance with the Agreement, [the date of Substantial Completion is _____, and the date of readiness for final payment is_____] and the number of days to achieve readiness for final payment is _____].

Before starting any Work at the Site, Contractor must comply with the following:

[Note any access limitations, security procedures, or other restrictions]

By: _____
Engineer/Project Manager

Title: _____

Date: _____

EJCDC
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

PERFORMANCE BOND

CONTRACTOR *(name and address)*:

SURETY *(name and address of principal place of business)*:

OWNER *(name and address)*:

CONSTRUCTION CONTRACT
Effective Date of the Agreement:
Amount:
Description *(name and location)*:

BOND
Bond Number:
Date *(not earlier than the Effective Date of the Agreement of the Construction Contract)*:
Amount:
Modifications to this Bond Form: ☐ None ☐ See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

_____ *(seal)*
Contractor's Name and Corporate Seal

By: _____
Signature

_____
Print Name

_____
Title

Attest: _____
Signature

_____
Title

SURETY

_____ *(seal)*
Surety's Name and Corporate Seal

By: _____
Signature *(attach power of attorney)*

_____
Print Name

_____
Title

Attest: _____
Signature

_____
Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

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1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

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10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

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EJCDC
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

PAYMENT BOND

CONTRACTOR *(name and address)*:

SURETY *(name and address of principal place of business)*:

OWNER *(name and address)*:

CONSTRUCTION CONTRACT

Effective Date of the Agreement:
Amount:
Description *(name and location)*:

BOND

Bond Number:
Date *(not earlier than the Effective Date of the Agreement of the Construction Contract)*:
Amount:
Modifications to this Bond Form: ☐ None ☐ See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

_____ *(seal)*
Contractor's Name and Corporate Seal

By: _____
Signature

_____
Print Name

_____
Title

Attest: _____
Signature

_____
Title

SURETY

_____ *(seal)*
Surety's Name and Corporate Seal

By: _____
Signature *(attach power of attorney)*

_____
Print Name

_____
Title

Attest: _____
Signature

_____
Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

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1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.

4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.

5. The Surety's obligations to a Claimant under this Bond shall arise after the following:

   5.1 Claimants who do not have a direct contract with the Contractor,

      5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and

      5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).

   5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).

6. If a notice of non-payment required by Paragraph 5.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.

7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

   7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

   7.2 Pay or arrange for payment of any undisputed amounts.

   7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.

11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

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12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. **Definitions**

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default**: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:

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CITY OF SHEBOYGAN
SUBMITTAL FORM
DOCUMENT 00 62 11

DATE: Click here to enter a date.

CITY BID NUMBER: Click here to enter text.

SUBMITTAL #: Click here to enter text.

PROJECT TITLE: Click here to enter text.

SUBMITTED BY: Click here to enter text.

CONTRACTOR: Click here to enter text.

SPECIFICATION SECTION OR DRAWING NUMBER:

Click here to enter text.

DESCRIPTION OF ITEMS INCLUDED IN SUBMITTAL:

Click here to enter text.

DOCUMENTS ATTACHED: ☐ Shop Drawings ☐ Product Data ☐ Test Results ☐ Other

COMMENTS:

Click here to enter text.

Contractor's Application for Payment No.

	Application Period:	Application Date:
To	From (Contractor):	Via (Engineer): N/A
Project:	City Bid Number:	Contractor's Project No.:

Application For Payment

Change Order Summary

Approved Change Orders

Number	Additions	Deductions
TOTALS		
NET CHANGE BY CHANGE ORDERS		

1. ORIGINAL CONTRACT PRICE..... $ _____

2. Net change by Change Orders..... $ _____

3. Current Contract Price (Line 1 ± 2)..... $ _____

4. TOTAL COMPLETED AND STORED TO DATE
(Column F total on Progress Estimates)..... $ _____

5. RETAINAGE:

a. 5% X _____ **Work Completed**..... $ _____

b. X _____ **Stored Material**..... $ _____

c. Total Retainage (Line 5.a + Line 5.b)..... $ _____

6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5.c)..... $ _____

7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)..... $ _____

8. AMOUNT DUE THIS APPLICATION..... $ _____

9. BALANCE TO FINISH, PLUS RETAINAGE
(Column G total on Progress Estimates + Line 5.c above)..... $ _____

Contractor's Certification

The undersigned Contractor certifies, to the best of its knowledge, the following:
(1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;
(2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interest, or encumbrances); and
(3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

Contractor Signature

By:	Date:

Payment of: $ _____
(Line 8 or other - attach explanation of the other amount)

is recommended by: _____ _____
(Engineer/Project Manager) (Date)

Payment of: $ _____
(Line 8 or other - attach explanation of the other amount)

is approved by: _____ _____
(City of Sheboygan) (Date)

Progress Estimate - Unit Price Work

Contractor's Application

For (Contract):								Application Number:			
Application Period:								Application Date:			
A					B	C	D	E	F		
Item		Contract Information				Estimated Quantity Installed	Value of Work Installed to Date	Materials Presently Stored (not in C)	Total Completed and Stored to Date (D + E)	% (F / B)	Balance to Finish (B - F)
Bid Item No.	Description	Item Quantity	Units	Unit Price	Total Value of Item ($)						
	Page Totals										

CITY OF SHEBOYGAN
REQUEST FOR INFORMATION
DOCUMENT 00 63 13

RFI #: Click here to enter text.

CITY BID NUMBER: Click here to enter text.

DATE SUBMITTED: Click here to enter a date.

PROJECT TITLE: Click here to enter text.

DATE RESPONSE REQUESTED: Click here to enter a date.

REQUESTED BY: Click here to enter text.

CONTRACTOR: Click here to enter text.

SPECIFICATION SECTION OR DRAWING NUMBER:

Click here to enter text.

DESCRIPTION OF REQUEST:

Click here to enter text.

DOCUMENTS ATTACHED: ☐ Yes ☐ No

DETAILED RESPONSE:

Click here to enter text.

DOCUMENTS ATTACHED: ☐ Yes ☐ No

PREPARED BY: Click here to enter text.

DATE RESPONSE SENT: Click here to enter a date.

CITY OF SHEBOYGAN
PUBLIC WORKS

Contract Change Order

Change Order Number: _____

Project: _____ **Date of Issuance:** _____

Bid Number: _____ **Effective Date:** _____

Contractor: _____

Change in Contract Price Summary

Original Contract Price:	
Increase/(Decrease) from Previously Accepted Change Orders:	
Contract Price Prior to this Change Order:	
Increase/(Decrease) of this Change Order:	
Contract Price Incorporating this Change Order:	

Change in Contract Times Summary

	Substantial Completion	Ready for Final Payment
Original Completion Date (or days):		
Increase/(Decrease) from Previously Accepted Change Orders:		
Completion Date (or days) Prior to this Change Order:		
Increase/(Decrease) of this Change Order:		
Completion Date (or days) Incorporating this Change Order:		

The Contract is modified as follows upon execution of this Change Order:

Add the Following Items of Work

Item #:	Description	Qty.	Unit	Unit Price	Extension

Total Additional Work:

Revise the Following Items of Work

		Original				Revised			
Item #:	Description	Quantity	Units	Unit Price	Extension	Quantity	Units	Unit Price	Extension
N/A									
		Original Total:				**Revised Total:**			

Total Revised Work *(Revised - Original)*:

	Contract
Total Additional Work:	
Total Revised Work:	
Net Change in Contract:	

Final quantities to be determined based on actual quantities constructed and measured.

CITY OF SHEBOYGAN
PUBLIC WORKS

Contract Change Order

Change Order Number: _____

Project: _____ **Date of Issuance:** _____

Bid Number: _____ **Effective Date:** _____

Contractor: _____

Revise the Project Manual and Specifications as Follo

Signatures

Recommended By: _____ Engineer/Project Manager — Date: _____

Accepted By: _____ Contractor (Authorized) — Date: _____

Accepted By: _____ City of Sheboygan — Date: _____

Project Name: Click here to enter text.

Bid Number: Click here to enter text.

Contractor: Click here to enter text.

This ☐Preliminary ☐Final Certificate of Substantial Completion applies to:

☐ All Work

☐ The following specified portions of the Work:

//Enter text here//

Date of Substantial Completion: Click here to enter a date.

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Work or portion thereof designated above is hereby established, subject to the provisions of the Contract pertaining to Substantial Completion. The date of Substantial Completion in the final Certificate of Substantial Completion marks the commencement of the contractual correction period and applicable warranties required by the Contract.

A punch list of items to be completed or corrected is attached to this Certificate, if appropriate. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract.

The following documents are attached to and made a part of this Certificate: Click here to enter text.

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract.

EXECUTED BY CITY:		RECEIVED:	
By:	Engineer/Project Manager	By:	Contractor (Authorized Signature)
Title:		Title:	
Date:		Date:	

PROJECT MAN...					
CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Contractor's Affidavit of Compliance		
		Section:	00 65 18		
		Bid Number:	2480-73	Page:	1 of 1

PROJECT NAME: **2023 Sidewalk Program**

I CERTIFY to the best of my knowledge and belief that all work has been performed and materials supplied in strict accordance with the terms and conditions of the corresponding contract documents between the CITY OF SHEBOYGAN, hereinafter called the OWNER, and _____, hereinafter called the Contractor, for the above referenced project.

I further certify and declare that, except as listed below, all bills for materials, supplied, utilities, and for all other things furnished or caused to be furnished by the CONTRACTOR and used in the execution of the contract will be fully paid upon receipt of Final Payment and that there are no unpaid obligations, liens, claims, security interests, encumbrances, liabilities, and/or demands of State or Federal Agencies, subcontractors, materialmen, mechanics, laborers, or any others resulting from or arising out of any work done, caused to be done, or ordered to be done by the Contractor under the contract.

EXCEPTIONS: (If none, write "NONE," Contractor shall furnish a bond, acceptable to the Owner, for each exception)

In consideration of the prior and final payments made and all payments made for authorized changes, the Contractor releases and forever discharges the OWNER from any and all obligations, liens, claims, security interests, encumbrances, and/or liabilities arising by virtue of the contract and authorized changes between the parties, either verbal or in writing, and any and all claims and demands of every kind and character whatsoever against the OWNER, arising out of or in any way relating to the contract and authorized changes.

I further certify and agree that the warranty period is defined as commencing with Substantial Completion (or with each Substantial Completion if there is more than one) of the Project, or any portion thereof, and continuing for one (1) calendar year from the date of Final Acceptance of the entire project unless otherwise modified in writing as part of the Substantial Completion of Final Acceptance.

This statement is made for the purpose of inducing the Owner to make FINAL PAYMENT under the terms of the contract, relying on the trust and statements contained herein.

_____
Signed

_____
Title

Subscribed and sworn to before me
this _____ day of _____, 20____.

_____

_____

My commission expires _____ (Seal)

PROJECT MAN					
CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Consent of Surety to Final Payment		
		Section:	00 65 19		
		Bid Number:	2480-73	Page:	1 of 1

TO OWNER: City of Sheboygan
2026 New Jersey Avenue
Sheboygan, WI

PROJECT NAME: **2023 Sidewalk Program**

DATE: _____

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the

Surety Name: _____

Address: _____

_____

_____, Surety,

on bond of,

Contractor Name: _____

Address: _____

_____

_____, Contractor,

hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall not relieve the Surety of any of its obligations to

City of Sheboygan
2026 New Jersey Avenue
Sheboygan, WI , Owner,

as set for in said Surety's bond.

_____
(Surety)

Attest:
(Seal):

_____
(Signature of Authorized Representative)

_____
(Print Name and Title)

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

TABLE OF CONTENTS

Page

Article 1—Definitions and Terminology 1
1.01 Defined Terms 1
1.02 Terminology 6
Article 2—Preliminary Matters 7
2.01 Delivery of Performance and Payment Bonds; Evidence of Insurance 7
2.02 Copies of Documents 7
2.03 Before Starting Construction 8
2.04 Preconstruction Conference; Designation of Authorized Representatives 8
2.05 Acceptance of Schedules 8
2.06 Electronic Transmittals 9
Article 3—Contract Documents: Intent, Requirements, Reuse 9
3.01 Intent 9
3.02 Reference Standards 10
3.03 Reporting and Resolving Discrepancies 10
3.04 Requirements of the Contract Documents 11
3.05 Reuse of Documents 11
Article 4—Commencement and Progress of the Work 12
4.01 Commencement of Contract Times; Notice to Proceed 12
4.02 Starting the Work 12
4.03 Reference Points 12
4.04 Progress Schedule 12
4.05 Delays in Contractor's Progress 12
Article 5—Site; Subsurface and Physical Conditions; Hazardous Environmental Conditions 14
5.01 Availability of Lands 14
5.02 Use of Site and Other Areas 14
5.03 Subsurface and Physical Conditions 15
5.04 Differing Subsurface or Physical Conditions 16

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5.05 Underground Facilities 18
5.06 Hazardous Environmental Conditions at Site 19
Article 6—Bonds and Insurance 22
6.01 Performance, Payment, and Other Bonds 22
6.02 Insurance—General Provisions 22
6.03 Contractor's Insurance 24
6.04 Builder's Risk and Other Property Insurance 25
6.05 Property Losses; Subrogation 26
6.06 Receipt and Application of Property Insurance Proceeds 27
Article 7—Contractor's Responsibilities 27
7.01 Contractor's Means and Methods of Construction 27
7.02 Supervision and Superintendence 28
7.03 Labor; Working Hours 28
7.04 Services, Materials, and Equipment 28
7.05 "Or Equals" 29
7.06 Substitutes 30
7.07 Concerning Subcontractors and Suppliers 31
7.08 Patent Fees and Royalties 32
7.09 Permits 33
7.10 Taxes 33
7.11 Laws and Regulations 33
7.12 Record Documents 34
7.13 Safety and Protection 34
7.14 Hazard Communication Programs 35
7.15 Emergencies 35
7.16 Submittals 36
7.17 Contractor's General Warranty and Guarantee 38
7.18 Indemnification 39
7.19 Delegation of Professional Design Services 40
Article 8—Other Work at the Site 41
8.01 Other Work 41
8.02 Coordination 41
8.03 Legal Relationships 42

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Article 9—Owner's Responsibilities 43
9.01 Communications to Contractor 43
9.02 Replacement of Engineer 43
9.03 Furnish Data 43
9.04 Pay When Due 43
9.05 Lands and Easements; Reports, Tests, and Drawings 43
9.06 Insurance 43
9.07 Change Orders 43
9.08 Inspections, Tests, and Approvals 44
9.09 Limitations on Owner's Responsibilities 44
9.10 Undisclosed Hazardous Environmental Condition 44
9.11 Evidence of Financial Arrangements 44
9.12 Safety Programs 44
Article 10—Engineer's Status During Construction 44
10.01 Owner's Representative 44
10.02 Visits to Site 44
10.03 Resident Project Representative 45
10.04 Engineer's Authority 45
10.05 Determinations for Unit Price Work 45
10.06 Decisions on Requirements of Contract Documents and Acceptability of Work 45
10.07 Limitations on Engineer's Authority and Responsibilities 45
10.08 Compliance with Safety Program 46
Article 11—Changes to the Contract 46
11.01 Amending and Supplementing the Contract 46
11.02 Change Orders 46
11.03 Work Change Directives 47
11.04 Field Orders 47
11.05 Owner-Authorized Changes in the Work 47
11.06 Unauthorized Changes in the Work 48
11.07 Change of Contract Price 48
11.08 Change of Contract Times 49
11.09 Change Proposals 49
11.10 Notification to Surety 51

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Article 12—Claims 51
12.01 Claims 51
Article 13—Cost of the Work; Allowances; Unit Price Work 52
13.01 Cost of the Work 52
13.02 Allowances 56
13.03 Unit Price Work 56
Article 14—Tests and Inspections; Correction, Removal, or Acceptance of Defective Work 57
14.01 Access to Work 57
14.02 Tests, Inspections, and Approvals 57
14.03 Defective Work 58
14.04 Acceptance of Defective Work 58
14.05 Uncovering Work 59
14.06 Owner May Stop the Work 59
14.07 Owner May Correct Defective Work 59
Article 15—Payments to Contractor; Set-Offs; Completion; Correction Period 60
15.01 Progress Payments 60
15.02 Contractor's Warranty of Title 63
15.03 Substantial Completion 63
15.04 Partial Use or Occupancy 64
15.05 Final Inspection 65
15.06 Final Payment 65
15.07 Waiver of Claims 66
15.08 Correction Period 67
Article 16—Suspension of Work and Termination 68
16.01 Owner May Suspend Work 68
16.02 Owner May Terminate for Cause 68
16.03 Owner May Terminate for Convenience 69
16.04 Contractor May Stop Work or Terminate 69
Article 17—Final Resolution of Disputes 70
17.01 Methods and Procedures 70
Article 18—Miscellaneous 70
18.01 Giving Notice 70
18.02 Computation of Times 70

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18.03 Cumulative Remedies 70
18.04 Limitation of Damages 71
18.05 No Waiver 71
18.06 Survival of Obligations 71
18.07 Controlling Law 71
18.08 Assignment of Contract 71
18.09 Successors and Assigns 71
18.10 Headings 71

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.

3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

5. *Bidder*—An individual or entity that submits a Bid to Owner.

6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.

7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.

8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.

9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.

10. *Claim*

a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by

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Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.

b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.

c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.

d. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.

13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.

14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.

15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.

16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.

17. *Cost of the Work*—See Paragraph 13.01 for definition.

18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.

20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.

21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or

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communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.

23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.

24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.

    a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.

    b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.

    c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.

25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.

29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.

30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.

31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.

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32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.

34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals.

36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.

39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part

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thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.

44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.

45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

46. *Technical Data*

    a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.

    b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.

    c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.

47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

48. *Unit Price Work*—Work to be paid for on the basis of unit prices.

49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

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50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 *Terminology*

A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. *Day*: The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective*: The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

1. does not conform to the Contract Documents;

2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or

3. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).

E. *Furnish, Install, Perform, Provide*

1. The word "furnish," when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.

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4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words "furnish," "install," "perform," or "provide," then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

F. *Contract Price or Contract Times*: References to a change in "Contract Price or Contract Times" or "Contract Times or Contract Price" or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term "or both" is not expressed.

G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).

B. *Evidence of Contractor's Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.

C. *Evidence of Owner's Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

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2.03 *Before Starting Construction*

A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

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2.06 *Electronic Transmittals*

A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.

B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.

C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.

C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.

D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.

E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

G. Nothing in the Contract Documents creates:

1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or

2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

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3.02 *Reference Standards*

A. *Standards Specifications, Codes, Laws and Regulations*

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements*: Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

2. *Contractor's Review of Contract Documents*: If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take

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precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:

a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.

C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

A. Contractor and its Subcontractors and Suppliers shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or

2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

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ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work may be done at the Site prior to such date.

4.03 *Reference Points*

A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.

B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.

B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

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C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:

1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
2. Abnormal weather conditions;
3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
4. Acts of war or terrorism.

D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:

1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.

E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:

1. The circumstances that form the basis for the requested adjustment;
2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.

Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the

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effect of the delay, disruption, or interference on the critical path to completion of the Work.

F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.

G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.

2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise;

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(b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

B. *Removal of Debris During Performance of the Work*: During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.

C. *Cleaning*: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading of Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;

2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and

3. Technical Data contained in such reports and drawings.

B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

C. *Reliance by Contractor on Technical Data*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

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D. *Limitations of Other Data and Documents*: Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

A. *Notice by Contractor*: If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:

1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
2. is of such a nature as to require a change in the Drawings or Specifications;
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

B. *Engineer's Review*: After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

C. *Owner's Statement to Contractor Regarding Site Condition*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement

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to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

D. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

E. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

    a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;

    b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

    c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:

    a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;

    b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or

    c. Contractor failed to give the written notice required by Paragraph 5.04.A.

3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.

4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities.

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Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:

1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;

2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;

4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and

5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.

B. *Notice by Contractor*: If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.

C. *Engineer's Review*: Engineer will:

1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;

2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;

3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and

4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.

During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

D. *Owner's Statement to Contractor Regarding Underground Facility*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written

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statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.

E. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

F. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

   a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;

   b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and

   c. Contractor gave the notice required in Paragraph 5.05.B.

2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.

3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;

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2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and

3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.

E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

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F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.

G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.

H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

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ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.

B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.

C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.

E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.

F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.

G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.

H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.

B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the

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required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.

C. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.

D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.

F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.

G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

H. Contractor shall require:

1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and

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2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.

I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.

K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.

M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.

N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

A. *Required Insurance*: Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.

B. *General Provisions*: The policies of insurance required by this Paragraph 6.03 as supplemented must:

1. include at least the specific coverages required;

2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;

3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;

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4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and

5. include all necessary endorsements to support the stated requirements.

C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:

1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;

2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;

3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and

5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.

B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.

C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.

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D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.

E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.

2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.

B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.

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1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.

C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.

D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.

C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at

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Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.

B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.

C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.

B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

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7.05 *"Or Equals"*

A. *Contractor's Request; Governing Criteria*: Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.

1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:

   a. in the exercise of reasonable judgment Engineer determines that the proposed item:

      1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

      2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;

      3) has a proven record of performance and availability of responsive service; and

      4) is not objectionable to Owner.

   b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:

      1) there will be no increase in cost to the Owner or increase in Contract Times; and

      2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.

B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.

C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.

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E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 *Substitutes*

A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.

1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.

2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:

   a. will certify that the proposed substitute item will:

      1) perform adequately the functions and achieve the results called for by the general design;

      2) be similar in substance to the item specified; and

      3) be suited to the same use as the item specified.

   b. will state:

      1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;

      2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and

      3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.

   c. will identify:

      1) all variations of the proposed substitute item from the item specified; and

      2) available engineering, sales, maintenance, repair, and replacement services.

   d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in

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Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.

B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.

C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.

F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.

B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.

C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.

D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or

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otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.

E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.

F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.

G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.

I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.

J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.

K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.

L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.

M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any

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license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.

B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.09 *Permits*

A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.10 *Taxes*

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.11 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to

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such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.

C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12 *Record Documents*

A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.13 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.

B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.

C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any

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of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.

F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.

H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).

J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

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7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

1. Before submitting a Shop Drawing or Sample, Contractor shall:

a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

b. determine and verify:

1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;

2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;

c. confirm that the Submittal is complete with respect to all related data included in the Submittal.

2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

B. *Submittal Procedures for Shop Drawings and Samples*: Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.

1. *Shop Drawings*

a. Contractor shall submit the number of copies required in the Specifications.

b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.

2. *Samples*

a. Contractor shall submit the number of Samples required in the Specifications.

b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer

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may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Engineer's Review of Shop Drawings and Samples*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.

3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.

6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.

7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.

8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. *Resubmittal Procedures for Shop Drawings and Samples*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.

2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two

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resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.

3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

E. *Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:

a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.

b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.

c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.

2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03. 2.04, and 2.05.

F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 *Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.

B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:

1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and

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2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.

C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:

1. Observations by Engineer;

2. Recommendation by Engineer or payment by Owner of any progress or final payment;

3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. Use or occupancy of the Work or any part thereof by Owner;

5. Any review and approval of a Shop Drawing or Sample submittal;

6. The issuance of a notice of acceptability by Engineer;

7. The end of the correction period established in Paragraph 15.08;

8. Any inspection, test, or approval by others; or

9. Any correction of defective Work by Owner.

E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity

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directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.

B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.19 *Delegation of Professional Design Services*

A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.

B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.

C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.

E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:

1. Checking for conformance with the requirements of this Paragraph 7.19;

2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and

3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.

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G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.

C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.

D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be

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set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:

1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
2. An itemization of the specific matters to be covered by such authority and responsibility; and
3. The extent of such authority and responsibilities.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.

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C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

9.03 *Furnish Data*

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.

B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.

C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

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9.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.

B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

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B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.

B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

A. Engineer has the authority to reject Work in accordance with Article 14.

B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.

C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.

D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any

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Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.

B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.

C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders covering:

1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;

2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;

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3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and

4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.

B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Work Change Directives*

A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

B. If Owner has issued a Work Change Directive and:

1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.

2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.

B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving

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the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.

B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.

C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.

B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);

2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or

3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).

C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will be determined as follows:

1. A mutually acceptable fixed fee; or

2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;

b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;

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c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;

d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;

e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and

f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.

B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

A. *Purpose and Content*: Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

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B. *Change Proposal Procedures*

1. *Submittal*: Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.

2. *Supporting Data*: The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.

   a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.

   b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

   The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

3. *Engineer's Initial Review*: Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.

4. *Engineer's Full Review and Action on the Change Proposal*: Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.

C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

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11.10 *Notification to Surety*

A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12—CLAIMS

12.01 *Claims*

A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:

1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;

2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;

3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and

4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.

B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.

D. *Mediation*

1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.

2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal

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and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.

E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.

F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.

G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:

1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.

B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe

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benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.

5. Other costs consisting of the following:

    a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

    b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

        1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

    c. *Construction Equipment Rental*

        1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment,

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machinery, or parts must cease when the use thereof is no longer necessary for the Work.

2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.

3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded*: The term Cost of the Work does not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.

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2. The cost of purchasing, renting, or furnishing small tools and hand tools.
3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
6. Expenses incurred in preparing and advancing Claims.
7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee*

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
    a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
    b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
        1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
        2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

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13.02 *Allowances*

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances*: Contractor agrees that:

1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.

C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:

a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

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b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.

2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.

3. Adjusted unit prices will apply to all units of that item.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 *Tests, Inspections, and Approvals*

A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:

1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;

2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;

3. by manufacturers of equipment furnished under the Contract Documents;

4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and

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5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.

F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

A. *Contractor's Obligation*: It is Contractor's obligation to assure that the Work is not defective.

B. *Engineer's Authority*: Engineer has the authority to determine whether Work is defective, and to reject defective Work.

C. *Notice of Defects*: Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.

D. *Correction, or Removal and Replacement*: Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.

E. *Preservation of Warranties*: When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

F. *Costs and Damages*: In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved

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by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.

C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.

1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.

2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then

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Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 *Progress Payments*

A. *Basis for Progress Payments*: The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.

B. *Applications for Payments*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

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3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

   a. the Work has progressed to the point indicated;

   b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and

   c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

   a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or

   b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

   a. to supervise, direct, or control the Work;

   b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;

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c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;

d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.

6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:

a. the Work is defective, requiring correction or replacement;

b. the Contract Price has been reduced by Change Orders;

c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:

a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;

c. Contractor has failed to provide and maintain required bonds or insurance;

d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;

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e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;

f. The Work is defective, requiring correction or replacement;

g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

h. The Contract Price has been reduced by Change Orders;

i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;

j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;

k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or

l. Other items entitle Owner to a set-off against the amount recommended.

2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

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C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.

F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.

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2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.

2. The final Application for Payment must be accompanied (except as previously delivered) by:

   a. all documentation called for in the Contract Documents;

   b. consent of the surety, if any, to final payment;

   c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

   d. a list of all duly pending Change Proposals and Claims; and

   e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment

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bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

B. *Engineer's Review of Final Application and Recommendation of Payment*: If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Notice of Acceptability*: In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.

D. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.

E. *Final Payment Becomes Due*: Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

15.07 *Waiver of Claims*

A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

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15.08 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. correct the defective repairs to the Site or such adjacent areas;
2. correct such defective Work;
3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.

B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.

C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.

D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

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ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);

2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;

3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or

4. Contractor's repeated disregard of the authority of Owner or Engineer.

B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:

1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and

2. enforce the rights available to Owner under any applicable performance bond.

C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.

D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.

E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as

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to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.

G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and

3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.

B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

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ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

A. *Disputes Subject to Final Resolution*: The following disputed matters are subject to final resolution under the provisions of this article:

1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and

2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.

B. *Final Resolution of Disputes*: For any dispute subject to resolution under this article, Owner or Contractor may:

1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;

2. agree with the other party to submit the dispute to another dispute resolution process; or

3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:

1. in person, by a commercial courier service or otherwise, to the recipient's place of business;

2. by registered or certified mail, postage prepaid, to the recipient's place of business; or

3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be

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as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

18.07 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Assignment of Contract*

A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

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GENERAL

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC® C-700 (2013 Edition). All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.

INDEX

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY 2

SC – 1.02 Terminology 2

ARTICLE 2 – PRELIMINARY MATTERS 2

SC-2.02 Copies of Documents 2

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF WORK 3

SC-4.01 Commencement of Contract Times; Notice to Proceed 3

SC-4.03 Reference Points 3

SC-4.05 Delays in Contractor's Progress 3

ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS 3

SC-5.03 – Subsurface and Physical Conditions 3

SC-5.06 – Hazardous Environmental Conditions 4

ARTICLE 6 – BONDS AND INSURANCE 4

SC-6.01 Bonds and Insurance 4

SC-6.03 Contractor's Insurance 4

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES 8

SC-7.02 Supervision and Superintendence 8

SC-7.03 Labor; Working Hours 8

SC-7-12 Record Documents 9

ARTICLE 8 – OTHER WORK AT THE SITE 10

SC – 8.02 Coordination 10

SC – 8.03 Legal Relationships 10

SC – 8.04 Claims Between Contractors 10

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION 11

SC – 10.08 Compliance with Safety Program 11

ARTICLE 11 –CHANGES TO THE CONTRACT 11

SC – 11.06 Change Proposals 11

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK 11

SC – 13.03 Unit Price Work 11

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD 12

SC – 15.01 Progress Payments 12

SC - 15.01 Progress Payments 12

SC – 15.06 Final Payment 12

ARTICLE 19 – LIQUIDATED DAMAGES 12

SC-19.01 Liquidated Damages Schedule 12

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

Add the following as paragraph 1.01.A.49"

49. Designer – The individual or entity, if named as such in the agreement, and with which Owner has contracted for the design of the Work.

Add the following as paragraph 1.01.B:

B. Wherever the term City or CITY is used in these documents, it shall refer to the City of Sheboygan, Sheboygan County, Wisconsin, as represented by its elected officials. The terms "City" and "Owner" in this respect shall be considered synonymous

SC – 1.02 Terminology

Add the following as new paragraph 1.02.H:

H. Business Day:

1. The words "business day" mean every day the calendar shows, except Saturdays, Sundays, and City-Specified holidays, measured from midnight to the next midnight.

ARTICLE 2 – PRELIMINARY MATTERS

SC-2.02 Copies of Documents

Delete paragraph 2.02.A. in its entirety and insert the following:

A. Owner shall furnish to Contractor one copy of the fully executed Agreement. Owner will not furnish printed copies of the Project Manual or the Drawings. The electronic portable document format (PDF) Project Manual and Drawings furnished during bidding shall be used by Contractor.

Delete paragraph 2.02.B. in its entirety and insert the following:

B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications. Owner shall make such original printed

record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

Delete paragraph 2.03.A.3 in its entirety and insert the following:

3. a preliminary Schedule of Values for lump sum items with Bid Unit Prices in excess of $100,000, and for which no payment method is defined in the specifications, which includes quantities and prices of items which when added together equal the Bid Unit Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF WORK

SC-4.01 Commencement of Contract Times; Notice to Proceed

Delete the last sentence of paragraph 4.01.A. in its entirety and replace with the following:

In no event will the Contract Times commence to run later than the 115th day after the day of Bid opening or the 30th day after the Effective Date of the Agreement, whichever date is earlier, unless otherwise specified the Section 01 11 00 – SUMMARY OF WORK.

SC-4.03 Reference Points

Delete paragraph 4.03.A and replace with the following:

A. Engineer shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work. Contractor shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Engineer. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by a Wisconsin licensed Professional Land Surveyor, in good standing, with qualifications approved by the Engineer, to do the re-staking.

SC-4.05 Delays in Contractor's Progress

Delete paragraph 4.05.C.2 and replace with the following:

C. Abnormal Weather Conditions – Conditions of extreme or unusual weather for a given region, elevation, or season as determined by Engineer. Extreme or unusual weather that is typical for a given region, elevation, or season should not be considered Abnormal Weather Conditions.

ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

SC-5.03 – Subsurface and Physical Conditions

Add the following new paragraphs immediately after Paragraph 5.03.A.3:

4. The reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely are identified in Specification 01 11 00 – Summary of Work.

5. The drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely are identified in Specification 01 11 00 – Summary of Work

6. Contractor may examine copies of reports and drawings identified in SC-5.03.A.4 and SC-5.03.A.5 that were not included with the Bidding Documents at City of Sheboygan Department of Public Works by requesting a meeting to occur during regular business hours, or may request copies from Engineer.

SC-5.06 – Hazardous Environmental Conditions

Add the following new paragraphs immediately after Paragraph 5.06.A.3:

4. The reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely are identified in Specification 01 11 00 – Summary of Work.

5. The drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely are identified in Specification 01 11 00 – Summary of Work.

6. Contractor may examine copies of reports and drawings identified in SC-5.06.A.1 and SC-5.06.A.5 that were not included with the Bidding Documents at City of Sheboygan Department of Public Works by requesting a meeting to occur during regular business hours, or may request copies from Engineer.

ARTICLE 6 – BONDS AND INSURANCE

SC-6.01 Bonds and Insurance

Add the following to the end of paragraph 6.01.E.

Owner will make no further progress payments under the Agreement until Contractor provides the required bond.

SC-6.03 Contractor's Insurance

Add the following new paragraph immediately after Paragraph 6.03.J:

D. *Other Additional Insureds*: As a supplement to the provisions of Paragraph 6.03.C of the General Conditions, the commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies must include as

additional insureds (in addition to Owner and Engineer) the following: Designer, if identified in the Agreement.

E. *Workers' Compensation and Employer's Liability*: Contractor shall purchase and maintain workers' compensation and employer's liability insurance, including, as applicable, United States Longshoreman and Harbor Workers' Compensation Act, Jones Act, stop-gap employer's liability coverage for monopolistic states, and foreign voluntary workers' compensation (from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions).

Workers' Compensation and Related Policies	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
Jones Act (if applicable)	
Bodily injury by accident—each accident	$1,000,000
Bodily injury by disease—aggregate	$1,000,000
Employer's Liability	
Each accident	Statutory
Each employee	Statutory
Policy limit	Statutory
Stop-gap Liability Coverage	
For work performed in monopolistic states, stop-gap liability coverage must be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of:	$

F. *Commercial General Liability—Claims Covered*: Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:

1. damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,

2. damages insured by reasonably available personal injury liability coverage, and

3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.

G. C*ommercial General Liability—Form and Content*: Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:

1. Products and completed operations coverage.

    a. Such insurance must be maintained for three years after final payment.

b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.

2. Blanket contractual liability coverage, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.

3. Severability of interests and no insured-versus-insured or cross-liability exclusions.

4. Underground, explosion, and collapse coverage.

5. Personal injury coverage.

6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.

7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04 "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.

H. *Commercial General Liability—Excluded Content*. The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:

1. Any modification of the standard definition of "insured contract" (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).

2. Any exclusion for water intrusion or water damage.

3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.

4. Any exclusion of coverage relating to earth subsidence or movement.

5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability (other than worker's compensation).

6. Any limitation or exclusion based on the nature of Contractor's work.

7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.

I. Commercial General Liability—Minimum Policy Limits

Commercial General Liability	Policy limits of not less than:
General Aggregate	$2,000,000
Products—Completed Operations Aggregate	$2,000,000
Personal and Advertising Injury	$2,000,000
Bodily Injury and Property Damage—Each Occurrence	$1,000,000

J. *Automobile Liability*: Contractor shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis.

Automobile Liability	Policy limits of not less than:
Bodily Injury	
Each Person	$1,000,000
Each Accident	$1,000,000
Property Damage	
Each Accident	$1,000,000
[or]	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	$1,000,000

K. *Umbrella or Excess Liability*: Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

Excess or Umbrella Liability	Policy limits of not less than:
Each Occurrence	$2,000,000
General Aggregate	$1,000,000

L. *Using Umbrella or Excess Liability Insurance to Meet CGL and Other Policy Limit Requirements*: Contractor may meet the policy limits specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy's policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy, as specified herein. If such umbrella or excess liability policy was required under this Contract, at a specified minimum policy limit, such umbrella or excess policy must retain a minimum limit of $[specify amount] after accounting for partial attribution of its limits to underlying policies, as allowed above.

M. *Contractor's Pollution Liability Insurance*: Contractor shall purchase and maintain a policy covering third-party injury and property damage, including cleanup costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance must be maintained for no less than three years after final completion.

Contractor's Pollution Liability	Policy limits of not less than:
Each Occurrence/Claim	N/A
General Aggregate	N/A

.

N. *Contractor's Professional Liability Insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance must cover negligent acts, errors, or omissions in the performance of professional design or related services by the insured or others for whom the insured is legally liable. The insurance must be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. The retroactive date on the policy must pre-date the commencement of furnishing services on the Project.

Contractor's Professional Liability	Policy limits of not less than:
Each Claim	$1,000,000
Annual Aggregate	$1,000,000

.

O. *Railroad Protective Liability Insuranc*e: Prior to commencing any Work within 50 feet of railroad-owned and controlled property, Contractor shall (1) endorse its commercial general liability policy with ISO CG 24 17, removing the contractual liability exclusion for work within 50 feet of a railroad, (2) purchase and maintain railroad protective liability insurance meeting the following requirements, (3) furnish a copy of the endorsement to Owner, and (4) submit a copy of the railroad protective policy and other railroad-required documentation to the railroad, and notify Owner of such submittal.

Railroad Protective Liability Insurance	Policy limits of not less than:
Each Claim	As required by Railroad
Aggregate	As required by Railroad

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

SC-7.02 Supervision and Superintendence

Add the following paragraphs immediately after Paragraph 7.02.B

A. Contractor shall provide to Engineer and Owner the name and telephone number of the resident superintendent or another responsible person who will be available to contact during non-working hours, weekends and holidays.

SC-7.03 Labor; Working Hours

Add the following a new subparagraphs immediately after Paragraph 7.03.C:

1. Regular Working Hours shall be 7:00 am to 7:00 PM, local time, Monday through Friday.

2. Owner's Legal Holidays are as follows:

    a. New Year's Day
    Good Friday (Friday before Easter)
    Memorial Day
    Independence Day
    Labor Day
    Thanksgiving Day
    Day after Thanksgiving
    Christmas Eve Day
    Christmas Day
    New Year's Eve Day

    b. When a scheduled legal holiday falls on Saturday it will be observed on the previous Friday. A holiday that falls on Sunday will be observed the following Monday. The City retains the right to schedule holiday observance which bests suits its operations schedule.

SC-7-12 Record Documents

Delete the last sentence of paragraph 7.12.A and replace with the following:

Within 14 days following completion of the Work and prior to final payment, Contractor shall deliver these record documents to Engineer.

Add the following as Paragraph 7.15.B:

B. In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, and Contractor cannot be reached, Owner or Engineer may act to attempt to prevent threatened damage, injury, or loss. Owner or Engineer will give Contractor prompt written notice of such action and the cost of the correction or remedy shall be charged against Contractor. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Owner or Engineer in response to such an emergency, a Work Change Directive or Change Order will be issued.

ARTICLE 8 – OTHER WORK AT THE SITE

SC – 8.02 Coordination

Modify paragraph 8.02.A as follows:

Delete the words "the Supplementary Conditions" and replace with the words "Specification Section 01 11 00 – Summary of Work".

Modify paragraph 8.02 as follows:

Delete the words "the Supplementary Conditions" and replace with the words "Specification Section 01 11 00 – Summary of Work".

SC – 8.03 Legal Relationships

Modify the second sentence of paragraph 8.03.A as follows:

Delete the words "30 days" and replace with the words "10 days".

SC – 8.04 Claims Between Contractors

Add the following new section immediately following Section 8.03:

8.04 Claims Between Contractors

A. Should Contractor cause damage to the work or property of any separate contractor at the Site, or should any claim arising out of Contractor's performance of the Work at the Site be made by any separate contractor against Contractor, Owner, Engineer, Engineer's Consultants, or the construction coordination, Contractor shall promptly attempt to settle with such separate contractor by agreement or to otherwise resolve the dispute by arbitration or at law.

B. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Engineer, Engineer's Consultants, the construction coordinator and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising directly, indirectly, or consequentially out of any action, legal or equitable, brought by any separate contractor against Owner, Engineer, Engineer's Consultants, or the construction coordinator to the extent said claim is based on or arises out of Contractor's performance of the Work. Should a separate contractor cause damage to the Work or property of Contractor or should the performance of work by any separate contractor at the Site give rise to any other Claim, Contractor shall not institute any action, legal or equitable, against Owner, Engineer, Engineer's Consultants, or the construction coordinator or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from Owner, Engineer, Engineer's Consultants, or the construction coordinator on account of any such damage or Claim.

C. If Contractor is delayed at any time in performing or furnishing Work by any act or neglect of a separate contractor, and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, Contractor may make a Claim for an extension of times in accordance with Article 11. An extension of the Contract Times shall be Contractor's exclusive remedy with respect to Owner, Engineer, Engineer's Consultants, and construction coordinator for any delay, disruption, interference, or hindrance caused by any separate contractor. This paragraph does not prevent recovery from Owner, Engineer, Engineer's Consultant, or construction coordinator for activities that are their respective responsibilities.

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

SC – 10.08 Compliance with Safety Program

Add the following as paragraph 10.08

B. In the event Engineer determines that Contractor's safety plans, programs, and procedures do not provide adequate protection for Engineer, Engineer may direct its employees to leave the Site or implement additional safeguards for Engineer's protection. If taken, these actions will be in furtherance of Engineer's responsibility to its own employees only, and Engineer will not assume any responsibility for protection of any other persons affected by the Work. In the event Engineer observes situations which appear to have potential for immediate and serious injury to persons, Engineer may warn the persons who appear to be affected by such situations. Such warnings, if issued, shall be given based on general humanitarian concerns, and Engineer will not, by the issuance of any such warning, assume any responsibility to issue future warnings or any general responsibility for protection of persons affected by the Work.

ARTICLE 11 –CHANGES TO THE CONTRACT

SC – 11.06 Change Proposals

Modify the first sentence of paragraph 11.06.B.1 as follows:

Delete the words "30 days" and replace with the words "10 days".

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

SC – 13.03 Unit Price Work

Modify the paragraph 13.03.B and replace with the following:

The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparisons of Bids and determining initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities, unless noted otherwise in the specifications.

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

SC – 15.01 Progress Payments

Add the following as paragraph 15.01.B.4

1. The Application for Payment form to be used is EJCDC C-620 or City of Sheboygan Application for Payment Form 00 62 76, or a similar form approved by the Owner

SC - 15.01 Progress Payments

Modify the first sentence of paragraph 15.01.B.1 as follows:

Delete the words "20 Days" and replace with the words "thirty days".

Modify the second sentence of paragraph 15.01.D.1 as follows:

Delete the words "Ten days" and replace with the words "Forty-five days".

SC – 15.06 Final Payment

Add the following as Paragraph 15.06.A.2.f

f. Contractors Affidavit of Compliance (Document 00 65 18)

LIQUIDATED DAMAGES		
Original Contract Amount		
From more than:	To and including:	Calendar Day
$0	$100,000	$180
$100,000	$300,000	$295
$300,000	$500,000	$480
$500,000	$1,000,000	$665
$1,000,000	--------	$990

ARTICLE 19 – LIQUIDATED DAMAGES

SC-19.01 Liquidated Damages Schedule

Add the following as Article 19 – LIQUIDATED DAMAGES

19.01 The following table represents the Liquidated Damages applicable to City of Sheboygan Agreements as referenced in paragraph 4.03 of the Agreement:

LIQUIDATED DAMAGES		
Original Contract Amount		
From more than:	To and including:	Calendar Day
$0	$100,000	$180
$100,000	$300,000	$295
$300,000	$500,000	$480
$500,000	$1,000,000	$665
$1,000,000	--------	$990

PART 1 – GENERAL

1.01 SUMMARY

A. Summary of the Work including work by the City, City-Furnished Products, Work by Others, Sequence of work, Contractors use of the Premises.

B. Work under the project will generally consist of the items stated in 00 11 13 – Advertisement for Bids.

C. Work on the Annual Sidewalk Program cannot begin until May 31, 2022.

D. As a result of restrictions and time restraints mandated by Municipal Code which allows the involved property owner twenty days to reply to an issued Sidewalk Repair Notice, this contract shall be in effect for the year's construction season and work.

E. In addition to the other requirement of the Contract, if within thirty-six months from contract completion tree or root heave occurs, replace cracked or displaced sidewalk as defined in the Paragraph 15.08 of the General Conditions. Engineer will provide notification of locations requiring completion.

1.02 PAYMENT PROCEDURES

A. Work specified in the Sections is considered incidental and payment shall be included as part of appropriate unit prices included on Bid Form.

1.03 WORK BY THE CITY

A. None

1.04 TRAFFIC CONTROL

A. Maintain at least one lane of traffic in each direction at all times.

1.05 PERMITS

A. The following permits have been obtained or will be obtained by the City of Sheboygan prior to the start of Construction:

a. None.

1.06 SUBSURFACE AND PHYSICAL CONDITIONS

A. The reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely are:

a. None.

B. The drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site

(except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely are:

a. None.

1.07 HAZARDOUS ENVIRONMENTAL CONDITIONS

A. The reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely are

a. None.

B. The drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely are

a. None.

PART 2 – PRODUCTS

2.01 CITY FURNISHED PRODUCTS

A. None.

PART 3 – EXECUTION

(NOT USED)

END OF SECTION

PART 1 – GENERAL

1.01 SUMMARY

A. Provide all items, articles, materials, operations or method, labor, supervision, equipment, incidentals, taxes and permits necessary to complete the Work as described within the Contract Documents. Install all items furnished by City as mentioned or scheduled within the Contract Documents.

1.02 PAYMENT PROCEDURES

A. Work specified in the Section is considered incidental and payment shall be included as part of appropriate unit prices included on Bid Form.

1.03 SEQUENCE OF WORK

A. Existing facilities shall remain in service and available for public use during construction, unless specified in this or other sections.

1.04 CONTRACTOR USE OF THE PREMISES

A. Limit all operations to City right-of-ways or Easements; restore damaged properties outside of right-of-ways or easements at no cost to the City.

1.05 REFERENCE STANDARDS OR SPECIFICATIONS

A. When other specifications documents are referenced within this project manual any text within those documents discussing contract administration, measurement or payment are not included, unless otherwise specified.

B. Where compliance with two or more industry standards or sets of requirements are specified, and the overlapping of those standards or requirements establishes different or conflicting minimums or levels of quality, the most stringent requirement (which is generally recognized to be also most costly) is intended and will be enforced, unless more detailed language written directly into Contract Documents clearly indicates that a less stringent requirement is acceptable.

1.06 NOTIFICATION TO THE PUBLIC

A. Notify affected residents and businesses a minimum of 7 business days prior to commencing work.

B. Notify affected residents and businesses a minimum of 3 business days prior to closing a driveway.

C. Notify Engineer 7 business days prior to closing a street. Engineer will notify Sheboygan Police, Fire and Ambulance, Sheboygan County Sheriff's Department and Sheboygan Transit.

1.07 ACCESS REQUIRMENTS

A. Maintain access to business and residents at all times, unless otherwise noted.

B. Provide continuous access for emergency vehicles.

C. Comply with Section 01 11 00 – Summary of work for additional access requirements, if any.

1.08 MAIL DELIVERY

A. Work with the U.S. Postal Service to assure mail delivery throughout the project. Some or all mail boxes may have to be moved, temporarily relocated or replaced in a new location. Relocating mail boxes, temporarily or permanently, shall be incidental to the contract, and meet the Postal Service criteria.

1.09 REMOVALS

A. Do not remove or damage any tree, shrub, or other land resource unless indicated for removal.

B. At limits of pavement, curb and gutter, driveway or sidewalk removal provide a full depth saw cut prior to removal. Provide straight, vertical sawcuts at all edges of existing asphalt and concrete materials to be matched by new pavement materials. This shall include curb and gutter, driveway aprons, sidewalk, and street pavement and patching work. If the sawed edges break prior to placement of the new pavement, curb and gutter, driveway or sidewalk, re-sawcut the existing edge.

1.10 PROJECT MEETINGS

A. Conduct bi-weekly progress meetings throughout the construction period. Meetings will be held at the Sheboygan Department of Public Works office.
   1. Items to be discussed at meeting shall include, but not be limited to:
      a. Review of progress since previous meeting.
      b. Review Outstanding Items since last meeting.
      c. Contractors Schedule (3-week look ahead).
      d. Submittal Schedule.

1.11 CONSTRUCTION STAKING

A. Layout of the work is the responsibility of the Contractor.

B. Comply with Section 01 71 23 – Construction Staking

1.12 SUBMITTALS

A. Work-Related Submittals:

   1. Shop Drawings:
      a. As defined in Paragraph 1.01.A.39 of the General Conditions, and in particular includes technical data and drawings specifically prepared for this Project, including fabrication and installation drawings, diagrams, data sheets, schedules, templates, patterns, reports, instructions, design mix formulas, measurements, and similar information not in standard printed form.

2. Product Data:
   a. Includes standard catalog type printed information on manufactured materials, equipment and systems that has not been specifically prepared for this Project, including manufactures' product specifications, manufacturers' instructions, catalog cut sheets, standard wiring diagrams, printed performance curves, mill reports, and standard color charts.
3. Test Results:
   a. Includes source and field quality inspection and test reports, actual performance curves, and certifications of results prepared specifically for equipment, material, and systems provided for this Project.
4. Miscellaneous Submittals:
   a. Work-related submittals that do not fit in previous categories, including schedules, guarantees, warranties, certifications, maintenance agreements, workmanship bonds, survey data and reports, physical work records, copies of industry standards, field measurements, extra materials, keys, and similar information, devices, and materials applicable to Work.

B. Action On Submittals

1. Unsolicited Submittals:
   a. Engineer will return unsolicited submittals without reviewing.
2. `Response:
   a. Marked: "Approved"
      1. Work covered by submittal may proceed provided it complies with Contract Documents. Acceptance of Work depends on that compliance.
   b. Marked: "Approved As Noted"
      1. Work covered by submittal may proceed provided it complies with Engineer's notations or corrections on submittal and with Contract Documents. Acceptance of work depends on that compliance. Resubmittal not required.
   c. Marked: "Not Approved"
      1. Work covered by submittal does not comply with Contract Documents. Do not proceed with Work covered by submittal.
      2. Prepare new submittal complying with Contract Documents and Engineer's notations.
   d. Marked: "Filed for Record"
      1. Work covered by the submittal does not require approval.
      2. Submitted documentation is filed with the project records.

1.13 MANUFACTURERS' DIRECTIONS

A. Manufactured articles, materials and equipment shall be stored, commissioned, operated, applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer, unless specified to the contrary.

B. Wherever specifications explicitly call for work to be performed or materials to be installed in accordance with the manufacturer's directions, furnish copies in accordance with the Submittals paragraphs of the specification section before installing the material or performing the work.

1.14 PROJECT OBSERVATION

A. All work under this proposal shall be subject to the observation by authorized personnel of the Engineer, and all findings, determinations and recommendations by the Engineer or its duly authorized agents shall be final and conclusive.

B. Provide the Engineer a three business day notice prior to the start of any work on the project. Any work done without three business day notice will be subject to non-payment. If observation of the work is not required, the Engineer shall inform the foreman and the work will be reviewed upon completion.

1.15 INCIDENTAL ITEMS OF WORK

A. Any items of work shown on the drawings or required by the specifications but not specifically included in the Bid shall be considered incidental items of work. The cost of incidental items of work shall be included in the prices bid for related work.

1.16 PERMITS

A. Acquire all necessary City permits. Contact the Building Inspection Department at 920-459-3477 to determine the associated fees and shall be incidental to the contract. These permits shall be obtained at the City of Sheboygan Building Inspection Department located on the 1st Floor of City Hall, 828 Center Avenue, Sheboygan, Wisconsin.

B. Comply with the City licensing requirements established by the City of Sheboygan Building Inspection Department for plumbing, HVAC, electrical and building construction. These applications are obtained in the Building Inspection Department, located on the 1st Floor of City Hall, 828 Center Avenue, Sheboygan, Wisconsin.

C. Comply with permits, if any, identified is Section 01 11 00 – Summary of Work.

1.17 EXISTING FACILITIES

A. Provide a minimum of a 3 business day notice to owners of existing utilities prior to excavation activities.

B. The requirements of Section 182.0175 of the Wisconsin State Statutes apply to work under this contract.

1.18 DELIVERY, STORAGE, AND HANDLING

A. Adjust weight, type, capacity, haul routes, and method of operation of hauling vehicles such that there is no damage to existing streets, subgrade, or base course.

B. Engineer has final authority to revise haul routes, procedures, and operation times.

C. Keep haul routes clean and free of construction material and debris.

D. Construction equipment, materials and stockpiles shall not be left within 100 feet of any commercial establishment during non-working hours or when no working is occurring.

E. Parking restrictions shall be obeyed at all times in the vicinity of schools.

1.19 WATER UTILITY AND HYDRANT USE

A. Do not operate any hydrants, valves or other apparatus owned by the Sheboygan Water Utility.

B. Should water from hydrants be needed during construction, the contractor shall apply, in person, for a hydrant use permit at the Sheboygan Water Utility Office, 72 Park Avenue. Any damage to Water Utility apparatus shall be repaired at the Contractor's expense.

C. Coordinate with Sheboygan Water Utility to repair any damaged water service laterals or water mains. Sheboygan Water Utility will determine extent of repairs required. If a lead water service is exposed contract the Sheboygan Water Utility within 1 hour.

1.20 SANITARY FACILITIES

A. Provide and maintain sanitary chemical toilets located where approved and in sufficient number required for the work force employed by Contractor.

1.21 PUBLIC RECORDS LAW

A. The City of Sheboygan is subject to the Wisconsin public records law. Any submissions to the City in connection with this project may be disclosed in response to a public records request.

PART 2 – PRODUCTS

2.01 CITY FURNISHED PRODUCTS

A. City will furnish materials as specified in Section 01 64 00 – City Furnished Products of the Project Specific Manual. If section is not included in the Project Specific Manual, then no products will be furnished by City.

PART 3 – EXECUTION

(NOT USED)

END OF SECTION

PART 1 – GENERAL

1.01 SUMMARY

A. Section Includes:
1. Quality assurance.
2. Procedures to measure and report the quality and performance of the Work.
3. Requirements for Contractor Cooperation
4. Payment.

1.02 PRICE AND PAYMENT PROCEDURES

A. Measurement and Payment:
1. All Work and costs of this Section shall be incidental to the Project and included in the Total Base Bid.

1.03 SUBMITTALS

A. Prior to start of Work, submit testing laboratory name for various specified tests for approval by Engineer.

B. After each inspection or test, submit copies of report to Engineer no later than 3 business days after completion of inspection or test. Include:
1. Test date
2. Project Number and Title
3. Inspector or Tester
4. Date and time of sampling, testing or inspection
5. Location of inspection or test
6. Identification of product and applicable Specification Section.
7. Test Results
8. Conformance with Contract Documents.

C. Manufacturer's certificates of quality control or performance.

1.04 WORKMANSHIP

A. Comply with industry standards of the region, except where more restrictive tolerances or specified requirements indicate more rigid standards or more precise workmanship.

1.05 TESTS AND INSPECTIONS

A. Conform to the requirements of the General Conditions, except as modified herein.

B. Notify Engineer 48 hours prior to expected time for operations requiring tests and inspections.

C. Provide incidental labor and facilities to obtain and handle samples at Site or source, transport samples to laboratory, and facilitate tests and inspections for storing and curing of test samples.

D. Owner shall pay for all testing not identified in the specifications. Any test identified in the specifications is the responsibility of the contractor.

1. If any test fails to meet requirements, reimburse Owner for cost of all subsequent tests to ensure compliance.

E. Notify Engineer of pit and scale location and other correlated items prior to beginning Work.

1.06 LABORATORY RESPONSIBILITIES

A. Test samples and perform field tests.

B. Provide qualified personnel. Cooperate with Engineer and Contractor in performance of services.

C. Ascertain compliance with the requirements of the Contract Documents.

D. When requested by Engineer, provide interpretation of test results.

1.07 LIMITS ON TESTING LABORATORY AUTHORITY

A. Laboratory may not release, revoke, alter, or enlarge on requirements of Contract Documents.

B. Laboratory may not approve or accept any portion of the Work.

C. Laboratory may not assume any duties of Contractor.

D. Laboratory has no authority to stop Work.

1.08 MANUFACTURER'S CERTIFICATES

A. If requested by Engineer, submit manufacturer's certificate with shop drawings certifying that products meet or exceed specified requirements executed by responsible officer.

1.09 MANUFACTURER'S FIELD SERVICES

A. Provide qualified representative to observe field conditions; conditions of surfaces and installation; quality of workmanship; start-up of equipment; and test, adjust, and balance of equipment.

PART 2 – PRODUCTS

(NOT USED)

PART 3 – EXECUTION

(NOT USED)

END OF SECTION

CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Traffic Control		
		Section:	01 55 26		
		Bid Number:	2480-23	Page:	1 of 2

PART 1 – GENERAL

1.01 SUMMARY

A. This Section identifies detour marking, warning signs and devices, temporary traffic signals, temporary pavement markings, guardrails, handrails, temporary fencing, flagpersons, and other equipment and materials required to protect vehicular and pedestrian traffic from construction activities.

B. Traffic regulations shall comply with chapters and Sections of the referenced documents. References to measurements and payments in the reference documents are superseded by this Section.

1.02 NOTIFICATIONS, ACCESS AND PROJECT REQUIREMENTS

A. Comply with Section 01 11 00 – Summary of Work

B. Comply with Section 01 14 00 – Work Restrictions.

1.03 REFERENCE STANDARDS

A. WisDOT: Wisconsin Department of Transportation

B. WisDOT Specification: State of Wisconsin, Department of Transportation, "Standard Specifications for Highway and Structure Construction", latest Edition.

C. WMUTCD: Wisconsin Manual on Uniform Traffic Control Devices, latest edition.

D. MUTCD: Federal Highway Administration, Manual on Uniform Traffic Control Devices, latest edition. In Wisconsin, this includes the latest edition of Wisconsin Supplement to Federal MUTCD.

E. Maintaining Agency: Agency having maintenance jurisdiction over roadway which may include WisDOT, and the City of Sheboygan.

1.04 SUBMITTALS

A. Submit Product Data in accordance with Section 01 33 00 – Submittal Procedures.
   1. Include in Submittal:
      a. Traffic control plan and detour, if required.
      b. Manufacturer's written instructions, including storage, handling, installation, and starting of product.

1.05 PAYMENT PROCEDURES

A. Unit Prices:
   1. Cost for traffic control shall be paid according to the various unit prices included in the Bid. If individual items are not included in the Bid, the cost of this work shall be considered incidental to adjacent utility and roadway construction work.

PART 2 – PRODUCTS

2.01 MATERIALS

A. Conform to the following material requirements:
   1. WMUTCD
   2. MUTCD
   3. WisDOT Specifications

2.02 PERSONNEL

A. Flagpersons shall be trained in accordance with State of Wisconsin regulations.

PART 3 – EXECUTION

3.01 GENERAL

A. Perform all work in accordance with WisDOT, WMUTCD and MUTCD requirements and as the shown on the plans.

END OF SECTION

PART 1 – GENERAL

1.01 SUMMARY

A. Maintain work areas free from environmental pollution that would be in violation of federal, state or local regulations.

B. Permits obtained by Owner are list in Section 01 11 00 – Summary of Work. All other permits not listed are to be obtained by Contractor.

1.02 PAYMENT PROCEDURES

A. Work specified in this section is considered incidental and payment shall be included as part of appropriate unit prices included in Bid Form.

PART 2 – PRODUCTS

(NOT USED)

PART 3 – EXECUTION

3.01 GENERAL

A. Confine construction activities to areas defined on the Drawings or elsewhere in the Contract Documents.

B. Grade site to drain. Maintain excavations free of water.

C. Protect site from puddling or running water.

1.03 ARCHAEOLOGICAL FINDS DURING CONSTRUCTION

A. There are no known archaeological remains at the Project site.

B. Should skeletons, artifacts, or other archaeological remains be uncovered:

2. Suspend operations of this Contract at the site of discovery.
3. Continue operations in other areas.
4. Notify Engineer immediately of the finding.

C. Should the discovery site require archaeological studies resulting in delays and/or additional work, Contractor will be compensated by an adjustment under pertinent provisions of the Contract.

4.03 PROTECTION OF STORM SEWERS

A. Prevent construction materials, concrete, earth or other debris from entering existing storm sewers or sewer construction.
B. Inlet protection required for all storm sewers with project limits.

4.04 PROTECTION OF WATERWAYS

A. Comply with federal, state and local regulations regarding pollution of lakes, streams, rivers or wetlands by dumping of refuse, rubbish, dredge material or debris.

B. Disposal of materials into waters of state must conform to requirements of Wisconsin DNR.

C. Comply with Wisconsin Department of Transportation "Product Acceptability List" (PAL), current edition and Wisconsin Department of Natural Resources Storm Water Management Technical Standards.

END OF SECTION

PROJECT MAN					
CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Closeout Requirements		
		Section:	01 78 00		
		Bid Number:	2480-23	Page:	1 of 2

PART 1 – GENERAL

1.01 SUMMARY

A. Section includes requirements for Project Closeout and Final Payment including:
   1. Submittals,
   2. Inspections Procedures,
   3. Record Document Submittals.

1.02 PAYMENT PROCEDURES

A. Work specified in this section is considered incidental and payment shall be included as part of appropriate unit prices included in Bid Form.

1.03 SUBSTANTIAL COMPLETION

A. Comply with section 15.03 of the General Conditions.

1.04 FINAL COMPLETION

A. Comply with Section 15.05 and 15.06 of the General Conditions

1.05 RECORD DRAWINGS

A. Submit to Engineer a set of record documents as described in paragraph 7.11.A of the General Conditions and Section 01 78 39 – Project Record Documents.

PART 2 – PRODUCTS

(NOT USED)

PART 3 – EXECUTION

3.01 PROJECT CLOSEOUT CHECKLIST

A. The project closeout checklist at the end of this document will be used by the Engineer to document the closeout status of the project.

END OF SECTION

PROJECT MAN...					
CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Closeout Requirements		
		Section:	01 78 00		
		Bid Number:	2480-23	Page:	2 of 2

PROJECT CLOSEOUT CHECKLIST (Based on 2018 EJCDC General Conditions of the Contract)

Contract Status	Item to be Competed:	Reference	Completed/Submitted By:	Date Completed:
Substantial Completion				
	Letter requesting Substantial Completion	GC 15.03.A	Contractor	
	Draft of Punch List Items to be completed or corrected before final payment	GC 15.03.A	Contractor	
	Inspect work	GC 15.03.B	Owner/Contractor/Engineer	
	Notification if not ready for Substantial Completion	GC 15.03.B	Engineer/Owner	
	Certification of Substantial Completion Issued	GC 15.03.C	Engineer/Owner	
			Date of Substantial Completion	

Final Completion				
	Letter requesting Final Completion	GC 15.05.A	Contractor	
	Inspect work	GC 15.05.A	Owner/Contractor/Engineer	
			Date of Final Completion	

Final Payment				
	Submit Record Drawings	GC 15.06.A.1 GC 15.06.A.2.a GC 7.12 SC 7.12 01 78 39	Contractor	
	Consent of Surety to Final Payment	GC 15.06.A.2.b	Contractor	
	List of Pending Change Proposals and Claims	GC 15.06.A.2.d	Contractor	
	Lien Waivers	GC 15.06.A.2.e	Contractor	
	Contractor's Affidavit of Compliance	SC 15.06.A.2.f	Contractor	
	Final Pay Application	GC 15.06.A.1	Contractor	
	Notice of Acceptability	GC 15.06.C	Engineer	
	Final Payment	GC 15.06.E	Owner	
			Date of Final Payment	

PART 1 - GENERAL

1.01 SUMMARY

A. Throughout progress of the Work, maintain an accurate record of changes in the Contract Documents.

1.02 PAYMENTS

A. Work specified in this section is considered incidental and payment shall be included as part of appropriate unit prices included in Bid Form.

1.03 SUBMITTALS

A. Prior to submitting request for final completion, deliver one complete marked up set of Drawings to Engineer for use in preparation of record drawings.

PART 2 – PRODUCTS

(NOT USED)

PART 3 - EXECUTION

3.01 RECORD DRAWINGS

A. Maintain one record set of Drawings legibly annotated to show all changes made during construction and the final location of all underground piping and utilities.

1. The marked up set of Drawings shall be a compilation of all of the work completed. Individual sets from the various subcontractors will not be accepted.
2. The marked up set of Drawings shall graphically show the changes. Reference to RFI's, Change Orders will not be accepted.
3. The Record Drawings will show
   a. Grade changes, changes in elevations for footings, culverts, manholes etc.
   b. New or revised LC, PC, PI, and PT.
   c. Relocated driveway entrances.
   d. Changes in size, location, and slope of pipes.
   e. Changes to invert elevations.
   f. Undercut areas.
   g. Areas of geotextile fabric or geogrid.
   h. Omissions, errors and discrepancies discovered during construction.
   i. Features added, revised, or deleted by contract change orders.
   j. Corrected or new bench marks. Cross out those that no longer exist.
   k. Changes to drainage.
   l. Material type, size, and manufacturer where optional materials are allowed by specifications.
   m. Final dimensions, elevations, details, sizes, numbers, lengths, locations, etc., if different from the original plan.
   n. Locations of private utilities, if different from original plans.
   o. Any other information necessary to document site conditions.
4. Graphically depict changes by modifying or adding to plans, and details Using a red colored pencil or pen.

5. Wherever a revision is made, also make changes to related section views, details, legend, profiles, plans and elevation views, schedules, notes and call out designations, and mark accordingly to avoid conflicting data on all other sheets.
6. For deletions, cross out all features, data and captions that relate to that revision.

END OF SECTION

PART 1 – GENERAL

1.01 SUMMARY

A. This work shall consist of constructing new concrete sidewalks and crosswalks; removing and reconstructing faulty existing concrete sidewalks and crosswalks; removing and reconstructing curb, or curb and gutter, removing and reconstructing street pavement; tree root cutting, excavation and removal of trimmings, restoration and clean-up of sites at locations designated by the Engineering Department in all parts of the City, on a prepared foundation or base as provided in these specifications.

B. Location, width and grade for sidewalks and crosswalks will be set by the City Engineering Department upon request.

1.02 DEFINITIONS

A. WisDOT Specs: Wisconsin Department of Transportation Standards Specifications for Highway Construction, latest Edition.

1.03 PAYMENT PROCEDURES

A. REMOVALS
   1. Description:
      a. This work shall consist of removing, wholly or in parts, sidewalks, steps, curb and gutter, curb, pavements and crosswalks, and integral sidewalk and curb occurring within the individual project areas and which interfere with the required marked construction, and shall also consist of disposing of the resulting rubble and soil removed.
      b. Removing of pavements shall consist of removal of Portland cement concrete pavements, irrespective of the depth and including all surfaces or other pavement superimposed thereon.
      c. Install the new sidewalks, steps, curb and gutter, pavements and crosswalks within three (3) working days of the completion of the removal.
      d. Removal of topsoil is incidental.
   2. Method of Measurement:
      a. Removing sidewalk will be measured by area in square feet.
      b. Removing steps will be measured based on the area in square feet of the horizontal projection (tread) of the steps.
      c. Removing curb and gutter, or just curb, which is separate from and not removable in conjunction with removing sidewalks or pavements, will be measured by length in linear feet, taken along the flow line of gutter for curb and gutter and along face of curb for curb. Where curb is integral with pavement or sidewalk, removal will all be classes as removing pavement or sidewalk, and will be included and measured by area in square feet or removing pavement or sidewalk.
      d. Removing pavement will be measured by area in square feet irrespective of the depth or number of courses encountered, including integral curb.
      e. Removing integral sidewalk and curb will be measured based on the areas in square feet of sidewalk from face of curb to closest joint.
   3. Basis of Payment:
      a. Removing sidewalk- square feet (S.F.), removing curb and gutter- linear feet (L.F.), removing integral sidewalk and curb- square feet (S.F.), and remove concrete aprons- square feet (S.F.)

b. The contract unit price for removing the above items shall be payment in full for all sawing, breaking, removing, and disposal; for procurement of any required permits; for disposal of materials; for safety barricading; and for furnishing all labor, tools, equipment and incidentals necessary to complete the item of work in accordance with the requirements of the contract. Removal beyond the limits as field marked without authorization will not be compensated. Include the cost of topsoil removal.

B. CONCRETE SIDEWALKS
1. Description:
   a. All sidewalks shall be four (4") inch depth except when authorized by the City Engineering Department in areas of driveway locations and upon property owner's request for the additional thickness, which shall be seven (7") inches. Restoration with topsoil and seed is incidental.
2. Method of Measurement:
   a. Sidewalks and crosswalks installed, including handicapped ramps, shall be measured by area in square feet, and the quantity measured for payment shall be the amount actually completed and accepted in accordance with the terms of the contract, computed from dimensions as field measured by the Engineering Department.
3. Basis of Payment:
   a. The area, measured as provided above, shall be paid for at the contract unit price per square foot for the items for concrete sidewalk- 4 inch, 6 inch or 7 inch sidewalk-, including ramps for the handicapped, which price shall be full compensation for furnishing all materials, including concrete masonry, expansion joints; for all normal excavation and preparation of foundation, including sand fill, backfilling, and disposal of surplus materials; for placing, finishing, sawing of joints, protecting and curing; for barricading for public safety; and for labor, tools, equipment and incidentals necessary to complete the work, including disposal of surplus materials from excavation, root grinding material and restoring the site of the work. Include the cost of restoration with topsoil and seed.

C. CONCRETE CURB OR CURB AND GUTTER
1. Method of Measurement:
   a. These items, completed in accordance with the terms of the contract, will be measured by length in linear feet along the flow line and such measurement shall be continuous along such line extended across driveway and alley entrance returns or handicapped ramps.
2. Basis of Payment:
   a. The footage, measured as provided above, shall be paid for at the contract unit price per linear foot. This price shall be full compensation for all excavation and preparation of foundation and all special construction required at driveway and alley entrances or handicapped ramps; for furnishing all materials, for placing, finishing, protecting and curing; for sawing of joints; for barricading for public safety; and for all labor, tools and equipment and incidentals necessary to complete the work, including disposal of surplus materials from excavation, root grinding material and restoring the site of the work. Include the cost of restoration with topsoil and seed.

D. INTEGRAL SIDEWALK AND CURB
1. Method of Measurement:
   a. Integral sidewalk and curb as shown on the attached typical sections, including handicapped ramps if required, shall be measured by area in square feet of sidewalk area (face of curb to opposite edge of sidewalk), and the quantity

measured for payment shall be the amount actually completed and accepted in accordance with the terms of the contract, computed from dimensions as field measured by the Engineering Department.

2. Basis of Payment:
   a. The area, measured as provided above, shall be paid for at the contract unit price per square foot for the items of Integral Sidewalk and Curb, including ramps for the handicapped, which price shall be full compensation for furnishing all materials, including concrete masonry, expansion joints; for all normal excavation and preparation of foundation, including the integral curb; sand fill, backfilling and disposal of surplus material including root grinding material; for placing, finishing, sawing of joints, protecting and curing; and for all labor, tools, equipment and incidentals necessary to complete the work and restore the site of the work. Include the cost of restoration with topsoil and seed.

E. CONCRETE APRONS- 7 INCHES
1. Method of Measurement:
   a. Concrete Aprons - 7 inch, shall be measured by area in square yard, and the quantity measured for payment shall be the amount actually completed and accepted in accordance with the terms of this contract, computed from dimensions of actual field measurements by the Engineering Department.
2. Basis of Payment:
   a. The area, measured as provided above, shall be paid for at the contract unit price per square yard for the items for concrete aprons 7 inch, which price shall be full compensation for furnishing all materials, including concrete masonry, expansion joints; for all normal excavation and preparation of foundation, including sand fill, backfilling, and disposal of surplus materials; for placing, finishing, sawing of joints, protecting and curing; for barricading for public safety; and for labor, tools, equipment and incidentals necessary to complete the work, including disposal of surplus materials from excavation, root grinding material and restoring the site of the work. Include the cost of restoration with topsoil and seed.

F. CONCRETE SAWING
1. Method of Measurement:
   a. Only when authorized and directed by a city representative the contractor shall be compensated at the contract unit price per lineal foot for the item of concrete sawing for any such work in project areas where existing joints cannot be utilized.
2. Basis of Payment:
   a. Sawing, measured as provided above, shall be paid for at the contract unit price per lineal foot, which price shall be full compensation for sawing and sludge removal.
   b. No compensation will be allowed for concrete sawing for the express convenience of the contractor.

G. TOPSOIL. SEED AND FERTILIZER
1. Method of Measurement:
   a. Only when authorized and directed by a city representative the contractor shall be compensated at the contract unit price per square yard for the topsoil, seed and fertilizer.
   b. Topsoil shall be measured for payment by square yard price of topsoil, and shall include any removal required, grading and placement of topsoil.
2. B. Basis of Payment:
   a. The contract price per square yard of topsoil four (4")) depth shall be full compensation for all materials, for all evacuation and preparation of foundation, for

placing, disposal of surplus material and for all labor, tools, equipment and incidentals necessary to complete the work and restore the site of work.

1.04 SUBMITTALS

A. Submit Product Data in accordance with Section 01 14 00 – Work Restrictions.
   1. Include in Submittal:
      a. Source of Aggregate
      b. Production Test Results
      c. Test Results.

PART 2 – PRODUCTS

2.01 Products

A. Construction methods and all materials furnished and used in the work under this contract shall conform to the requirements as stated in Section 601 and Section 602 of the WisDOT Specs and as modified herein.

B. Concrete to be used in the work under this contract shall be air-entrained Portland cement, Class A-FA, providing a minimum compressive strength of 3,500 P.S.I. in twenty-eight (28) days.

PART 3 – EXECUTION

3.01 Preparation

A. No sidewalk installation or foundation embankment shall be installed without complete removal of all underlying sod, vegetation and humus soil.

B. Excess materials from preparation of sidewalk foundations and concrete rubble from removals shall be removed by the contractor from the project site and not deposited or stored on private property without the property owner's written consent.

C. When excavating, the contractor shall excavate four (4") inches deeper than the subgrade of the sidewalk installation and shall bring the foundation to subgrade elevation with clean gravel containing stone no larger than 3/4" in diameter, and mechanically compact this top layer.

D. In embankment sections, the foundation shall be brought to subgrade elevation with clean gravel, containing stone no larger than 3/4" in diameter, and shall be mechanically tamped or compacted in one (1') foot layers to ensure stability. The embankment foundation shall be constructed to minimum width of two (2') feet wider than the proposed sidewalk and extending not less than one foot beyond each edge of the proposed sidewalk installation.

E. In a cut section, the foundation shall be made sufficiently wide to permit placing of forms and performing the required work of placing the concrete and finishing.

F. Grading required to prepare the foundation which amounts to more than an average fill of six (6") inches to subgrade or an average cut of more than twelve (12") inches to subgrade shall be considered as excessive excavation. The City representative shall determine the

quantities involved and the contractor shall be paid for such additional excavation at the unit price for such work, in place.

G. Prior to the contractor making any excavation for sidewalk installation ordered under this contract that will require excessive cut or fill as stated above, the contractor shall notify the City Engineer to investigate the work location to determine the quantities involved. The contractor's failure to comply with this requirement will reflect to mean to the City that no additional cut or fill is involved and that the contractor cannot, after the fact, claim or request additional payment for excessive cut or fill on this particular installation site.

H. In locations where faulty sidewalks are ordered to be rebuilt, the existing sidewalks are to be removed. The new sidewalk installation shall be constructed to correct line, grade and depth according to the specifications for new concrete sidewalks.

I. Removal work by the contractor shall be performed to the removal limits as field marked by the City representative. Existing joints will be utilized by the City in marking the removal limits. Contractor shall exercise due care so as not to impair the value of any portion of the existing structure which is to be retained. Removals beyond these field-marked removal limits, due to improper grades of existing, retained structure, will not be compensated by the City to the contractor unless specifically approved by the City representative. Damages beyond the City-approved removal limits shall be restored by the contractor at his own expense.

3.02 GRADING FOR NEW SIDEWALK

A. To establish proper construction depth of the new sidewalk, the removal of top soil and sod and the compaction of the subgrade will be paid on a square footage basis. This measure will be equal to the square footage of new sidewalk installed.

3.03 FORMS

A. Forms shall be of wood or metal and shall be straight and have sufficient strength to resist springing, tipping or other displacement during the process of depositing and consolidating the concrete. If of wood, the forms shall be surfaced plank of at least two (2") inch nominal thickness stock except for sharply curved sections; if of metal, they shall be of approved section and shall have a flat, true surface on top. The forms shall have a depth of four (4") inches equal to the depth of the sidewalk. They shall be securely staked, braced and held firmly to the required line and grade and shall be sufficiently tight to prevent leakage or mortar. All forms shall be cleaned thoroughly and oiled before the concrete is placed against them.

B. The contractor shall provide the engineering department a minimum of 24-hour notice prior to placing concrete to allow time to check the foundation and forms. Failure to comply with this provision may require removal and replacement, at the Contractor's cost, or disqualify the request for payment of the work.

3.04 PLACING AND FINISHING OF CONCRETE

A. Concrete placed by hand methods shall not exceed a three (3") inch slump. The concrete shall be placed on a moist foundation, deposited to the required depth, and consolidated and spaded sufficiently to eliminate honeycombing at forms and to bring the mortar to the

surface for proper finishing. Before the mortar has set, the surface shall be steel troweled and brushed.

B. All water stop boxes will have a PVC sleeve placed around the perimeter of the stop box if it is located in the sidewalk. This PVC sleeve and vertical adjustment of the stop box is incidental to the contract.

C. Concrete sidewalk - 6 inches shall have a window pane finish to match existing walks.

D. Before performing the final surface finish, check the sidewalk surface with a 4-foot straightedge and correct areas that vary 1/8 inch from the testing edge or will cause water to not drain from the sidewalk. Concrete sidewalk were water does not drain from the sidewalk may require removal and replacement, at the Contractor's cost, or disqualify the request for payment of the work."

3.05 HANDICAPPED RAMPS

A. Ramps for handicapped shall be constructed at all crosswalks, in locations as shown on the included detail sheets and as located by the City representative. The City shall not measure crosswalks constructed without ramp for handicapped for payment. The City representative, at all rebuilt crosswalks, shall determine locations of handicapped ramps.

3.06 CURB RAMP DETECTABLE WARNING FIELD

A. The City of Sheboygan will supply the Neenah Foundry Company curb ramp detectable warning plates (Neenah R-4984 (24"x24" square)). The contractor will be responsible for the installation and rebar reinforcement.

B. The contractor is responsible for retrieving the detectable warning plates from the Municipal Service Building located at 2026 New Jersey Avenue. The contractor shall inform the inspector 24 hours prior to needing the castings.

C. The installation of the 2'x2' detectable warning field shall be measured and paid for as a unit of each, and shall include all labor, transportation, and equipment necessary to install said devices.

3.07 JOINTS

A. For sidewalks of uniform width, transverse joints shall be constructed at right angles to the centerline of the sidewalks and longitudinal joints shall be constructed parallel to the centerline of the walk. For sidewalks of variable or tapering widths, the transverse and longitudinal joints shall be at right angles to each other insofar as feasible, and the joints shall be constructed as laid out in the field by the engineer.

B. Whenever the entire area between the back of the curb and the right-of-way or lot line is to be covered with concrete sidewalk, and when a permanent structure is located within such area or on the right-of-way or lot line, such sidewalk shall be constructed in alternate sections extending from the back of the curb to permanent structure, and such sections shall not exceed 12 linear feet of sidewalk length. When the alternate sections placed in the first operation have been cured, as specified, the intervening sections shall be placed to complete the walk.

C. Sidewalk installation shall be divided into square sections by means of a grooved or sawed contraction joint.

D. One-half inch (2") expansion preformed joint filler shall be placed between the sidewalk and back of abutting parallel curb or gutter and one-inch (1 ") between sidewalk and buildings or other rigid structures.

E. No joint shall deviate more than five degrees from a position perpendicular to the surface of the finished sidewalk, nor shall the axis of any joint deviate more than one-half inch (1/2") either way from a straight line or from the designated alignment at any point. If the joints are constructed in sections, there shall be no offsets or concrete struts between adjacent units.

F. When the sidewalk is constructed in partial width slabs, transverse joints in adjacent slabs shall be placed in line with like joints in the previously constructed slabs. In the case of widening existing sidewalks, transverse joints shall be placed in line with like joints in the existing sidewalks.

G. Insofar as feasible, sidewalks shall be divided into sections of five (5') feet in any dimension. The unit areas shall be produced by use of metal slab division forms extending to the full depth of the concrete or, when approved by the Engineer, by contraction joints, as defined hereinafter.

H. Contraction joints in sidewalks shall consist of slot or groove, at least one inch (1 ") in depth and one-fourth inch (1/4") width, formed by inserting a metal parting strip in the concrete after it has been struck off and consolidated and while the concrete is still plastic. As soon as the concrete will retain its shape, the parting strip shall be removed and the joint edge finished.

I. Contraction joints at least one inch (1 ") in depth and approximately one-eighth (1/8") inch in width may be sawed in the concrete sidewalk. The sawing shall be done as soon as practicable after the concrete has set sufficiently to preclude raveling during the sawing and before any shrinkage cracking takes place in the concrete. Sawing of these contraction joints will not be a pay item, but can be accomplished at the contractor's option.

J. Expansion joint filler shall extend to the full depth of the concrete, and the top shall be one-quarter (1/4") inch below the finished surface of the sidewalk. Expansion joints are to be installed in sections of sidewalk no longer than 96 feet.

K. The concrete at the faces of all forms shall be thoroughly spaded and compacted to fill the voids, and the surface shall be finished smooth and true to grade in manner as hereinbefore provided. The edges of the sidewalk along form, joints and metal slab division forms shall be rounded with an edger of one-quarter inch (1/4") radius, "Honeycombing" on exposed faces, due to lack of spading, shall be patched and upon removal of forms and prior to backfilling at the contractor's expense.

L. Joints in sidewalk installations shall not be sealed.

3.08 CURING AND PROTECTION

A. All concrete masonry placed shall be cured by the white or clear pigmented Impervious Coating Method in such a manner as to provide a continuous uniform water impermeable film on the entire concrete surface.

B. Protection of concrete placed shall be the contractor's responsibility and may be opened to pedestrian traffic after expiration of the curing period of three days and backfilling.

3.09 BACKFILLING AND RESTORING THE SITE OF THE WORK

A. Where the sidewalk does not abut curb, gutter, pavement or other structure, and when the concrete in such sidewalk has cured, forms removed, and honeycombing patched, the disturbed ground or terrain along the sides shall be backfilled to the top of the new concrete with suitable and acceptable topsoil. being without vegetation or stones and seeded. The seed shall conform to theW-DOT seed mix #40 without the white clover.

B. Backfilling shall conform to the adjacent terrain, and shall be level with the placed sidewalk.

C. The contractor shall dispose of surplus excavation and shall restore the site of the work to a neat and clean condition, satisfactory to the City representative, within the specified time of twenty-four (24) hours after forms have been removed.

D. A depth of four (4") inches topsoil shall be placed whenever concrete sidewalk is removed and not replaced, or designated by the project engineer. Topsoil to be approved prior to use by the project engineer. Excavated material, vegetation, or stones is not acceptable backfill material.

3.10 REMOVING OF REGULATORY SIGNS

A. To be done by others

B. When it becomes necessary to remove trees or regulatory signs to facilitate placement of sidewalk, the contractor, upon completion of removal work, shall notify the City Engineering Department of this fact and the tree or regulatory signs will be removed by City forces.

C. The responsibility for barricading for public safety at these locations shall be the contractor's responsibility

3.11 ROOT CUTTING

A. The contractor will be required to cut and/or grind all single tree roots and remove the trimmings from all single tree roots that extend into the sidewalk from existing trees, as well as tree stumps and root clumps up to a distance of twelve (12") inches from the edge of the concrete walk, extended a minimum of six (6") inches on each side of the root and cut to a depth of twelve (12") inches below the finished surface grade of the sidewalk.

B. The method used to cut the roots shall be mechanical and leave a blunt cut at the root, if a tree is present in the area. The Engineer shall approve the method of root cutting prior to the work beginning.

C. The Contractor should take care to disturb the area as little as possible during the root cutting operations. Granular material shall be compacted into the trench left by the root cutting.

D. All root cutting items/labor/backfill material listed above under root cutting will be incidental to the contract.

E. Restoration of the trench outside of the limits of the newly replaced sidewalk shall be restored with topsoil, seed, and fertilizer. The topsoil, seed and fertilizer will be paid under the appropriated bid items.

3.12 ROOT EXCAVATION

A. The contractor will excavate and remove buried roots found existing below the surface of the sidewalk. Root removal will begin from the bottom of the sidewalk grade and extend twelve (12") inches below that grade. This excavated area will be replaced with granular material and compacted in no more than 6-inch lifts within the excavated area. All items/labor/backfill material listed above shall be incidental to the contract.

B. The trench outside of the limits of the newly replaced sidewalk shall be restored with topsoil, seed, and fertilizer. The topsoil, seed and fertilizer will be paid under the appropriated bid items.

III

Res. No. 151 - 22 - 23. By Alderpersons Dekker and Rust. March 6, 2023.

A RESOLUTION authorizing the appropriate City officials to enter into a contract with Buteyn-Peterson Construction Company for miscellaneous sewer repairs.

WHEREAS, the City of Sheboygan has advertised for bids to complete various sewer repairs throughout the City as identified on the attached bid worksheet (the "Project"); and

WHEREAS, the lowest bid of seven received was from Buteyn-Peterson Construction Company for $283,729.00; and

WHEREAS, the City Engineer has reviewed the bids and determined that the low bid met all of the specifications.

NOW, THEREFORE, BE IT RESOLVED: That the Mayor and City Clerk are hereby authorized to enter into the attached agreement with Buteyn-Peterson Construction Company for the Project.

BE IT FURTHER RESOLVED: That the Finance Director is authorized to draw funds, not to exceed $283,729.00 from Account No. 630310-531100 (Wastewater System - Contracted Services) to pay for the construction done pursuant to the agreement.

PW

_____

_____

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20 . _____, City Clerk

Approved _____ 20 . _____, Mayor

AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between City of Sheboygan ("Owner") and Butyen-Peterson Construction Company ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: municipal street and utility construction.

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Miscellaneous Sewer Repairs (New York Avenue, Wisconsin Avenue, Niagara Avenue, And Ontario Avenue)

2.02 City of Sheboygan Resolution: //Resolution Number//

ARTICLE 3 – ENGINEER

3.01 The part of the Project that pertains to the Work has been designed by the City of Sheboygan.

3.02 The Engineering Division, Department of Public Works, City of Sheboygan, Sheboygan, WI will assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. The Work will be substantially completed on or before June 30, 2023 and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the 14th day following substantial completion.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner the amount identified in paragraph 19.01 of the Supplementary Conditions for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.

2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner the amount identified in paragraph 19.01 of the Supplementary Conditions for each day that expires after such time until the Work is completed and ready for final payment.

3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

4. Milestones: Contractor shall pay Owner the amount identified in paragraph 19.01 of the Supplementary Conditions for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of each Milestone, until Milestone is achieved.

B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

4.04 *Special Damages*

C. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

D. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item) as stated in Contractor's Bid, attached hereto as an exhibit.

B. The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on the third Wednesday of the Month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract

a. 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and

b. 0 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

6.04 *Interest*

A. All amounts not paid when due shall bear interest at the rate of 0 percent per annum.

ARTICLE 7 – CONTRACT DOCUMENTS

7.01 *Contents*

A. The Contract Documents consist of the following:

1. This Agreement.

2. Bonds:

a. Performance bond (together with power of attorney).

b. Payment bond (together with power of attorney).

3. Specifications as listed in the table of contents of the project manual (copy of list attached and incorporated by reference).

4. Drawings as listed in the table of contents of the drawings (copy of list attached and incorporated by reference).

5. Addenda (not attached but incorporated by reference)

a. Number 1 dated 2/15/2023

b. Number 2 dated 2/21/2023

6. Exhibits to this Agreement (enumerated as follows):

a. Contractor's Bid consisting of 1 page

7. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:

a. Notice to Proceed,

b. Work Change Directives,

c. Change Orders,

d. Field Order,

e. Task Orders.

B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 7.

D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8 – ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 *Contractor's Representations*

A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:

1. Contractor has examined and carefully studied the Contract Documents, including Addenda.

2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.

4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the

Supplementary Conditions, with respect to the Technical Data in such reports and drawings.

5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.

6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.

7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

8.02 *Contractor's Certifications*

A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

(Continued on next page)

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

OWNER:
City of Sheboygan

By: _____
(signature)
Name, Title: Ryan Sorenson, Mayor

Date: _____

Attest:

By: _____
(signature)
Name, Title: Meredith DeBruin, City Clerk

Date: _____

Signatures authorized pursuant to Res. ___-21-22.

Address for giving notices:
City of Sheboygan – Engineering Division
2026 New Jersey Avenue
Sheboygan, WI 53081

Approved as to form and Execution:

By: _____
(signature)
Name, Title: Charles C. Adams, City Attorney

Date: _____

CONTRACTOR:
Butyen-Peterson Construction Company

By: _____
(signature)
Name, Title: _____
(printed)

Date: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Address for giving notices:

_____

_____

_____

CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Table of Contents		
		Section:	00 01 10		
		Bid Number:	2481-23	Page:	1 of 2

MISCELLANEOUS SEWER REPAIRS
(NEW YORK AVENUE, WISCONSIN AVENUE, NIAGARA AVENUE, AND ONTARIO AVENUE)

SECTION	TITLE	Pages
00 00 00	**PROCUREMENT AND CONTRACTING REQUIREMENTS**	
	Introductory Information	
00 01 01	Cover	1
00 01 10	Table of Contents	2
	Procurement Requirements	
00 11 13	Advertisement for Bids	2
00 21 13	Instructions for Bidders	10
00 41 43	Bid Form	6
00 41 44	Unit Price Worksheet	1
00 41 44.1	Quest Unit Price Worksheet	1
00 42 13	Bid Bond	2
00 45 13	Bidder's Proof of Responsibility	4
00 45 20	Bidder's Proof of Responsibility and Non-Collusion Affidavit - Subcontractor	3
00 45 50	List of Subcontractors	1
	Contracting Requirements	
00 52 00	Agreement	7
00 55 00	Notice to Proceed	1
00 61 13	Performance Bond Form	3
00 61 14	Payment Bond Form	3
00 62 11	Submittal Cover	1
00 62 76	Application for Payment	2
00 63 13	Request for Information	1
00 63 63	Change Order Form	2
00 65 16	Certificate of Substantial Completion	1
00 65 18	Contractor's Affidavit of Compliance Certification and Release	1
00 65 19	Consent of Surety to Final Payment	1
00 72 00	Standard General Conditions of the Construction Contract – 2018	78
00 73 00	Supplementary Conditions	13
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01 14 00	Work Restrictions	5
01 43 00	Quality Assurance	2
01 55 26	Traffic Control	2
01 57 19	Temporary Environmental Controls	2
01 78 00	Closeout Requirements	2
01 78 19	Project Record Requirements	2
31 00 00	**EARTHWORK**	
31 25 00	Erosion Control and Site Maintenance	3
32 00 00	**EXTERIOR IMPROVEMENTS**	
32 10 00	Grading, Pavement, Curb and Gutter, and Sidewalk	3

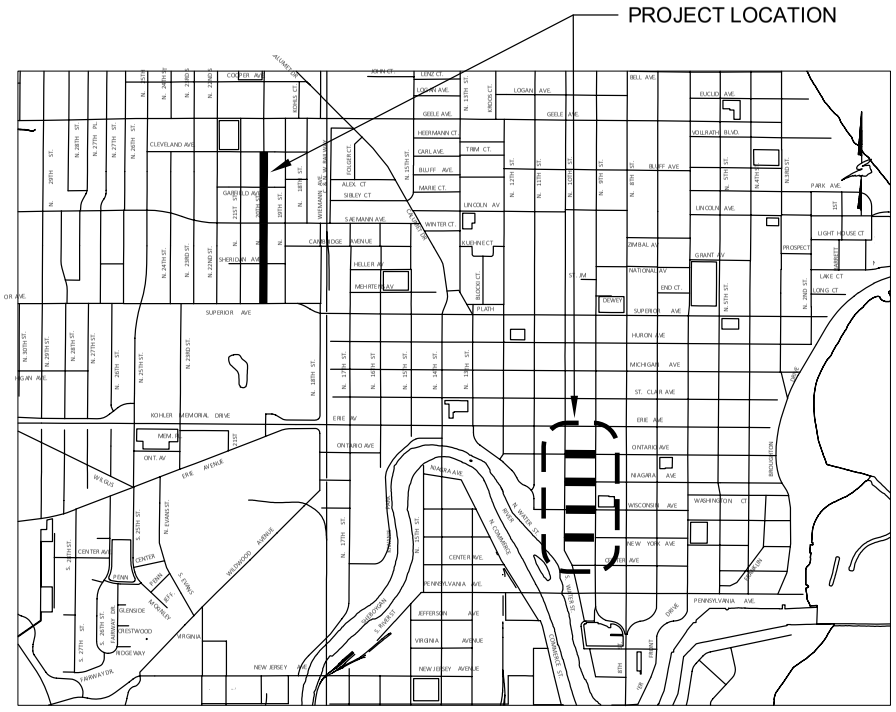
SECTION	TITLE	Pages
33 00 00	**UTILITIES**	
33 05 09	Sewer Pipe	2
33 05 61	Concrete Manholes, Catch Basins and Inlets	4

BID NUMBER: 2481-23

CITY OF SHEBOYGAN
DEPARTMENT OF PUBLIC WORKS

MISCELLANEOUS SEWER REPAIRS
NEW YORK AVENUE, WISCONSIN AVENUE,
NIAGARA AVENUE, AND ONTARIO AVENUE

FEBRUARY 2023



NOT TO SCALE

DRAWING INDEX		
SHEET NO.	**DRAWING SERIES/NUMBER**	**DESCRIPTION**
1	000CV	TITLE SHEET
2	001GN	GENERAL NOTES
3-7	040D	CONSTRUCTION DETAILS
8-8.1	310TC	DETOUR ROUTES
9	400P-1	SEWER PLANS - NEW YORK AVENUE
10	400P-2	SEWER PLANS - WISCONSIN AVENUE
11	400P-3	SEWER PLANS - NIAGARA AVENUE
12	400P-4	SEWER PLANS - ONTARIO AVENUE
13-16	400P-5 TO -8	SEWER PLANS - NORTH 20TH STREET

Revision Number	Revision Description	Drawn By	Date
1	ADDENDUM NO. 1 (ENTIRE SHEET ADDED)	KEJ	2/15/2023

MISCELLANEOUS SEWER REPAIRS
NEW YORK AVENUE, WISCONSIN AVENUE,
NIAGARA AVENUE, AND ONTARIO AVENUE
TITLE SHEET

CITY OF SHEBOYGAN
PUBLIC WORKS

City of Sheboygan
Department of Public Works
Engineering Division
2026 New Jersey Avenue
Sheboygan, WI 53081

Ryan Sazama, PE - City Engineer

Designed By	KEJ
Drawn By	KEJ
Checked By	MPB
Plot Date	2/15/2023
Bid No.	2481-23
Project Date	FEBRUARY 2023
Sheet No.	1
Drawing No.	

PLOTTED BY - Jump, Kevin

FILE NAME: P:\ENGINEERING\STREETS\NEW YORK AVENUE\SEWER REPAIRS (10TH TO 9TH)\PRODUCTION\PLAN SHEETS\000CV.DWG
LAYOUT NAME - 000CV

2481-23 Miscellaneous Sewer Repairs (#8389398)
Owner: Sheboygan WI, City of
Solicitor: Sheboygan WI, City of
02/22/2023 10:00 AM CST

						Buteyn-Peterson Construction Company	
Section Title	**Line Item**	**Item Code**	**Item Description**	**UofM**	**Quantity**	**Unit Price**	**Extension**
Required Items							
	1	R1	Mobilization	LS	1	$7,500.00	$7,500.00
	2	R2	Erosion Control	LS	1	$3,000.00	$3,000.00
	3	R3	Traffic Control	LS	1	$6,800.00	$6,800.00
	4	R4	Wisconsin Avenue Detour	LS	1	$2,100.00	$2,100.00
	5	R5	Niagara Avenue Detour	LS	1	$2,100.00	$2,100.00
	6	R6	Superior Avenue Detour	LS	1	$2,800.00	$2,800.00
	7	R7	New York Avenue - Storm Sewer Spot Repair 20 feet from MH ST-13A-107	LS	1	$5,900.00	$5,900.00
	8	R8	New York Avenue - Storm Sewer Spot Repair 404 feet from MH ST-13A-107	LS	1	$6,600.00	$6,600.00
	9	R9	Wisconsin Avenue - Sanitary Sewer Relay from MH SA-13A-59 to MH SA-13A-58	LF	221	$389.00	$85,969.00
	10	R10	Wisconsin Avenue - Storm Sewer Spot Repair 224 to 234 feet from MH ST-13A-114	LS	1	$6,750.00	$6,750.00
	11	R11	Niagara Avenue - Storm Sewer Spot Repair 336 fett from MH ST-A-016	LS	1	$6,400.00	$6,400.00
	12	R12	Niagara Avenue - Storm Sewer Spot Repair 408 feet from MH ST-A-016	LS	1	$14,500.00	$14,500.00
	13	R13	Niagara Avenue - Storm Sewer Relay MH ST-13A-001 to CB ST-13A-001S	LF	33	$170.00	$5,610.00
	14	R14	Ontario Avenue - Storm Sewer Spot Repair 122 feet from MH ST-13A-133	LS	1	$8,800.00	$8,800.00
	15	R15	North 20th Street - Sanitary Sewer Relay from MH SA-30-158 to North	LF	250	$278.00	$69,500.00
	16	R16	North 20th Street - Sanitary Sewer Spot Repair and Wye Repair - 64 to 70 feet South of MH SA-30-145	LS	1	$9,400.00	$9,400.00
	17	R17	North 20th Street - Sanitary Sewer Wye Repair - 15 Feet North of MH SA-30-145	LS	1	$9,400.00	$9,400.00
	18	R18	North 20th Street - Sanitary Sewer Wye Repair - 111 Feet South of MH SA-30-133	LS	1	$9,100.00	$9,100.00
	19	R19	North 20th Street - Sanitary Sewer Wye Repair - 69 Feet South of MH SA-30-133	LS	1	$9,100.00	$9,100.00
	20	R20	North 20th Street - Sanitary Sewer Wye Repair - 67 Feet South of MH SA-30-105	LS	1	$12,400.00	$12,400.00
Total							**$283,729.00**

PROJECT MANUAL

BID NUMBER:
2481-23

MISCELLANEOUS SEWER REPAIRS (NEW YORK AVENUE, WISCONSIN AVENUE, NIAGARA AVENUE, AND ONTARIO AVENUE)

FEBRUARY 2023

CITY OF SHEBOYGAN
PUBLIC WORKS
Engineering Division
2026 New Jersey Ave
Sheboygan, WI 53081

MISCELLANEOUS SEWER REPAIRS
(NEW YORK AVENUE, WISCONSIN AVENUE, NIAGARA AVENUE, AND ONTARIO AVENUE)

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33 05 09	Sewer Pipe	2
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ADVERTISEMENT FOR BIDS

MISCELLANEOUS SEWER REPAIRS
(NEW YORK, AVE., WISCONSIN AVE., NIAGARA AVE., AND ONTARIO AVE.)

Bid No. 2481-23

Owner and Work: The City of Sheboygan hereby gives notice that sealed public bids will be received for Miscellaneous Sewer Repairs (New York, Ave., Wisconsin Ave., Niagara Ave., And Ontario Ave.) The majority work of this contract is generally described as follows:

- 6 - Sewer Spot Repairs,
- 33 LF of 15-inch PVC Storm Sewer Relay,
- 221 LF of 12-Inch PVC Sanitary Sewer Relay,
- Concrete Pavement Replacement,
- Concrete Base Replacement,
- Erosion Control,
- Traffic Control and Detours.

Time and Place of Bid Opening: Bids will be received until 10:00 AM Local Time on Wednesday, February 22, 2023. Bids will be received using the QuestCDN vBid website. No Paper bids will be accepted. Prospective bidders must be on the plan holders list through QuestCDN for bids to be accepted. To access the bid form, download the project documents and select the online bidding button on the online advertisement. As soon as practical, after said closing time, all bids will be opened online and a summary of the bids will be available. A public opening will be held at the Municipal Services Building located at 2026 New Jersey Avenue, Sheboygan, WI.

Bidding Documents: Complete digital project bidding documents are available at www.questcdn.com. You may download the digital plan documents for a non-refundable fee of $42 from the QuestCDN Website.

Quest eBidDoc Number for this project is: 8389398

QuestCDN: Please contact QuestCDN.com at 952-233-1632 or info@questcdninfo.com for assistance in free membership registration, downloading, bidding and working with this digital project information.

Pre-Bid Qualification: All bidders shall be required to file or have on file a valid Bidder's Proof of Responsibility form with the Engineering Division, City of Sheboygan, not less than five (5) days prior to the time of opening of these bids. Only bidders who have demonstrated their qualifications to perform the work will be permitted to bid. Forms are included in the proposed contract documents.

Subcontractors: The apparent Successful Bidder, and any other Bidder so requested, shall within ten (10) days after Bid opening, submit to the City a Bidder's Proof of Responsibility Affidavit and Non-Collusion Affidavit from each Subcontractor. Forms are included in the proposed contract documents.

Bid Security: A satisfactory Bid Bond, payable to the City of Sheboygan, WI, in an amount not less than five (5%) percent of the bid.

Legal Provisions: This contract letting shall be subject to the provisions of Section 62.15, 66.0901, and 779.15 of the Wisconsin Statutes.

Ryan J. Sazama, P.E., A.I.A.
City Engineer

TABLE OF CONTENTS

Page

ARTICLE 1 – DEFINED TERMS 2
ARTICLE 2 – COPIES OF BIDDING DOCUMENTS 2
ARTICLE 3 – QUALIFICATIONS OF BIDDERS 2
ARTICLE 4 – SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE 3
ARTICLE 5 – BIDDER'S REPRESENTATIONS 4
ARTICLE 6 – PRE-BID CONFERENCE 5
ARTICLE 7 – INTERPRETATIONS AND ADDENDA 5
ARTICLE 8 – BID SECURITY 5
ARTICLE 9 – CONTRACT TIMES 6
ARTICLE 10 – LIQUIDATED DAMAGES 6
ARTICLE 11 – SUBSTITUTE AND "OR-EQUAL" ITEMS 6
ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS, AND OTHERS 6
ARTICLE 13 – PREPARATION OF BID 7
ARTICLE 14 – BASIS OF BID 8
ARTICLE 15 – SUBMITTAL OF BID 8
ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID 8
ARTICLE 17 – OPENING OF BIDS 9
ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE 9
ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT 9
ARTICLE 20 – BONDS AND INSURANCE 10
ARTICLE 21 – SIGNING OF AGREEMENT 10

ARTICLE 1 – DEFINED TERMS

1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions.

1.02 QuestCDN has the following meaning:

A. The term "QuestCDN" is used to describe the Quest Construction Data Network website or the Quest vBid online bidding website, available at http://www.questcdn.com//.

ARTICLE 2 – COPIES OF BIDDING DOCUMENTS

2.01 Complete sets of the Bidding Documents may be obtained from the Issuing Office in the number and format stated in the bid advertisement.

2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

2.03 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license for any other use.

ARTICLE 3 – QUALIFICATIONS OF BIDDERS

3.01 Prospective Bidders are required to furnish or have on file a valid Bidder's Proof of Responsibility form (Form 00 45 13) with the City of Sheboygan Engineering Division not less than five (5) days prior to the time of opening of these bids. Forms for filing of such Proof of Responsibility are attached to the contract documents for the use of all interested bidders.

3.02 Said form shall fully develop the bidder's financial ability, adequacy of plant, equipment and organization, prior experience or competency to perform the work contemplated and other pertinent and material facts.

3.03 The City reserves the right to require separate Statements for bidding on each public contract. In no event shall this Statement of Bidder's Qualifications be used to qualify bidders for public contracts after one (1) year from Statement's date.

3.04 The City reserves the right to consider as unqualified any bidder that does not habitually perform, with his own forces, the major portions of the work under this contract and/or has performed unacceptable or substandard work for the City under previous City contracts.

3.05 A Bidder's failure to submit required qualification information within the times indicated will disqualify Bidder from bidding on the Contract.

3.06 No requirement in this Article 3 to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder's qualifications.

3.07 Bidder is advised to carefully review those portions of the Bid Form requiring Bidder's representations and certifications.

ARTICLE 4 – SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE

4.01 Site and Other Areas

A. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by Owner for the use of the Contractor. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by Contractor.

4.02 Existing Site Conditions

A. Subsurface and Physical Conditions; Hazardous Environmental Conditions

1. The Supplementary Conditions identify:

a. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site.

b. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

c. reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.

d. Technical Data contained in such reports and drawings.

2. Engineer will make copies of reports and drawings referenced above available to any Bidder on request. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy Bidder is entitled to rely, as provided in the General Conditions, has been identified and established in the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any Technical Data or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

3. If the Supplementary Conditions do not identify Technical Data, the default definition of Technical Data set forth in Article 1 of the General Conditions will apply.

Underground Facilities: Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or adjacent to the Site are set forth in the Contract Documents and are based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others.

B. Adequacy of Data: Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 5.03, 5.04, and 5.05 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 5.06 of the General Conditions.

4.03 Site Visit and Testing by Bidders

A. Bidder shall conduct the required Site visit during normal working hours, and shall not disturb any ongoing operations at the Site.

B. Bidder is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.

C. On request, and to the extent Owner has control over the Site, and schedule permitting, the Owner will provide Bidder access to the Site to conduct such additional examinations, investigations, explorations, tests, and studies as Bidder deems necessary for preparing and submitting a successful Bid. Owner will not have any obligation to grant such access if doing so is not practical because of existing operations, security or safety concerns, or restraints on Owner's authority regarding the Site.

D. Bidder shall comply with all applicable Laws and Regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by Owner or by property owners or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.

E. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

4.04 Other Work at the Site

A. Reference is made to Specification Section 01 11 00 –Summary of work in the Project Bidding Documents for the identification of the general nature of other work of which Owner is aware (if any) that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) and relates to the Work contemplated by these Bidding Documents. If Owner is party to a written contract for such other work, then on request, Owner will provide to each Bidder access to examine such contracts (other than portions thereof related to price and other confidential matters), if any.

ARTICLE 5 – BIDDER'S REPRESENTATIONS

5.01 It is the responsibility of each Bidder before submitting a Bid to:

A. examine and carefully study the Bidding Documents, and any data and reference items identified in the Bidding Documents;

B. visit the Site, conduct a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfy itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;

C. become familiar with and satisfy itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work;

D. carefully study all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings;

E. consider the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs;

F. agree, based on the information and observations referred to in the preceding paragraph, that at the time of submitting its Bid no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;

G. become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;

H. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder;

I. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work; and

J. agree that the submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 6 – PRE-BID CONFERENCE

6.01 A pre-bid conference will not be conducted for this Project.

ARTICLE 7 – INTERPRETATIONS AND ADDENDA

7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda delivered to all parties recorded as having received the Bidding Documents. Questions received less than three days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

7.02 Addenda may be issued to clarify, correct, supplement, or change the Bidding Documents.

ARTICLE 8 – BID SECURITY

8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of 5 percent of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a Bid bond (on the form included in the Bidding Documents) issued by a surety meeting the requirements of Paragraphs 6.01 and 6.02 of the General Conditions.

8.02 The Bid security of the apparent Successful Bidder will be retained until Owner awards the contract to such Bidder, and such Bidder has executed the Contract Documents, furnished the required contract security, and met the other conditions of the Notice of Award, whereupon the

Bid security will be released. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited. Such forfeiture shall be Owner's exclusive remedy if Bidder defaults.

8.03 The Bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Contract or 91 days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.

8.04 Bid security of other Bidders that Owner believes do not have a reasonable chance of receiving the award will be released within seven days after the Bid opening.

ARTICLE 9 – CONTRACT TIMES

9.01 The number of days within which, or the dates by which, Milestones, if identified are to be achieved and the Work is to be substantially completed, and completed and ready for final payment, are set forth in the Agreement.

ARTICLE 10 – LIQUIDATED DAMAGES

10.01 Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

ARTICLE 11 – SUBSTITUTE AND "OR-EQUAL" ITEMS

11.01 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration during the bidding and Contract award process of possible substitute or "or-equal" items. In cases in which the Contract allows the Contractor to request that Engineer authorize the use of a substitute or "or-equal" item of material or equipment, application for such acceptance may not be made to and will not be considered by Engineer until after the Effective Date of the Contract.

11.02 All prices that Bidder sets forth in its Bid shall be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of "or-equal" or substitution requests are made at Bidder's sole risk.

ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS, AND OTHERS

12.01 A Bidder shall be prepared to retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of the Work if required by the Bidding Documents (most commonly in the Specifications) to do so. If a prospective Bidder objects to retaining any such Subcontractor, Supplier, or other individual or entity, and the concern is not relieved by an Addendum, then the prospective Bidder should refrain from submitting a Bid.

12.02 Subsequent to the submittal of the Bid, Owner may not require the Successful Bidder or Contractor to retain any Subcontractor, Supplier, or other individual or entity against which Contractor has reasonable objection.

12.03 Bidder shall submit with the bid a list of proposed subcontractors in accordance with Wisconsin Statute Section 66.0901(7). The list may not be added to nor altered without the written consent of the City.

12.04 The apparent Successful Bidder, and any other Bidder so requested, shall within ten days after Bid opening, submit to the City a Bidder's Proof of Responsibility and Non-Collusion Affidavit (Document 00 42 20) from each Subcontractor.

If City, after due investigation, has reasonable objection to any proposed Subcontractor, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder shall submit a substitute, Bidder's Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and making the Contract award.

12.05 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors. Declining to make requested substitutions will constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor so listed and against which City makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to subsequent revocation of such acceptance as provided in Paragraph 7.06 of the General Conditions.

ARTICLE 13 – PREPARATION OF BID

13.01 The Electronic Bid Worksheet is available from QuestCDN. To access the electronic bid worksheet, download the project documents, then select online bidding on QuestCDN. A summary of the items and units is included in the documents for reference. The official bid worksheet is only available on QuestCDN

13.02 A Bid by a corporation shall be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation shall be shown.

13.03 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The partnership's address for receiving notices shall be shown.

13.04 A Bid by a limited liability company shall be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the firm's address for receiving notices shall be shown.

13.05 A Bid by an individual shall show the Bidder's name and address for receiving notices.

13.06 A Bid by a joint venture shall be executed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The joint venture's address for receiving notices shall be shown.

13.07 All names shall be printed in ink below the signatures.

13.08 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers and dates of which shall be filled in on the Bid Form.

13.09 Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.

ARTICLE 14 – BASIS OF BID

14.01 Unit Price

A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Worksheet under the required section.

If Alternates are present, include a separate unit price for each Alternate provided on the Bid Form. The price for the Alternates will be the amount added to or deleted from the Base Bid if the Owner selects the Alternate. In the evaluation of Bids, Owner may select any combination of Alternates or Owner may choose not to accept any Alternate Bids.

B. The "Bid Price" (sometimes referred to as the extended price) for each unit price Bid item will be the product of the "Estimated Quantity" (which Owner or its representative has set forth in the Bid Worksheet) for the item and the corresponding "Bid Unit Price" offered by the Bidder. The total of all unit price Bid items will be the sum of these "Bid Prices"; such total will be used by Owner for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions and as modified in the Supplementary Conditions.

C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

14.02 Allowances

A. For cash allowances the Bid price shall include such amounts as the Bidder deems proper for Contractor's overhead, costs, profit, and other expenses on account of cash allowances, if any, named in the Contract Documents, in accordance with Paragraph 13.02.B of the General Conditions.

ARTICLE 15 – SUBMITTAL OF BID

15.01 A Bid shall be received no later than the date and time prescribed in the advertisement or invitation to bid and shall be submitted using QuestCDN as prescribed in the advertisement or invitation to bid.

15.02 Only Bidders qualified in accordance with Article 3 will be allowed to access the Quest Bid Worksheet. Engineer will grant access to online Quest Bid Worksheet on QuestCDN. If bidder is qualified in accordance with Article 3 and needs access to Bid Worksheet, bidder shall contact Engineer.

15.03 Bid Security and other required documents shall be submitted using QuestCDN.

15.04 Paper bids or Bids received after the date and time prescribed for the opening of bids, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the Bidder unopened.

ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID

16.01 Bids may be modified and revised using QuestCDN until the such time the bids are opened as indicated in the advertisement or invitation to bid

16.02 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid,

and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

ARTICLE 17 – OPENING OF BIDS

17.01 Bids will be opened at the time and place indicated in the advertisement or invitation to bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the bids have been reviewed.

ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE

18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT

19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible. If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, then the Owner will reject the Bid as nonresponsive; provided that Owner also reserves the right to waive all minor informalities not involving price, time, or changes in the Work.

19.02 If Owner awards the contract for the Work, such award shall be to the responsible Bidder submitting the lowest responsive Bid. Only after authorization for such award is made by the City of Sheboygan Common Council, to whom all proposals will be referred for consideration, will the contract be awarded.

19.03 Evaluation of Bids

A. In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Worksheet or prior to the Notice of Award.

B. Bids will be evaluated and the low Bidder determined pursuant to Article 19:

1. If no Alternate is present, bids will be compared on the basis of the "Base Bid" and this amount will be the basis for determining the lowest Bidder.

2. If an Alternate is present, bids will be compared on the basis of the "Adjusted Base Bid" and this amount will be the basis for determining the lowest Bidder. The sum of the Total Base Bid and any combination of Alternates accepted by the Owner will determine the "Adjusted Base Bid."

19.04 In evaluating whether a Bidder is responsible, Owner will consider the qualifications of the Bidder and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.

19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers.

ARTICLE 20 – BONDS AND INSURANCE

20.01 Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the Agreement (executed by Successful Bidder) to Owner, it shall be accompanied by required bonds and insurance documentation.

ARTICLE 21 – SIGNING OF AGREEMENT

21.01 When Owner issues a Notice of Award to the Successful Bidder, it shall be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 15 days thereafter, Successful Bidder shall execute and deliver the required number of counterparts of the Agreement (and any bonds and insurance documentation required to be delivered by the Contract Documents) to Owner. Within ten days thereafter, Owner shall deliver one fully executed counterpart of the Agreement to Successful Bidder, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.

ARTICLE 1 – THE PROJECT

1.01 The Project, of which the Work under the Bid is a part, is generally described as follows: **Miscellaneous Sewer Repairs (New York Avenue, Wisconsin Avenue, Niagara Avenue, And Ontario Avenue)** for the City of Sheboygan, Wisconsin, City Bid Number: **2481-23**.

ARTICLE 2 – BID RECIPIENT

2.01 This Bid is submitted to:

City of Sheboygan
2026 New Jersey Ave
Sheboygan, WI 53081

2.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 3 – BIDDER'S ACKNOWLEDGEMENTS

3.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 4 – BIDDER'S REPRESENTATIONS

4.01 *In submitting this Bid, Bidder represents that:*

A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

Addendum No.	Addendum, Date
_____	_____
_____	_____
_____	_____
_____	_____

B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2)

reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.

F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.

G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.

H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.

I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.

J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 5 – BIDDER'S CERTIFICATION

5.01 *Bidder certifies that:*

A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;

B. Bidder is fully informed respecting the preparation and contents of the attached Bid and all of the pertinent circumstances respecting such Bid

C. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;

D. Bidder has not solicited or induced any individual or entity to refrain from bidding; and

E. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 5.01.D:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at

artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

F. The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the bidder or any of its agents, representatives, owners, employees or parties in interest, including this affiant.

ARTICLE 6 – BASIS OF BID

6.01 Bidder will complete the Work in accordance with the Contract Documents for the price submitted on the QuestCDN website.

6.02 Bidder acknowledges that (1) each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and (2) estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

ARTICLE 7 – TIME OF COMPLETION

7.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates indicated in the Agreement.

7.02 Bidder accepts the provisions of the Agreement and paragraph 19.01 of the Supplementary Conditions as to liquidated damages.

ARTICLE 8 – ATTACHMENTS TO THIS BID

8.01 The following documents are submitted using QuestCDN and made a condition of this Bid:

A. QuestCDN Bid Unit Price Worksheet as submitted on QuestCDN.

B. Required Bid security;

C. List of Subcontractors (Document 00 45 50).

ARTICLE 9 – DEFINED TERMS

9.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 10 – BIDDER'S PROOF OF RESPONSIBILY AFFIDAVIT

10.01 *Bidder certifies that*:

A. The bidder maintains a permanent place of business.

B. The bidder is authorized to do business in the State of Wisconsin.

C. The bidder possesses all valid, effective licenses, registrations, or certificates required for the bidder or its employees by federal, state, county or local law, necessary for the type of work it seeks to perform, including, but not limited to, licenses, registrations or certifications for any type of trade work or specialty work.

D. For projects funded in whole or in part by federal or state funding, that the bidder, or any agent, partner, employee or officer of the bidder, is not debarred, suspended, proposed for debarment or declared ineligible from contracting with any unit of federal, state or local government.

E. The bidder complies with 42 U.S.C. § 2000e and Federal Executive Order No. 11246 as amended by Executive Order No. 11375 (known as the Equal Opportunity Employer provision).

F. The bidder has general liability, workers' compensation and automobile insurance at levels sufficient to protect the city given the size of the project.

G. The bidder has complied with 40 U.S.C §§ 3141-3148 (Federal Davis-Bacon related Acts), and all rules and regulation therein, for projects undertaken by the contactor that are covered by these laws, for the past five (5) years.

H. For projects funded in whole or in part by federal or state funding, and where the contract amount exceeds $100,000, the bidder participates in a Registered Apprenticeship Program.

I. For projects funded in whole or in part by federal or state funding, that the Bidder has a written substance abuse prevention program meeting the requirements of Wis. Stat § 103.503.

J. The employees who will perform work on the project are properly classified as employees or independent bidders under all applicable state and federal laws.

K. The bidder has not been the subject of any investigation, order or judgment from any state or federal agency or court concerning an employment practice, including but not limited to, classification of employees, unemployment insurance, wage and hour laws, discrimination. If the bidder has been the subject of any investigation, order or judgment from any state or federal agency or court concerning an employment practice, the contactor must provide copies of the investigation, order or judgment.

L. Within the last five (5) years, the bidder has not been found by a final decision of a court or government agency in violation of any other law relating to its contracting business, including but not limited to environmental laws, bid-rigging or price fixing, antitrust or tax laws, where the penalty for such violation resulted in the imposition of fine, back pay damages or any other type of penalty in the amount of more than $10,000.

M. The bidder's employees who will perform work on the project are:

   1. Covered under a current workers' compensation policy; and

   2. Properly classified under such policy.

N. The bidder complies with all laws regarding health insurance coverage for employees.

O. The bidder has adequate financial resources to complete the public contract, as well as all other work the bidder is presently under contract to complete.

P. The bidder is bondable for the terms of the proposed public works contract.

Q. If required in the Director's discretion, the bidder has a record, viewable by the City upon request, of satisfactorily completing at least five projects of similar size and complexity within the last five years. Criteria that will be considered in determining satisfactory completion of projects may include, but is not limited to:

1. Completion of contracts in accordance with drawing and specifications;
2. Diligent execution of the work and completed contracts according to the established time schedules unless extensions are granted by the owner; and
3. Fulfilled guarantee requirements of the contract documents.

R. The bidder has, and diligently maintains, a written safety program.

S. The bidder has not received a serious, willful or repeated violation from OSHA in the last ten (10) years.

T. The bidder has not defaulted on any project in the past three (3) years.

ARTICLE 11 – SUBCONTRACTORS

11.01 Bidder agrees that Successful Bidder, and any other Bidder so requested, shall within ten (10) days after Bid opening, submit to the City a Proof of Responsibility Affidavit and Non-Collusion Affidavit from each Subcontractor (Document 00 45 20).

(Continued on Next Page)

ARTICLE 12 – BID SUBMITTAL

BIDDER: *[Indicate correct name of bidding entity]*

_____

By:
[Signature] _____

[Printed name] _____
(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:
[Signature] _____

[Printed name] _____

Title: _____

Submittal Date: _____

Address for giving notices:

_____

_____

_____

Telephone Number: _____

Fax Number: _____

Contact Name and e-mail address: _____

_____

CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Unit Price Worksheet		
		Section:	00 41 44		
		Bid Number:	2481-23	Page:	1 of 1

PART 1 – GENERAL

1.01 SUMMARY

A. The bid worksheet on the following page(s) is representative of the official bid worksheet located on the QuestCDN website.

B. The bid worksheet located on the QuestCDN website takes precedence over the bid worksheet in this section.

PART 2 – PRODUCTS

(NOT USED)

PART 3 – EXECUTION

(NOT USED)

END OF SECTION

Section Title	Line Item	Item Code	Item Description	UofM	Quantity	Unit Price	Extension
Required Items	Required						
	1	R1	Mobilization	LS	1		
	2	R2	Erosion Control	LS	1		
	3	R3	Traffic Control	LS	1		
	4	R4	Wisconsin Avenue Detour	LS	1		
	5	R5	Niagara Avenue Detour	LS	1		
	6	R6	New York Avenue - Storm Sewer Spot Repair 20 feet from MH ST-13A-107	LS	1		
	7	R7	New York Avenue - Storm Sewer Spot Repair 404 feet from MH ST-13A-107	LS	1		
	8	R8	Wisconsin Avenue - Sanitary Sewer Relay from MH SA-13A-59 to MH SA-13A-58	LF	221		
	9	R9	Wisconsin Avenue - Storm Sewer Spot Repair 224 to 234 feet from MH ST-13A-114	LS	1		
	10	R10	Niagara Avenue - Storm Sewer Spot Repair 336 fett from MH ST-A-016	LS	1		
	11	R11	Niagara Avenue - Storm Sewer Spot Repair 408 feet from MH ST-A-016	LS	1		
	12	R12	Niagara Avenue - Storm Sewer Relay MH ST-13A-001 to CB ST-13A-001S	LF	33		
	13	R13	Ontario Avenue - Storm Sewer Spot Repair 122 feet from MH ST-13A-133	LS	1		

ARTICLE 1 – PROOF OF RESPONSIBILY AFFIDAVIT

1.01 *Subcontractor certifies that*:

A. The Subcontractor maintains a permanent place of business.

B. The Subcontractor is authorized to do business in the State of Wisconsin.

C. The Subcontractor possesses all valid, effective licenses, registrations, or certificates required for the Subcontractor or its employees by federal, state, county or local law, necessary for the type of work it seeks to perform, including, but not limited to, licenses, registrations or certifications for any type of trade work or specialty work.

D. For projects funded in whole or in part by federal or state funding, that the Subcontractor, or any agent, partner, employee or officer of the Subcontractor, is not debarred, suspended, proposed for debarment or declared ineligible from contracting with any unit of federal, state or local government.

E. The Subcontractor complies with 42 U.S.C. § 2000e and Federal Executive Order No. 11246 as amended by Executive Order No. 11375 (known as the Equal Opportunity Employer provision).

F. The Subcontractor has general liability, workers' compensation and automobile insurance at levels sufficient to protect the city given the size of the project.

G. The Subcontractor has complied with 40 U.S.C §§ 3141-3148 (Federal Davis-Bacon related Acts), and all rules and regulation therein, for projects undertaken by the contactor that are covered by these laws, for the past five (5) years.

H. For projects funded in whole or in part by federal or state funding, and where the contract amount exceeds $100,000, the Subcontractor participates in a Registered Apprenticeship Program.

I. For projects funded in whole or in part by federal or state funding, that the Subcontractor has a written substance abuse prevention program meeting the requirements of Wis. Stat § 103.503.

J. The employees who will perform work on the project are properly classified as employees or independent Subcontractors under all applicable state and federal laws.

K. The Subcontractor has not been the subject of any investigation, order or judgment from any state or federal agency or court concerning an employment practice, including but not limited to, classification of employees, unemployment insurance, wage and hour laws, discrimination. If the Subcontractor has been the subject of any investigation, order or judgment from any state or federal agency or court concerning an employment practice, the contactor must provide copies of the investigation, order or judgment.

L. Within the last five (5) years, the Subcontractor has not been found by a final decision of a court or government agency in violation of any other law relating to its contracting business, including but not limited to environmental laws, bid-rigging or price fixing, antitrust or tax laws, where the penalty for such violation resulted in the imposition of fine, back pay damages or any other type of penalty in the amount of more than $10,000.

M. The Subcontractor's employees who will perform work on the project are:

1. Covered under a current workers' compensation policy; and
2. Properly classified under such policy.

N. The Subcontractor complies with all laws regarding health insurance coverage for employees.

O. The Subcontractor has adequate financial resources to complete the public contract, as well as all other work the Subcontractor is presently under contract to complete.

P. The Subcontractor is bondable for the terms of the proposed public works contract.

Q. If required in the Director's discretion, the Subcontractor has a record, viewable by the City upon request, of satisfactorily completing at least five projects of similar size and complexity within the last five years. Criteria that will be considered in determining satisfactory completion of projects may include, but is not limited to:

1. Completion of contracts in accordance with drawing and specifications;
2. Diligent execution of the work and completed contracts according to the established time schedules unless extensions are granted by the owner; and
3. Fulfilled guarantee requirements of the contract documents.

R. The Subcontractor has, and diligently maintains, a written safety program.

S. The Subcontractor has not received a serious, willful or repeated violation from OSHA in the last ten (10) years.

T. The Subcontractor has not defaulted on any project in the past three (3) years.

ARTICLE 2 – NON-COLLUSION AFFIDAVIT

A. Subcontractor is fully informed respecting the preparation and contents of the subcontractor's Proposal submitted by the subcontractor to the Contractor, listed above, for certain work in connection with the contract pertaining to the Project in City of Sheboygan, Wisconsin

B. Such subcontractor's Proposal is genuine and is not a collusive or sham proposal:

C. Neither the subcontractor nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm, or person to submit a collusive or sham proposal in connection with such Contract or to refrain from submitting a proposal in connection with such Contract, or has in any manner, directly or indirectly, sought by unlawful agreement or connivance with any other Bidder, firm or person to fix the price or prices in said subcontractor's Proposal or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the (Local Public Agency) or any person interested in the proposed Contract; and

D. The price or prices quoted in the subcontractor's Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees or parties in interest, including this affiant.

(Continued on Next Page)

Subcontractor: *[Indicate correct name of entity]*

_____

By:
[Signature] _____

[Printed name] _____
(If Subcontractor is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:
[Signature] _____

[Printed name] _____

Title: _____

Submittal Date: _____

PROJECT MAN...					
CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	List of Subcontractors		
		Section:	00 45 50		
		Bid Number:	2480-23	Page:	1 of 1

Project Name: **Miscellaneous Sewer Repairs (New York Avenue, Wisconsin Avenue, Niagara Avenue, and Ontario Avenue)**

List proposed subcontractors below. If no subcontractors are proposed check the box next to "No Subcontractors". This form is still required to be submitted if no Subcontractors are proposed. Add Additional sheets as may be necessary.

☐ No Subcontractors.

Name of Proposed Subcontractors			Class of Work
1	Name:		
	Address:		
2	Name:		
	Address:		
3	Name:		
	Address:		
4	Name:		
	Address:		
5	Name:		
	Address:		
6	Name:		
	Address:		
7	Name:		
	Address:		
8	Name:		
	Address:		

AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between City of Sheboygan ("Owner") and //Contractor// ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: municipal street and utility construction.

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Miscellaneous Sewer Repairs (New York Avenue, Wisconsin Avenue, Niagara Avenue, And Ontario Avenue)

2.02 City of Sheboygan Resolution: //Resolution Number//

ARTICLE 3 – ENGINEER

3.01 The part of the Project that pertains to the Work has been designed by the City of Sheboygan.

3.02 The Engineering Division, Department of Public Works, City of Sheboygan, Sheboygan, WI will assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. The Work will be substantially completed on or before June 30, 2023 and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the 14th day following substantial completion.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner the amount identified in paragraph 19.01 of the Supplementary Conditions for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.

2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner the amount identified in paragraph 19.01 of the Supplementary Conditions for each day that expires after such time until the Work is completed and ready for final payment.

3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

4. Milestones: Contractor shall pay Owner the amount identified in paragraph 19.01 of the Supplementary Conditions for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of each Milestone, until Milestone is achieved.

B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

4.04 *Special Damages*

C. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

D. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item) as stated in Contractor's Bid, attached hereto as an exhibit.

B. The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on the third Wednesday of the Month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract

a. 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and

b. 0 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

6.04 *Interest*

A. All amounts not paid when due shall bear interest at the rate of 0 percent per annum.

ARTICLE 7 – CONTRACT DOCUMENTS

7.01 *Contents*

A. The Contract Documents consist of the following:

1. This Agreement.

2. Bonds:

a. Performance bond (together with power of attorney).

b. Payment bond (together with power of attorney).

3. Specifications as listed in the table of contents of the project manual (copy of list attached and incorporated by reference).

4. Drawings as listed in the table of contents of the drawings (copy of list attached and incorporated by reference).

5. Addenda (not attached but incorporated by reference)

a. Number **{Number}** dated **{Date}**.

b. Number **{Number}** dated **{Date}**.

c. Number **{Number}** dated **{Date}**.

6. Exhibits to this Agreement (enumerated as follows):

a. Contractor's Bid consisting of **{Total Pages}**.

7. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:

a. Notice to Proceed,

b. Work Change Directives,

c. Change Orders,

d. Field Order,

e. Task Orders.

B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 7.

D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8 – ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 *Contractor's Representations*

A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:

1. Contractor has examined and carefully studied the Contract Documents, including Addenda.

2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.

4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to

existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.

5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.

6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.

7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

8.02 *Contractor's Certifications*

A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

(Continued on next page)

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

OWNER:

City of Sheboygan

By: _____
(signature)

Name, Title: Ryan Sorenson, Mayor

Date: _____

Attest:

By: _____
(signature)

Name, Title: Meredith DeBruin, City Clerk

Date: _____

Signatures authorized pursuant to Res. ___-21-22.

Address for giving notices:
City of Sheboygan – Engineering Division
2026 New Jersey Avenue
Sheboygan, WI 53081

Approved as to form and Execution:

By: _____
(signature)

Name, Title: Charles C. Adams, City Attorney

Date: _____

CONTRACTOR:

{Contractor}_____

By: _____
(signature)

Name, Title: _____
(printed)

Date: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Address for giving notices:

_____

_____

_____

Project Name: Click here to enter text.

Bid Number: Click here to enter text.

Contractor: Click here to enter text.

TO CONTRACTOR:

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on [_____, 20__]. *[see Paragraph 4.01 of the General Conditions]*

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work shall be done at the Site prior to such date. In accordance with the Agreement, [the date of Substantial Completion is _____, and the date of readiness for final payment is_____] and the number of days to achieve readiness for final payment is _____].

Before starting any Work at the Site, Contractor must comply with the following:

[Note any access limitations, security procedures, or other restrictions]

By: _____
Engineer/Project Manager

Title: _____

Date: _____

EJCDC
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

PERFORMANCE BOND

CONTRACTOR *(name and address)*:

SURETY *(name and address of principal place of business)*:

OWNER *(name and address)*:

CONSTRUCTION CONTRACT
Effective Date of the Agreement:
Amount:
Description *(name and location)*:

BOND
Bond Number:
Date *(not earlier than the Effective Date of the Agreement of the Construction Contract)*:
Amount:
Modifications to this Bond Form: ☐ None ☐ See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL	**SURETY**
_____ *(seal)*	_____ *(seal)*
Contractor's Name and Corporate Seal	Surety's Name and Corporate Seal
By: _____	**By:** _____
Signature	Signature *(attach power of attorney)*
_____	_____
Print Name	Print Name
_____	_____
Title	Title
Attest: _____	**Attest:** _____
Signature	Signature
_____	_____
Title	Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

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1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

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10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

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EJCDC
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

PAYMENT BOND

CONTRACTOR *(name and address)*:

SURETY *(name and address of principal place of business)*:

OWNER *(name and address)*:

CONSTRUCTION CONTRACT

Effective Date of the Agreement:
Amount:
Description *(name and location)*:

BOND

Bond Number:
Date *(not earlier than the Effective Date of the Agreement of the Construction Contract)*:
Amount:
Modifications to this Bond Form: ☐ None ☐ See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

_____ *(seal)*
Contractor's Name and Corporate Seal

By: _____
Signature

_____
Print Name

_____
Title

Attest: _____
Signature

_____
Title

SURETY

_____ *(seal)*
Surety's Name and Corporate Seal

By: _____
Signature *(attach power of attorney)*

_____
Print Name

_____
Title

Attest: _____
Signature

_____
Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

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1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.

4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.

5. The Surety's obligations to a Claimant under this Bond shall arise after the following:

   5.1 Claimants who do not have a direct contract with the Contractor,

      5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and

      5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).

   5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).

6. If a notice of non-payment required by Paragraph 5.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.

7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

   7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

   7.2 Pay or arrange for payment of any undisputed amounts.

   7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.

11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

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12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. **Definitions**

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default**: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:

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CITY OF SHEBOYGAN
SUBMITTAL FORM
DOCUMENT 00 62 11

DATE: Click here to enter a date.

CITY BID NUMBER: Click here to enter text.

SUBMITTAL #: Click here to enter text.

PROJECT TITLE: Click here to enter text.

SUBMITTED BY: Click here to enter text.

CONTRACTOR: Click here to enter text.

SPECIFICATION SECTION OR DRAWING NUMBER:

Click here to enter text.

DESCRIPTION OF ITEMS INCLUDED IN SUBMITTAL:

Click here to enter text.

DOCUMENTS ATTACHED: ☐ Shop Drawings ☐ Product Data ☐ Test Results ☐ Other

COMMENTS:

Click here to enter text.

Contractor's Application for Payment No.

	Application Period:	Application Date:
To	From (Contractor):	Via (Engineer): N/A
Project:	City Bid Number:	Contractor's Project No.:

Application For Payment

Change Order Summary

Approved Change Orders

Number	Additions	Deductions
TOTALS		
NET CHANGE BY CHANGE ORDERS		

1. ORIGINAL CONTRACT PRICE..... $ _____

2. Net change by Change Orders..... $ _____

3. Current Contract Price (Line 1 ± 2)..... $ _____

4. TOTAL COMPLETED AND STORED TO DATE
(Column F total on Progress Estimates)..... $ _____

5. RETAINAGE:

a. 5% X _____ **Work Completed**..... $ _____

b. X _____ **Stored Material**..... $ _____

c. Total Retainage (Line 5.a + Line 5.b)..... $ _____

6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5.c)..... $ _____

7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)..... $ _____

8. AMOUNT DUE THIS APPLICATION..... $ _____

9. BALANCE TO FINISH, PLUS RETAINAGE
(Column G total on Progress Estimates + Line 5.c above)..... $ _____

Contractor's Certification

The undersigned Contractor certifies, to the best of its knowledge, the following:
(1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;
(2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interest, or encumbrances); and
(3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

Contractor Signature

By:	Date:

Payment of: $ _____
(Line 8 or other - attach explanation of the other amount)

is recommended by: _____ _____
(Engineer/Project Manager) (Date)

Payment of: $ _____
(Line 8 or other - attach explanation of the other amount)

is approved by: _____ _____
(City of Sheboygan) (Date)

Progress Estimate - Unit Price Work

Contractor's Application

For (Contract):								Application Number:			
Application Period:								Application Date:			
A					B	C	D	E	F		
Item		Contract Information				Estimated Quantity Installed	Value of Work Installed to Date	Materials Presently Stored (not in C)	Total Completed and Stored to Date (D + E)	% (F / B)	Balance to Finish (B - F)
Bid Item No.	Description	Item Quantity	Units	Unit Price	Total Value of Item ($)						
	Page Totals										

RFI #: Click here to enter text.

CITY BID NUMBER: Click here to enter text.

DATE SUBMITTED: Click here to enter a date.

PROJECT TITLE: Click here to enter text.

DATE RESPONSE REQUESTED: Click here to enter a date.

REQUESTED BY: Click here to enter text.

CONTRACTOR: Click here to enter text.

SPECIFICATION SECTION OR DRAWING NUMBER:

Click here to enter text.

DESCRIPTION OF REQUEST:

Click here to enter text.

DOCUMENTS ATTACHED: ☐ Yes ☐ No

DETAILED RESPONSE:

Click here to enter text.

DOCUMENTS ATTACHED: ☐ Yes ☐ No

PREPARED BY: Click here to enter text.

DATE RESPONSE SENT: Click here to enter a date.

CITY OF SHEBOYGAN
PUBLIC WORKS

Contract Change Order

Change Order Number: _____

Project: _____ **Date of Issuance:** _____

Bid Number: _____ **Effective Date:** _____

Contractor: _____

Change in Contract Price Summary

Original Contract Price:	
Increase/(Decrease) from Previously Accepted Change Orders:	
Contract Price Prior to this Change Order:	
Increase/(Decrease) of this Change Order:	
Contract Price Incorporating this Change Order:	

Change in Contract Times Summary

	Substantial Completion	Ready for Final Payment
Original Completion Date (or days):		
Increase/(Decrease) from Previously Accepted Change Orders:		
Completion Date (or days) Prior to this Change Order:		
Increase/(Decrease) of this Change Order:		
Completion Date (or days) Incorporating this Change Order:		

The Contract is modified as follows upon execution of this Change Order:

Add the Following Items of Work

Item #:	Description	Qty.	Unit	Unit Price	Extension

Total Additional Work:

Revise the Following Items of Work

		Original				Revised			
Item #:	Description	Quantity	Units	Unit Price	Extension	Quantity	Units	Unit Price	Extension
N/A									
		Original Total:				**Revised Total:**			

Total Revised Work *(Revised - Original)*:

	Contract
Total Additional Work:	
Total Revised Work:	
Net Change in Contract:	

Final quantities to be determined based on actual quantities constructed and measured.

CITY OF SHEBOYGAN
PUBLIC WORKS

Contract Change Order

Change Order Number: _____

Project: _____ **Date of Issuance:** _____

Bid Number: _____ **Effective Date:** _____

Contractor: _____

Revise the Project Manual and Specifications as Follo

Signatures

Recommended By: _____ Engineer/Project Manager — Date: _____

Accepted By: _____ Contractor (Authorized) — Date: _____

Accepted By: _____ City of Sheboygan — Date: _____

Project Name: Click here to enter text.

Bid Number: Click here to enter text.

Contractor: Click here to enter text.

This ☐Preliminary ☐Final Certificate of Substantial Completion applies to:

☐ All Work

☐ The following specified portions of the Work:

//Enter text here//

Date of Substantial Completion: Click here to enter a date.

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Work or portion thereof designated above is hereby established, subject to the provisions of the Contract pertaining to Substantial Completion. The date of Substantial Completion in the final Certificate of Substantial Completion marks the commencement of the contractual correction period and applicable warranties required by the Contract.

A punch list of items to be completed or corrected is attached to this Certificate, if appropriate. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract.

The following documents are attached to and made a part of this Certificate: Click here to enter text.

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract.

EXECUTED BY CITY:		RECEIVED:	
By:	Engineer/Project Manager	By:	Contractor (Authorized Signature)
Title:		Title:	
Date:		Date:	

CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Contractor's Affidavit of Compliance		
		Section:	00 65 18		
		Bid Number:	2481-23	Page:	1 of 1

PROJECT NAME: **Miscellaneous Sewer Repairs (New York Avenue, Wisconsin Avenue, Niagara Avenue, And Ontario Avenue)**

I CERTIFY to the best of my knowledge and belief that all work has been performed and materials supplied in strict accordance with the terms and conditions of the corresponding contract documents between the CITY OF SHEBOYGAN, hereinafter called the OWNER, and _____, hereinafter called the Contractor, for the above referenced project.

I further certify and declare that, except as listed below, all bills for materials, supplied, utilities, and for all other things furnished or caused to be furnished by the CONTRACTOR and used in the execution of the contract will be fully paid upon receipt of Final Payment and that there are no unpaid obligations, liens, claims, security interests, encumbrances, liabilities, and/or demands of State or Federal Agencies, subcontractors, materialmen, mechanics, laborers, or any others resulting from or arising out of any work done, caused to be done, or ordered to be done by the Contractor under the contract.

EXCEPTIONS: (If none, write "NONE," Contractor shall furnish a bond, acceptable to the Owner, for each exception)

In consideration of the prior and final payments made and all payments made for authorized changes, the Contractor releases and forever discharges the OWNER from any and all obligations, liens, claims, security interests, encumbrances, and/or liabilities arising by virtue of the contract and authorized changes between the parties, either verbal or in writing, and any and all claims and demands of every kind and character whatsoever against the OWNER, arising out of or in any way relating to the contract and authorized changes.

I further certify and agree that the warranty period is defined as commencing with Substantial Completion (or with each Substantial Completion if there is more than one) of the Project, or any portion thereof, and continuing for one (1) calendar year from the date of Final Acceptance of the entire project unless otherwise modified in writing as part of the Substantial Completion of Final Acceptance.

This statement is made for the purpose of inducing the Owner to make FINAL PAYMENT under the terms of the contract, relying on the trust and statements contained herein.

_____
Signed

_____
Title

Subscribed and sworn to before me
this _____ day of _____, 20____.

_____

_____

My commission expires _____ (Seal)

PROJECT MAN					
CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Consent of Surety to Final Payment		
		Section:	00 65 19		
		Bid Number:	2481-23	Page:	1 of 1

TO OWNER: City of Sheboygan
2026 New Jersey Avenue
Sheboygan, WI

PROJECT NAME: **Miscellaneous Sewer Repairs (New York Avenue, Wisconsin Avenue, Niagara Avenue, And Ontario Avenue)**

DATE: _____

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the

Surety Name: _____

Address: _____

_____

_____, Surety,

on bond of,

Contractor Name: _____

Address: _____

_____

_____, Contractor,

hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall not relieve the Surety of any of its obligations to

City of Sheboygan
2026 New Jersey Avenue
Sheboygan, WI , Owner,

as set for in said Surety's bond.

_____
(Surety)

Attest:
(Seal):

_____
(Signature of Authorized Representative)

_____
(Print Name and Title)

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

TABLE OF CONTENTS

Page

Article 1—Definitions and Terminology 1
1.01 Defined Terms 1
1.02 Terminology 6
Article 2—Preliminary Matters 7
2.01 Delivery of Performance and Payment Bonds; Evidence of Insurance 7
2.02 Copies of Documents 7
2.03 Before Starting Construction 8
2.04 Preconstruction Conference; Designation of Authorized Representatives 8
2.05 Acceptance of Schedules 8
2.06 Electronic Transmittals 9
Article 3—Contract Documents: Intent, Requirements, Reuse 9
3.01 Intent 9
3.02 Reference Standards 10
3.03 Reporting and Resolving Discrepancies 10
3.04 Requirements of the Contract Documents 11
3.05 Reuse of Documents 11
Article 4—Commencement and Progress of the Work 12
4.01 Commencement of Contract Times; Notice to Proceed 12
4.02 Starting the Work 12
4.03 Reference Points 12
4.04 Progress Schedule 12
4.05 Delays in Contractor's Progress 12
Article 5—Site; Subsurface and Physical Conditions; Hazardous Environmental Conditions 14
5.01 Availability of Lands 14
5.02 Use of Site and Other Areas 14
5.03 Subsurface and Physical Conditions 15
5.04 Differing Subsurface or Physical Conditions 16

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5.05 Underground Facilities 18
5.06 Hazardous Environmental Conditions at Site 19
Article 6—Bonds and Insurance 22
6.01 Performance, Payment, and Other Bonds 22
6.02 Insurance—General Provisions 22
6.03 Contractor's Insurance 24
6.04 Builder's Risk and Other Property Insurance 25
6.05 Property Losses; Subrogation 26
6.06 Receipt and Application of Property Insurance Proceeds 27
Article 7—Contractor's Responsibilities 27
7.01 Contractor's Means and Methods of Construction 27
7.02 Supervision and Superintendence 28
7.03 Labor; Working Hours 28
7.04 Services, Materials, and Equipment 28
7.05 "Or Equals" 29
7.06 Substitutes 30
7.07 Concerning Subcontractors and Suppliers 31
7.08 Patent Fees and Royalties 32
7.09 Permits 33
7.10 Taxes 33
7.11 Laws and Regulations 33
7.12 Record Documents 34
7.13 Safety and Protection 34
7.14 Hazard Communication Programs 35
7.15 Emergencies 35
7.16 Submittals 36
7.17 Contractor's General Warranty and Guarantee 38
7.18 Indemnification 39
7.19 Delegation of Professional Design Services 40
Article 8—Other Work at the Site 41
8.01 Other Work 41
8.02 Coordination 41
8.03 Legal Relationships 42

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Article 9—Owner's Responsibilities 43
9.01 Communications to Contractor 43
9.02 Replacement of Engineer 43
9.03 Furnish Data 43
9.04 Pay When Due 43
9.05 Lands and Easements; Reports, Tests, and Drawings 43
9.06 Insurance 43
9.07 Change Orders 43
9.08 Inspections, Tests, and Approvals 44
9.09 Limitations on Owner's Responsibilities 44
9.10 Undisclosed Hazardous Environmental Condition 44
9.11 Evidence of Financial Arrangements 44
9.12 Safety Programs 44
Article 10—Engineer's Status During Construction 44
10.01 Owner's Representative 44
10.02 Visits to Site 44
10.03 Resident Project Representative 45
10.04 Engineer's Authority 45
10.05 Determinations for Unit Price Work 45
10.06 Decisions on Requirements of Contract Documents and Acceptability of Work 45
10.07 Limitations on Engineer's Authority and Responsibilities 45
10.08 Compliance with Safety Program 46
Article 11—Changes to the Contract 46
11.01 Amending and Supplementing the Contract 46
11.02 Change Orders 46
11.03 Work Change Directives 47
11.04 Field Orders 47
11.05 Owner-Authorized Changes in the Work 47
11.06 Unauthorized Changes in the Work 48
11.07 Change of Contract Price 48
11.08 Change of Contract Times 49
11.09 Change Proposals 49
11.10 Notification to Surety 51

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Article 12—Claims 51
12.01 Claims 51
Article 13—Cost of the Work; Allowances; Unit Price Work 52
13.01 Cost of the Work 52
13.02 Allowances 56
13.03 Unit Price Work 56
Article 14—Tests and Inspections; Correction, Removal, or Acceptance of Defective Work 57
14.01 Access to Work 57
14.02 Tests, Inspections, and Approvals 57
14.03 Defective Work 58
14.04 Acceptance of Defective Work 58
14.05 Uncovering Work 59
14.06 Owner May Stop the Work 59
14.07 Owner May Correct Defective Work 59
Article 15—Payments to Contractor; Set-Offs; Completion; Correction Period 60
15.01 Progress Payments 60
15.02 Contractor's Warranty of Title 63
15.03 Substantial Completion 63
15.04 Partial Use or Occupancy 64
15.05 Final Inspection 65
15.06 Final Payment 65
15.07 Waiver of Claims 66
15.08 Correction Period 67
Article 16—Suspension of Work and Termination 68
16.01 Owner May Suspend Work 68
16.02 Owner May Terminate for Cause 68
16.03 Owner May Terminate for Convenience 69
16.04 Contractor May Stop Work or Terminate 69
Article 17—Final Resolution of Disputes 70
17.01 Methods and Procedures 70
Article 18—Miscellaneous 70
18.01 Giving Notice 70
18.02 Computation of Times 70

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18.03 Cumulative Remedies 70
18.04 Limitation of Damages 71
18.05 No Waiver 71
18.06 Survival of Obligations 71
18.07 Controlling Law 71
18.08 Assignment of Contract 71
18.09 Successors and Assigns 71
18.10 Headings 71

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.

3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

5. *Bidder*—An individual or entity that submits a Bid to Owner.

6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.

7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.

8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.

9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.

10. *Claim*

a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by

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Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.

b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.

c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.

d. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.

13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.

14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.

15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.

16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.

17. *Cost of the Work*—See Paragraph 13.01 for definition.

18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.

20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.

21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or

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communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.

23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.

24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.

    a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.

    b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.

    c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.

25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.

29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.

30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.

31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.

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32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.

34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals.

36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.

39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part

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thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.

44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.

45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

46. *Technical Data*

    a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.

    b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.

    c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.

47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

48. *Unit Price Work*—Work to be paid for on the basis of unit prices.

49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

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50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 *Terminology*

A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. *Day*: The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective*: The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

1. does not conform to the Contract Documents;

2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or

3. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).

E. *Furnish, Install, Perform, Provide*

1. The word "furnish," when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.

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4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words "furnish," "install," "perform," or "provide," then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

F. *Contract Price or Contract Times*: References to a change in "Contract Price or Contract Times" or "Contract Times or Contract Price" or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term "or both" is not expressed.

G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).

B. *Evidence of Contractor's Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.

C. *Evidence of Owner's Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

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2.03 *Before Starting Construction*

A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

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2.06 *Electronic Transmittals*

A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.

B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.

C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.

C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.

D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.

E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

G. Nothing in the Contract Documents creates:

1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or

2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

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3.02 *Reference Standards*

A. *Standards Specifications, Codes, Laws and Regulations*

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements*: Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

2. *Contractor's Review of Contract Documents*: If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take

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precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:

a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.

C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

A. Contractor and its Subcontractors and Suppliers shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or

2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

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ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work may be done at the Site prior to such date.

4.03 *Reference Points*

A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.

B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.

B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

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C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:

1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
2. Abnormal weather conditions;
3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
4. Acts of war or terrorism.

D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:

1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.

E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:

1. The circumstances that form the basis for the requested adjustment;
2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.

Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the

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effect of the delay, disruption, or interference on the critical path to completion of the Work.

F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.

G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.

2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise;

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(b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

B. *Removal of Debris During Performance of the Work*: During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.

C. *Cleaning*: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading of Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;

2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and

3. Technical Data contained in such reports and drawings.

B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

C. *Reliance by Contractor on Technical Data*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

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D. *Limitations of Other Data and Documents*: Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

A. *Notice by Contractor*: If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:

1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
2. is of such a nature as to require a change in the Drawings or Specifications;
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

B. *Engineer's Review*: After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

C. *Owner's Statement to Contractor Regarding Site Condition*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement

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to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

D. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

E. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

    a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;

    b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

    c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:

    a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;

    b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or

    c. Contractor failed to give the written notice required by Paragraph 5.04.A.

3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.

4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities.

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Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:

1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;

2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;

4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and

5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.

B. *Notice by Contractor*: If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.

C. *Engineer's Review*: Engineer will:

1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;

2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;

3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and

4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.

During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

D. *Owner's Statement to Contractor Regarding Underground Facility*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written

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statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.

E. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

F. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

   a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;

   b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and

   c. Contractor gave the notice required in Paragraph 5.05.B.

2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.

3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;

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2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and

3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.

E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

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F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.

G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.

H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

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ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.

B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.

C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.

E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.

F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.

G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.

H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.

B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the

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required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.

C. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.

D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.

F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.

G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

H. Contractor shall require:

1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and

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2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.

I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.

K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.

M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.

N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

A. *Required Insurance*: Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.

B. *General Provisions*: The policies of insurance required by this Paragraph 6.03 as supplemented must:

1. include at least the specific coverages required;

2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;

3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;

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4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and

5. include all necessary endorsements to support the stated requirements.

C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:

1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;

2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;

3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and

5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.

B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.

C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.

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D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.

E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.

2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.

B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.

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1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.

C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.

D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.

C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at

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Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.

B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.

C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.

B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

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7.05 *"Or Equals"*

A. *Contractor's Request; Governing Criteria*: Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.

1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:

   a. in the exercise of reasonable judgment Engineer determines that the proposed item:

      1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

      2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;

      3) has a proven record of performance and availability of responsive service; and

      4) is not objectionable to Owner.

   b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:

      1) there will be no increase in cost to the Owner or increase in Contract Times; and

      2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.

B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.

C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.

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E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 *Substitutes*

A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.

1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.

2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:

   a. will certify that the proposed substitute item will:

      1) perform adequately the functions and achieve the results called for by the general design;

      2) be similar in substance to the item specified; and

      3) be suited to the same use as the item specified.

   b. will state:

      1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;

      2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and

      3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.

   c. will identify:

      1) all variations of the proposed substitute item from the item specified; and

      2) available engineering, sales, maintenance, repair, and replacement services.

   d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in

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Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.

B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.

C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.

F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.

B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.

C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.

D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or

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otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.

E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.

F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.

G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.

I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.

J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.

K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.

L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.

M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any

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license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.

B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.09 *Permits*

A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.10 *Taxes*

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.11 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to

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such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.

C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12 *Record Documents*

A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.13 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.

B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.

C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any

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of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.

F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.

H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).

J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

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7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

1. Before submitting a Shop Drawing or Sample, Contractor shall:

a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

b. determine and verify:

1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;

2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;

c. confirm that the Submittal is complete with respect to all related data included in the Submittal.

2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

B. *Submittal Procedures for Shop Drawings and Samples*: Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.

1. *Shop Drawings*

a. Contractor shall submit the number of copies required in the Specifications.

b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.

2. *Samples*

a. Contractor shall submit the number of Samples required in the Specifications.

b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer

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may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Engineer's Review of Shop Drawings and Samples*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.

3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.

6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.

7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.

8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. *Resubmittal Procedures for Shop Drawings and Samples*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.

2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two

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resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.

3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

E. *Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:

a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.

b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.

c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.

2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03. 2.04, and 2.05.

F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 *Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.

B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:

1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and

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2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.

C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:

1. Observations by Engineer;

2. Recommendation by Engineer or payment by Owner of any progress or final payment;

3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. Use or occupancy of the Work or any part thereof by Owner;

5. Any review and approval of a Shop Drawing or Sample submittal;

6. The issuance of a notice of acceptability by Engineer;

7. The end of the correction period established in Paragraph 15.08;

8. Any inspection, test, or approval by others; or

9. Any correction of defective Work by Owner.

E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity

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directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.

B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.19 *Delegation of Professional Design Services*

A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.

B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.

C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.

E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:

1. Checking for conformance with the requirements of this Paragraph 7.19;

2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and

3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.

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G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.

C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.

D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be

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set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:

1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
2. An itemization of the specific matters to be covered by such authority and responsibility; and
3. The extent of such authority and responsibilities.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.

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C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

9.03 *Furnish Data*

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.

B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.

C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

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9.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.

B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

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B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.

B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

A. Engineer has the authority to reject Work in accordance with Article 14.

B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.

C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.

D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any

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Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.

B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.

C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders covering:

1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;

2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;

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3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and

4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.

B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Work Change Directives*

A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

B. If Owner has issued a Work Change Directive and:

1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.

2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.

B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving

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the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.

B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.

C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.

B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);

2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or

3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).

C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will be determined as follows:

1. A mutually acceptable fixed fee; or

2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;

b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;

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c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;

d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;

e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and

f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.

B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

A. *Purpose and Content*: Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

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B. *Change Proposal Procedures*

1. *Submittal*: Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.

2. *Supporting Data*: The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.

   a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.

   b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

   The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

3. *Engineer's Initial Review*: Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.

4. *Engineer's Full Review and Action on the Change Proposal*: Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.

C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

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11.10 *Notification to Surety*

A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12—CLAIMS

12.01 *Claims*

A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:

1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;

2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;

3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and

4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.

B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.

D. *Mediation*

1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.

2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal

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and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.

E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.

F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.

G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:

1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.

B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe

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benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.

5. Other costs consisting of the following:

    a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

    b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

        1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

    c. *Construction Equipment Rental*

        1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment,

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machinery, or parts must cease when the use thereof is no longer necessary for the Work.

2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.

3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded*: The term Cost of the Work does not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.

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2. The cost of purchasing, renting, or furnishing small tools and hand tools.
3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
6. Expenses incurred in preparing and advancing Claims.
7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee*

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
    a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
    b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
        1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
        2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

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13.02 *Allowances*

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances*: Contractor agrees that:

1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.

C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:

a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

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b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.

2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.

3. Adjusted unit prices will apply to all units of that item.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 *Tests, Inspections, and Approvals*

A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:

1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;

2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;

3. by manufacturers of equipment furnished under the Contract Documents;

4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and

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5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.

F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

A. *Contractor's Obligation*: It is Contractor's obligation to assure that the Work is not defective.

B. *Engineer's Authority*: Engineer has the authority to determine whether Work is defective, and to reject defective Work.

C. *Notice of Defects*: Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.

D. *Correction, or Removal and Replacement*: Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.

E. *Preservation of Warranties*: When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

F. *Costs and Damages*: In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved

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by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.

C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.

1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.

2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then

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Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 *Progress Payments*

A. *Basis for Progress Payments*: The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.

B. *Applications for Payments*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

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3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

   a. the Work has progressed to the point indicated;

   b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and

   c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

   a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or

   b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

   a. to supervise, direct, or control the Work;

   b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;

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c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;

d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.

6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:

a. the Work is defective, requiring correction or replacement;

b. the Contract Price has been reduced by Change Orders;

c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:

a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;

c. Contractor has failed to provide and maintain required bonds or insurance;

d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;

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e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;

f. The Work is defective, requiring correction or replacement;

g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

h. The Contract Price has been reduced by Change Orders;

i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;

j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;

k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or

l. Other items entitle Owner to a set-off against the amount recommended.

2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

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C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.

F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.

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2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.

2. The final Application for Payment must be accompanied (except as previously delivered) by:

   a. all documentation called for in the Contract Documents;

   b. consent of the surety, if any, to final payment;

   c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

   d. a list of all duly pending Change Proposals and Claims; and

   e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment

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bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

B. *Engineer's Review of Final Application and Recommendation of Payment*: If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Notice of Acceptability*: In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.

D. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.

E. *Final Payment Becomes Due*: Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

15.07 *Waiver of Claims*

A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

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15.08 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. correct the defective repairs to the Site or such adjacent areas;
2. correct such defective Work;
3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.

B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.

C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.

D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

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ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);

2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;

3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or

4. Contractor's repeated disregard of the authority of Owner or Engineer.

B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:

1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and

2. enforce the rights available to Owner under any applicable performance bond.

C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.

D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.

E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as

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to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.

G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and

3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.

B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

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ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

A. *Disputes Subject to Final Resolution*: The following disputed matters are subject to final resolution under the provisions of this article:

1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and

2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.

B. *Final Resolution of Disputes*: For any dispute subject to resolution under this article, Owner or Contractor may:

1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;

2. agree with the other party to submit the dispute to another dispute resolution process; or

3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:

1. in person, by a commercial courier service or otherwise, to the recipient's place of business;

2. by registered or certified mail, postage prepaid, to the recipient's place of business; or

3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be

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as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

18.07 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Assignment of Contract*

A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

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PART 1 – GENERAL

1.01 SUMMARY

A. Summary of the Work including work by the City, City-Furnished Products, Work by Others, Sequence of work, Contractors use of the Premises.

B. Work under the project will generally consist of the items stated in 00 11 13 – Advertisement for Bids.

1.02 PAYMENT PROCEDURES

A. Work specified in the Sections is considered incidental and payment shall be included as part of appropriate unit prices included on Bid Form.

1.03 WORK BY THE CITY

A. None

1.04 TRAFFIC CONTROL

A. Do not open roadways to traffic until concrete pavement or concrete base has been placed and cured.
B. Do not close the intersections of a) North 9th Street and Wisconsin and b) North 10th Street and Niagara Avenue at the same times.

1.05 PERMITS

A. The following permits have been obtained or will be obtained by the City of Sheboygan prior to the start of Construction:

    a. None.

1.06 SUBSURFACE AND PHYSICAL CONDITIONS

A. The reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely are:

    a. None.

B. The drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely are:

    a. None.

1.07 HAZARDOUS ENVIRONMENTAL CONDITIONS

A. The reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely are

a. None.

B. The drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely are

a. None.

PART 2 – PRODUCTS

2.01 CITY FURNISHED PRODUCTS

A. None.

PART 3 – EXECUTION

(NOT USED)

END OF SECTION

PART 1 – GENERAL

1.01 SUMMARY

A. Provide all items, articles, materials, operations or method, labor, supervision, equipment, incidentals, taxes and permits necessary to complete the Work as described within the Contract Documents. Install all items furnished by City as mentioned or scheduled within the Contract Documents.

1.02 PAYMENT PROCEDURES

A. Work specified in the Section is considered incidental and payment shall be included as part of appropriate unit prices included on Bid Form.

1.03 SEQUENCE OF WORK

A. Existing facilities shall remain in service and available for public use during construction, unless specified in this or other sections.

1.04 CONTRACTOR USE OF THE PREMISES

A. Limit all operations to City right-of-ways or Easements; restore damaged properties outside of right-of-ways or easements at no cost to the City.

1.05 REFERENCE STANDARDS OR SPECIFICATIONS

A. When other specifications documents are referenced within this project manual any text within those documents discussing contract administration, measurement or payment are not included, unless otherwise specified.

B. Where compliance with two or more industry standards or sets of requirements are specified, and the overlapping of those standards or requirements establishes different or conflicting minimums or levels of quality, the most stringent requirement (which is generally recognized to be also most costly) is intended and will be enforced, unless more detailed language written directly into Contract Documents clearly indicates that a less stringent requirement is acceptable.

1.06 NOTIFICATION TO THE PUBLIC

A. Notify affected residents and businesses a minimum of 7 business days prior to commencing work.

B. Notify affected residents and businesses a minimum of 3 business days prior to closing a driveway.

C. Notify Engineer 7 business days prior to closing a street. Engineer will notify Sheboygan Police, Fire and Ambulance, Sheboygan County Sheriff's Department and Sheboygan Transit.

1.07 ACCESS REQUIRMENTS

A. Maintain access to business and residents at all times, unless otherwise noted.

B. Provide continuous access for emergency vehicles.

C. Comply with Section 01 11 00 – Summary of work for additional access requirements, if any.

1.08 MAIL DELIVERY

A. Work with the U.S. Postal Service to assure mail delivery throughout the project. Some or all mail boxes may have to be moved, temporarily relocated or replaced in a new location. Relocating mail boxes, temporarily or permanently, shall be incidental to the contract, and meet the Postal Service criteria.

1.09 REMOVALS

A. Do not remove or damage any tree, shrub, or other land resource unless indicated for removal.

B. At limits of pavement, curb and gutter, driveway or sidewalk removal provide a full depth saw cut prior to removal. Provide straight, vertical sawcuts at all edges of existing asphalt and concrete materials to be matched by new pavement materials. This shall include curb and gutter, driveway aprons, sidewalk, and street pavement and patching work. If the sawed edges break prior to placement of the new pavement, curb and gutter, driveway or sidewalk, re-sawcut the existing edge.

1.10 PROJECT MEETINGS

A. Conduct bi-weekly progress meetings throughout the construction period. Meetings will be held at the Sheboygan Department of Public Works office.
   1. Items to be discussed at meeting shall include, but not be limited to:
      a. Review of progress since previous meeting.
      b. Review Outstanding Items since last meeting.
      c. Contractors Schedule (3-week look ahead).
      d. Submittal Schedule.

1.11 CONSTRUCTION STAKING

A. Layout of the work is the responsibility of the Contractor.

B. Comply with Section 01 71 23 – Construction Staking

1.12 SUBMITTALS

A. Work-Related Submittals:

   1. Shop Drawings:
      a. As defined in Paragraph 1.01.A.39 of the General Conditions, and in particular includes technical data and drawings specifically prepared for this Project, including fabrication and installation drawings, diagrams, data sheets, schedules, templates, patterns, reports, instructions, design mix formulas, measurements, and similar information not in standard printed form.

2. Product Data:
   a. Includes standard catalog type printed information on manufactured materials, equipment and systems that has not been specifically prepared for this Project, including manufactures' product specifications, manufacturers' instructions, catalog cut sheets, standard wiring diagrams, printed performance curves, mill reports, and standard color charts.
3. Test Results:
   a. Includes source and field quality inspection and test reports, actual performance curves, and certifications of results prepared specifically for equipment, material, and systems provided for this Project.
4. Miscellaneous Submittals:
   a. Work-related submittals that do not fit in previous categories, including schedules, guarantees, warranties, certifications, maintenance agreements, workmanship bonds, survey data and reports, physical work records, copies of industry standards, field measurements, extra materials, keys, and similar information, devices, and materials applicable to Work.

B. Action On Submittals

1. Unsolicited Submittals:
   a. Engineer will return unsolicited submittals without reviewing.
2. `Response:
   a. Marked: "Approved"
      1. Work covered by submittal may proceed provided it complies with Contract Documents. Acceptance of Work depends on that compliance.
   b. Marked: "Approved As Noted"
      1. Work covered by submittal may proceed provided it complies with Engineer's notations or corrections on submittal and with Contract Documents. Acceptance of work depends on that compliance. Resubmittal not required.
   c. Marked: "Not Approved"
      1. Work covered by submittal does not comply with Contract Documents. Do not proceed with Work covered by submittal.
      2. Prepare new submittal complying with Contract Documents and Engineer's notations.
   d. Marked: "Filed for Record"
      1. Work covered by the submittal does not require approval.
      2. Submitted documentation is filed with the project records.

1.13 MANUFACTURERS' DIRECTIONS

A. Manufactured articles, materials and equipment shall be stored, commissioned, operated, applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer, unless specified to the contrary.

B. Wherever specifications explicitly call for work to be performed or materials to be installed in accordance with the manufacturer's directions, furnish copies in accordance with the Submittals paragraphs of the specification section before installing the material or performing the work.

1.14 PROJECT OBSERVATION

A. All work under this proposal shall be subject to the observation by authorized personnel of the Engineer, and all findings, determinations and recommendations by the Engineer or its duly authorized agents shall be final and conclusive.

B. Provide the Engineer a three business day notice prior to the start of any work on the project. Any work done without three business day notice will be subject to non-payment. If observation of the work is not required, the Engineer shall inform the foreman and the work will be reviewed upon completion.

1.15 INCIDENTAL ITEMS OF WORK

A. Any items of work shown on the drawings or required by the specifications but not specifically included in the Bid shall be considered incidental items of work. The cost of incidental items of work shall be included in the prices bid for related work.

1.16 PERMITS

A. Acquire all necessary City permits. Contact the Building Inspection Department at 920-459-3477 to determine the associated fees and shall be incidental to the contract. These permits shall be obtained at the City of Sheboygan Building Inspection Department located on the 1st Floor of City Hall, 828 Center Avenue, Sheboygan, Wisconsin.

B. Comply with the City licensing requirements established by the City of Sheboygan Building Inspection Department for plumbing, HVAC, electrical and building construction. These applications are obtained in the Building Inspection Department, located on the 1st Floor of City Hall, 828 Center Avenue, Sheboygan, Wisconsin.

C. Comply with permits, if any, identified is Section 01 11 00 – Summary of Work.

1.17 EXISTING FACILITIES

A. Provide a minimum of a 3 business day notice to owners of existing utilities prior to excavation activities.

B. The requirements of Section 182.0175 of the Wisconsin State Statutes apply to work under this contract.

1.18 DELIVERY, STORAGE, AND HANDLING

A. Adjust weight, type, capacity, haul routes, and method of operation of hauling vehicles such that there is no damage to existing streets, subgrade, or base course.

B. Engineer has final authority to revise haul routes, procedures, and operation times.

C. Keep haul routes clean and free of construction material and debris.

D. Construction equipment, materials and stockpiles shall not be left within 100 feet of any commercial establishment during non-working hours or when no working is occurring.

E. Parking restrictions shall be obeyed at all times in the vicinity of schools.

1.19 WATER UTILITY AND HYDRANT USE

A. Do not operate any hydrants, valves or other apparatus owned by the Sheboygan Water Utility.

B. Should water from hydrants be needed during construction, the contractor shall apply, in person, for a hydrant use permit at the Sheboygan Water Utility Office, 72 Park Avenue. Any damage to Water Utility apparatus shall be repaired at the Contractor's expense.

C. Coordinate with Sheboygan Water Utility to repair any damaged water service laterals or water mains. Sheboygan Water Utility will determine extent of repairs required. If a lead water service is exposed contract the Sheboygan Water Utility within 1 hour.

1.20 SANITARY FACILITIES

A. Provide and maintain sanitary chemical toilets located where approved and in sufficient number required for the work force employed by Contractor.

1.21 PUBLIC RECORDS LAW

A. The City of Sheboygan is subject to the Wisconsin public records law. Any submissions to the City in connection with this project may be disclosed in response to a public records request.

PART 2 – PRODUCTS

2.01 CITY FURNISHED PRODUCTS

A. City will furnish materials as specified in Section 01 64 00 – City Furnished Products of the Project Specific Manual. If section is not included in the Project Specific Manual, then no products will be furnished by City.

PART 3 – EXECUTION

(NOT USED)

END OF SECTION

PART 1 – GENERAL

1.01 SUMMARY

A. Section Includes:
1. Quality assurance.
2. Procedures to measure and report the quality and performance of the Work.
3. Requirements for Contractor Cooperation
4. Payment.

1.02 PRICE AND PAYMENT PROCEDURES

A. Measurement and Payment:
1. All Work and costs of this Section shall be incidental to the Project and included in the Total Base Bid.

1.03 SUBMITTALS

A. Prior to start of Work, submit testing laboratory name for various specified tests for approval by Engineer.

B. After each inspection or test, submit copies of report to Engineer no later than 3 business days after completion of inspection or test. Include:
1. Test date
2. Project Number and Title
3. Inspector or Tester
4. Date and time of sampling, testing or inspection
5. Location of inspection or test
6. Identification of product and applicable Specification Section.
7. Test Results
8. Conformance with Contract Documents.

C. Manufacturer's certificates of quality control or performance.

1.04 WORKMANSHIP

A. Comply with industry standards of the region, except where more restrictive tolerances or specified requirements indicate more rigid standards or more precise workmanship.

1.05 TESTS AND INSPECTIONS

A. Conform to the requirements of the General Conditions, except as modified herein.

B. Notify Engineer 48 hours prior to expected time for operations requiring tests and inspections.

C. Provide incidental labor and facilities to obtain and handle samples at Site or source, transport samples to laboratory, and facilitate tests and inspections for storing and curing of test samples.

D. Owner shall pay for all testing not identified in the specifications. Any test identified in the specifications is the responsibility of the contractor.

1. If any test fails to meet requirements, reimburse Owner for cost of all subsequent tests to ensure compliance.

E. Notify Engineer of pit and scale location and other correlated items prior to beginning Work.

1.06 LABORATORY RESPONSIBILITIES

A. Test samples and perform field tests.

B. Provide qualified personnel. Cooperate with Engineer and Contractor in performance of services.

C. Ascertain compliance with the requirements of the Contract Documents.

D. When requested by Engineer, provide interpretation of test results.

1.07 LIMITS ON TESTING LABORATORY AUTHORITY

A. Laboratory may not release, revoke, alter, or enlarge on requirements of Contract Documents.

B. Laboratory may not approve or accept any portion of the Work.

C. Laboratory may not assume any duties of Contractor.

D. Laboratory has no authority to stop Work.

1.08 MANUFACTURER'S CERTIFICATES

A. If requested by Engineer, submit manufacturer's certificate with shop drawings certifying that products meet or exceed specified requirements executed by responsible officer.

1.09 MANUFACTURER'S FIELD SERVICES

A. Provide qualified representative to observe field conditions; conditions of surfaces and installation; quality of workmanship; start-up of equipment; and test, adjust, and balance of equipment.

PART 2 – PRODUCTS

(NOT USED)

PART 3 – EXECUTION

(NOT USED)

END OF SECTION

PART 1 – GENERAL

1.01 SUMMARY

A. Maintain work areas free from environmental pollution that would be in violation of federal, state or local regulations.

B. Permits obtained by Owner are list in Section 01 11 00 – Summary of Work. All other permits not listed are to be obtained by Contractor.

1.02 PAYMENT PROCEDURES

A. Work specified in this section is considered incidental and payment shall be included as part of appropriate unit prices included in Bid Form.

PART 2 – PRODUCTS

(NOT USED)

PART 3 – EXECUTION

3.01 GENERAL

A. Confine construction activities to areas defined on the Drawings or elsewhere in the Contract Documents.

B. Grade site to drain. Maintain excavations free of water.

C. Protect site from puddling or running water.

1.03 ARCHAEOLOGICAL FINDS DURING CONSTRUCTION

A. There are no known archaeological remains at the Project site.

B. Should skeletons, artifacts, or other archaeological remains be uncovered:

2. Suspend operations of this Contract at the site of discovery.
3. Continue operations in other areas.
4. Notify Engineer immediately of the finding.

C. Should the discovery site require archaeological studies resulting in delays and/or additional work, Contractor will be compensated by an adjustment under pertinent provisions of the Contract.

4.03 PROTECTION OF STORM SEWERS

A. Prevent construction materials, concrete, earth or other debris from entering existing storm sewers or sewer construction.
B. Inlet protection required for all storm sewers with project limits.

4.04 PROTECTION OF WATERWAYS

A. Comply with federal, state and local regulations regarding pollution of lakes, streams, rivers or wetlands by dumping of refuse, rubbish, dredge material or debris.

B. Disposal of materials into waters of state must conform to requirements of Wisconsin DNR.

C. Comply with Wisconsin Department of Transportation "Product Acceptability List" (PAL), current edition and Wisconsin Department of Natural Resources Storm Water Management Technical Standards.

END OF SECTION

PROJECT MAN					
CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Closeout Requirements		
		Section:	01 78 00		
		Bid Number:	2481-23	Page:	1 of 2

PART 1 – GENERAL

1.01 SUMMARY

A. Section includes requirements for Project Closeout and Final Payment including:
   1. Submittals,
   2. Inspections Procedures,
   3. Record Document Submittals.

1.02 PAYMENT PROCEDURES

A. Work specified in this section is considered incidental and payment shall be included as part of appropriate unit prices included in Bid Form.

1.03 SUBSTANTIAL COMPLETION

A. Comply with section 15.03 of the General Conditions.

1.04 FINAL COMPLETION

A. Comply with Section 15.05 and 15.06 of the General Conditions

1.05 RECORD DRAWINGS

A. Submit to Engineer a set of record documents as described in paragraph 7.11.A of the General Conditions and Section 01 78 39 – Project Record Documents.

PART 2 – PRODUCTS

(NOT USED)

PART 3 – EXECUTION

3.01 PROJECT CLOSEOUT CHECKLIST

A. The project closeout checklist at the end of this document will be used by the Engineer to document the closeout status of the project.

END OF SECTION

PROJECT MAN...					
CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Closeout Requirements		
		Section:	01 78 00		
		Bid Number:	2481-23	Page:	2 of 2

PROJECT CLOSEOUT CHECKLIST (Based on 2018 EJCDC General Conditions of the Contract)

Contract Status	Item to be Competed:	Reference	Completed/Submitted By:	Date Completed:
Substantial Completion				
	Letter requesting Substantial Completion	GC 15.03.A	Contractor	
	Draft of Punch List Items to be completed or corrected before final payment	GC 15.03.A	Contractor	
	Inspect work	GC 15.03.B	Owner/Contractor/Engineer	
	Notification if not ready for Substantial Completion	GC 15.03.B	Engineer/Owner	
	Certification of Substantial Completion Issued	GC 15.03.C	Engineer/Owner	
			Date of Substantial Completion	

Final Completion				
	Letter requesting Final Completion	GC 15.05.A	Contractor	
	Inspect work	GC 15.05.A	Owner/Contractor/Engineer	
			Date of Final Completion	

Final Payment				
	Submit Record Drawings	GC 15.06.A.1 GC 15.06.A.2.a GC 7.12 SC 7.12 01 78 39	Contractor	
	Consent of Surety to Final Payment	GC 15.06.A.2.b	Contractor	
	List of Pending Change Proposals and Claims	GC 15.06.A.2.d	Contractor	
	Lien Waivers	GC 15.06.A.2.e	Contractor	
	Contractor's Affidavit of Compliance	SC 15.06.A.2.f	Contractor	
	Final Pay Application	GC 15.06.A.1	Contractor	
	Notice of Acceptability	GC 15.06.C	Engineer	
	Final Payment	GC 15.06.E	Owner	
			Date of Final Payment	

PART 1 - GENERAL

1.01 SUMMARY

A. Throughout progress of the Work, maintain an accurate record of changes in the Contract Documents.

1.02 PAYMENTS

A. Work specified in this section is considered incidental and payment shall be included as part of appropriate unit prices included in Bid Form.

1.03 SUBMITTALS

A. Prior to submitting request for final completion, deliver one complete marked up set of Drawings to Engineer for use in preparation of record drawings.

PART 2 – PRODUCTS

(NOT USED)

PART 3 - EXECUTION

3.01 RECORD DRAWINGS

A. Maintain one record set of Drawings legibly annotated to show all changes made during construction and the final location of all underground piping and utilities.

1. The marked up set of Drawings shall be a compilation of all of the work completed. Individual sets from the various subcontractors will not be accepted.
2. The marked up set of Drawings shall graphically show the changes. Reference to RFI's, Change Orders will not be accepted.
3. The Record Drawings will show
   a. Grade changes, changes in elevations for footings, culverts, manholes etc.
   b. New or revised LC, PC, PI, and PT.
   c. Relocated driveway entrances.
   d. Changes in size, location, and slope of pipes.
   e. Changes to invert elevations.
   f. Undercut areas.
   g. Areas of geotextile fabric or geogrid.
   h. Omissions, errors and discrepancies discovered during construction.
   i. Features added, revised, or deleted by contract change orders.
   j. Corrected or new bench marks. Cross out those that no longer exist.
   k. Changes to drainage.
   l. Material type, size, and manufacturer where optional materials are allowed by specifications.
   m. Final dimensions, elevations, details, sizes, numbers, lengths, locations, etc., if different from the original plan.
   n. Locations of private utilities, if different from original plans.
   o. Any other information necessary to document site conditions.
4. Graphically depict changes by modifying or adding to plans, and details Using a red colored pencil or pen.

5. Wherever a revision is made, also make changes to related section views, details, legend, profiles, plans and elevation views, schedules, notes and call out designations, and mark accordingly to avoid conflicting data on all other sheets.
6. For deletions, cross out all features, data and captions that relate to that revision.

END OF SECTION

PART 1 – GENERAL

1.01 SUMMARY

A. Provide erosion control devices at the locations shown on the drawings and as specified herein.

B. Maintain the work site as specified herein.

C. This is a standard City Specification. Materials and Items of work in this specification may not be required for all projects. Refer to Bid form and Plans to determine materials and items of work required.

1.02 DEFINITIONS

A. WisDOT Specs: Wisconsin Department of Transportation Standards Specifications for Highway Construction, latest Edition.

B. WisDOT PAL: Wisconsin Erosion Control Product Acceptability List (PAL), latest edition.

C. WDNR: Wisconsin Department of Natural Resources.

D. Technical Standards: Wisconsin Department of Natural Resources Storm Water Management Technical Standards

1.03 PERMITS

A. Comply with permits, if any, identified is Section 01 11 00 – Summary of Work.

1.04 PAYMENT PROCEDURES

A. Cost for erosion control shall be paid according to the various unit prices included in the Bid. If individual items are not included in the Bid, the cost of this work shall be considered incidental to adjacent utility and roadway construction work.

B. Site Maintenance, unless otherwise specified, is incidental to adjacent utility and roadway construction work.

1.05 QUALITY ASSURANCE

A. Erosion Control products not included in WisDOT PAL are not acceptable.

B. Submit product data in accordance with Section 01 14 00 – Work Restrictions.

PART 2 – PRODUCTS

2.01 WisDOT PAL

A. All products shall be as specified in current version of WisDOT PAL and WDNR Technical Standards.

PART 3 – EXECUTION

3.01 EROSION CONTROL REQUIREMENTS

A. Contractor shall not begin work until after initial erosion and sediment control devices are in place and approved by Engineer.

B. Comply with notes, if any, including the drawings.

C. Erosion control permits establish minimum erosion control measures required.

D. Furnish additional erosion control measures as needed based on the work plan and to adjust to field conditions.

E. Inspect all manholes and catch basins weekly or when requested by Engineer for materials that may be deposited in them. Remove and dispose of deposited material.

F. All erosion control measures shall be implemented in accordance with WDNR Technical Standards, available at: http://dnr.wi.gov/topic/stormwater/standards/const_standards.html

G. Construct temporary tracking at all vehicle entrances/exits to the site. Each pad shall be 25 feet wide and a minimum of 50 feet in length. The pads will be at least 12-inch thick consisting of 3 inches to 6 inches clear washed stone. Install tracking pads prior to any traffic leaving the site. Clean up sediment that leaves the site as soon as practical, no later than the end of the work day. Maintain tracking pad by scraping or top-dressing with additional aggregate.

H. Install silt fence parallel to the contours located downslope from the construction areas. Remove sediment and properly disposed of when the deposits reach half the height of the fence.

I. Install inlet protection in all downslope drainage inlets. Remove sediment and properly disposed of and restore to its original dimensions when the sediment has accumulate to half the design depth of the device.

J. Should dust be generated, it will be controlled by spraying the exposed grade with water. Water shall be applied at rates so that runoff does not occur.

K. The use, storage and disposal of construction materials such as chemicals, cement, compounds and other construction/building materials used on the site shall be managed to prevent their transport off site. All waste materials shall be properly disposed of in compliance with all Federal, State and Local requirements.

L. Stabilize the site with topsoil, permanent seed, fertilizer, mulch or erosion mat as detailed on the drawings to establish vegetation as soon as site disturbing activities have been completed. All seeded areas shall be watered for the first six weeks. Watering shall take place whenever more than 7 days of dry weather elapse. Stockpiles that are inactive for more than 14 consecutive days will be stabilized. Areas of exposed soils that will not see any land disturbing activities for a period greater than 30 days will receive temporary stabilization.

M. Excavated trench material shall be placed on the high side of the trench. Immediately following the pipe installation, the trench shall be backfilled, compacted and stabilized at the end of the working day.

N. Construction site diversion shall be used to intercept, divert and safely convey runoff on the site in order to divert clean water away from disturbed areas or redirect sediment laden waters to an appropriate sediment control device. Sediment shall be removed and properly disposed of once the deposits reach half the height of the diversion structure.

3.02 SITE MAINTENANCE

A. Maintain the project area and surrounding area by removing waste and rubbish on a daily basis.

B. Do not flush out concrete trucks or any other equipment onto existing completed public streets, walks, gutters, terraces, or boulevards.

C. At the completion of the work, remove all hubs, lath, signs, excess excavation and construction materials. Sweep roadway surface to remove surface contaminants and other debris.

D. Do not drag, push, or scrape material across or along the finished pavement or surface course.

E. Before requesting acceptance of the work, clean out soil, silt, or debris of drainage installations and structures constructed under the contract. Remove materials in other drainage installations or structures due to contractor's operations.

END OF SECTION

`PART 1 – GENERAL

1.01 SUMMARY

A. Provide base aggregate, concrete pavement, concrete sidewalk, concrete curb and gutter, concrete driveway, pedestrian curb and asphalt pavement at the locations shown on the drawings.

B. This is a standard City Specification. Materials and Items of work in this specification may not be required for all projects. Refer to Bid form and Plans to determine materials and items of work required.

1.02 DEFINITIONS

A. WisDOT Specs: Wisconsin Department of Transportation Standards Specifications for Highway Construction, latest Edition.

1.03 PAYMENT PROCEDURES

A. Unit Prices:
   1. Include the cost of work specified in this section in the appropriate Bid Item.
   2. Include cost of joint sealing in the appropriate Bid Items.

1.04 SUBMITTALS

A. Submit Product Data in accordance with Section 01 14 00 – Work Restrictions.
   1. Include in Submittal:
      a. Source of Aggregate
      b. Production Test Results
      c. Test Results.

PART 2 – PRODUCTS

2.01 BASE AGGREGATE MATERIALS

A. Furnish aggregate from WisDOT approved sources.

B. Conform to WisDOT Spec Section 305 for gradation requirements.
   1. Place 1.25-inch gradation under all concrete pavement, concrete curb and gutter, asphalt pavement, and driveways.
   2. Place 3/4-inch gradation under all sidewalks.

2.02 CONCRETE

A. Furnish aggregate from WisDOT approved sources.

B. Conform to WisDOT Specification Section 501.

2.03 CURB RAMP DETECTABLE WARNING FIELDS

A. Furnish Neenah Foundry R-4984-24B (Natural Patina)

2.04 JOINT SEALER

A. Hot-Poured elastic joint sealer conforming to ASTM D3405

PART 3 – EXECUTION

3.01 SUB BASE PREPARATION

A. Check subbase for soundness and elevations. Prepare subbase for base course placement by scraping down or filling irregularities. Compact subbase prior to base course placement.

B. Proof roll the prepared subbase. Make multiple passes to test entire area. Remove and replace areas where displacement in base (yielding, heaving, cracking or other signs of instability), in the opinion of the Engineer, is more than 1 inch under a fully-loaded tandem-axle dump truck. Excavate and backfill displaced areas with new base course material, compact, and retest. Do not begin placement of base course until deficient areas have been corrected.

3.02 BASE AGGREGATE PLACEMENT

A. Conform to the requirements of WisDOT Spec Section 305 for placement requirements and as modified herein.

B. Base aggregate shall extend 36-inches outside pavement and curb and gutter, or as specified on the drawings.

C. Existing base aggregate may be re-used with the written approval of the Engineer.

D. Maintain drainage during and after placement of base aggregate.

3.03 CONCRETE FORMS

A. Construct forms to the exact sizes, shapes, lines, and dimensions shown, and as required to obtain accurate alignment, location, grades, and level and plumb work in the finished concrete. All forms must be inspected and approved by the Engineer or his authorized representative, prior to placement of concrete.

B. Forms shall be straight and of sufficient strength to resist the pressure of the concrete without bending, tipping, and other deformation. Bracing and staking of forms shall be such that the forms remain in both horizontal and vertical alignment until their removal.

C. Forms shall not be removed from freshly placed concrete until it has hardened sufficiently to resist spalling, cracking or any other damage.

D. Curb Machines may be used to construct curb provided the curb can be constructed to the requirements of the specifications.

3.04 CONCRETE PAVEMENT AND DRIVEWAYS

A. Construct Concrete Pavement in accordance with WisDOT Spec Section 415 at the location and to the thicknesses the plans show and as modified herein.

B. Seal all joints in concrete pavement:

1. Place joint sealer in accordance to the manufacturer's instructions. All longitudinal, transverse, and construction joints shall be sealed prior to allowing any traffic on the pavement.
2. Joints shall not be sealed until they have been inspected and approved by the Engineer.
3. Should any spalling of the sawed edges occur that would in the judgment of the Engineer detrimentally affect the joint-sealing ability, such spalled areas shall be patched with an approved epoxy which shall be allowed to harden prior to installation of the joint seal. Each patch shall be true to the intended neat lines of the finished cut joint.
4. Application of the joint sealer shall be made when the joint surfaces are clean and dry. Joints shall be cleaned and dried to accept the sealing material in accordance to the manufacturer's recommendations.
5. All longitudinal and transverse concrete pavement joints, including the joint between the pavement and the curb and gutter and any joints in the curb and gutter shall be sealed. The sealant shall be tooled flush with or recessed up to a maximum of 1/16" ± 1/64" below the concrete surface. Overbonding will not be allowed. Material remaining on the surface of the pavement shall be removed without damaging the sealant in the joint.

END OF SECTION

PART 1 – GENERAL

1.01 SUMMARY

A. Perform sanitary, storm sewer and lateral work under this contract in accordance with the Standard Specifications for Sewer and Water Construction in Wisconsin, December 22, 2003, including Addenda 1 and 2, dated December 22, 2004 and April 22,2008, respectively, and as modified herein.

B. This is a standard City Specification. Materials and Items of work in this specification may not be required for all projects. Refer to Bid form and Plans to determine materials and items of work required.

1.02 DEFINITIONS

A. Standard Specifications: Standard Specifications for Sewer and Water Construction In Wisconsin, December 22, 2003, including Addenda 1 and 2, dated December 22, 2004 and April 22, 2008, respectively.

1.03 PAYMENT PROCEDURES

A. Unit Prices:
   1. Payment for Work under this specification, as shown on the bid form, and as specified herein.
   2. Individual items, including Base Aggregate, Slurry Backfill, Pavement Removal and Replacement, including all dowel bars, tie bars, manhole frame adjustments and other items of work shown on the plan and are not shown on the bid form shall be considered incidental to adjacent utility construction work.

1.04 SUBMITTALS

A. Submit Product Data in accordance with Section 01 14 00 – Work Restrictions.
   1. Include in Submittal:
      a. Source of Aggregate
      b. Production Test Results
      c. Test Results.
      d. Manufacturer's Written Instructions

PART 2 – PRODUCTS

2.01 PIPE MATERIAL – STORM SEWER

A. All pipe material shall be as follows and as specified in the bid form:
   a. Reinforced Concrete Pipe as defined in Section 8.6.0. Class III pipe, if not shown on the bid form or the drawings.
   b. Polyvinyl Chloride Sewer Pipe as defined in Section 8.10.0. SDR 35, if not shown on the bid form or the drawings.
   c. If no pipe material specified on drawings or bid form, either Reinforced concrete pipe or polyvinyl chloride sewer pipe as identified above will be allowed.

2.02 PIPE MATERIAL – SANITARY SEWER

B. All pipe material shall be as follows and as specified in the bid form:
   a. Polyvinyl Chloride Sewer Pipe as defined in Section 8.10.0. SDR 35, if not shown on the bid form or the drawings.

PART 3 – EXECUTION

3.01 GENERAL

A. Modify the Standards Specification as follows:

1. Paragraph 2.2.11(b) -Ten (10%) percent of the excavated material shall be changed to 100% of the excavated material.
2. Paragraph 2.2.15 - Unless otherwise specified, tree clearing and grubbing shall be incidental to the contract.
3. Paragraph 2.6.2 - Unless otherwise specified, all backfill in existing and/or proposed right-of-ways shall be sand as per Table 37.
4. Paragraph 2.6.3 - Unless otherwise specified, granular backfill credit shall be $10.00/c.y.. The trench width used shall be O.D. plus 36".
5. Paragraph 2.7.3(b) - Section 1-9 inclusive, all replacements shall be the same vertical dimensions and material as the original.
6. Paragraph 2.9.15(a) – Payment will be by the Each.
7. Paragraph 3.2.1(b) - A fan shall be used when a laser beam is in use at all times.
8. Paragraph 3.2.6 - All sewer pipe, unless otherwise specified, shall be bedded and filled to the spring line with bedding material conforming to Sections 8.43.2(a) as shown on the trench detail in these special provisions.
9. Paragraph 3.2.10(b) - All concrete pipe except elliptical pipe shall be rubber gasket type as per 3.2.11.

3.02 MAINTENANCE

A. All in-service manholes shall be kept clean and free of all construction materials and debris at all times. Contractor shall immediately remove any mortar, bricks, concrete chunks, dirt, etc. from manholes and shall be responsible for cleaning downstream manholes should construction debris be carried down line by flow during construction.

3.03 FOUNDATION STONE

A. Foundation stone is over and above the 4" bedding material as specified in the trench detail. Foundation stone will only be used when directed by Engineer.

END OF SECTION

PART 1 – GENERAL

1.01 SUMMARY

A. Section Includes:

1. Precast concrete manholes, catch basins, and inlets.
2. Castings and other components.
3. Adjusting concrete manholes, catch basins, and inlets.

1.02 DEFINITIONS

A. Standard Specifications: Standard Specifications for Sewer and Water Construction In Wisconsin, December 22, 2003, including Addenda 1 and 2, dated December 22, 2004 and April 22, 2008, respectively.
B. ASTM: American Society for Testing and Materials

1.03 PAYMENT PROCEDURES:

A. Unit Prices:
1. Payment for Adjusting Manholes, Inlets, and Catch Basins on structures not installed as part of this contract is incidental to adjacent work.
2. Payment for Chimney Seals is incidental to adjacent work.
3. Include the cost of work specified in this section in the appropriate Bid Item.

1.04 SUBMITTALS

A. Product data:

1. Manufacturer's specifications and other data needed to prove compliance with specified requirements.
2. Manufacturers recommended installation procedures.
3. Provide certification reports attesting that materials supplied meet referenced specifications.
4. Shop drawings for precast structures showing elevations and dimensions.

B. Submit in accordance with Section 01 14 00 – WORK RESTRICTIONS.

1.05 HANDLING AND DELIVERY OF MATERIALS

A. Inspect materials during unloading process and notify Engineer of cracked, flawed or otherwise defective material,

1.06 MAINTAINING SEWER SYSTEM

A. Maintain flow in sewers on continuous basis while construction is underway.
B. Plug sewers with inflatable plug. Provide pumps, portable generators, hoses, and related items appurtenant to the Work.
C. Sewer service lines to individual users may be disconnected for a period not to exceed 4 hours.
D. Secure manholes and structures immediately after completion or before suspension of operations at the end of working day with casting or suitable alternative device.

E. Mark structures susceptible to being hit by construction or vehicular traffic.

1.07 QUALITY ASSURANCE

A. Individual pre-cast manhole sections may be rejected because of any of the following reasons:

1. Fractures or cracks passing through shell, except for single end crack not exceeding depth of joint.
2. Defects indicating imperfect proportioning, mixing, and molding.
3. Surface defects indicating honeycombed or open texture.
4. Internal diameter of section varying more than 1% from nominal diameter.
5. Any continuous crack having surface width of 0.01 in. or more and extending for length of 12 in or more, regardless of position.

PART 2 - PRODUCTS

2.01 FRAMES AND COVERS

A. Grey Iron meeting ASTM A48, Class 35B

B. Manhole Castings – Sanitary:

1. Neenah Foundry Frame: R-1550
2. Neenah Foundry Lid: Type “B” solid lid with self-sealing gaskets and concealed pick holes.
3. Or identified on the drawings.

C. Manhole Castings – Storm:

1. Neenah Foundry Frame: R-1550-A
2. Neenah Foundry Lid: R-1050, vented lid.

2.02 ADJUSTING RINGS

A. Concrete Adjusting Rings:

1. Precast concrete with steel reinforcements, meeting ASTM G-478

B. Expanded Polypropylene (EPP) Rings:

1. Cretex Specialty Products - Pro-Ring.
   a. Grade, Finish, and Angle Rings permitted.
   b. M-1 Structural Adhesive/Sealant.

2.03 CEMENTITIOUS NON-SHRINK GROUT

A. Premixed, non-metallic, high strength, non-shrink grout which meets the requirements of ASTM C-191 and C-827 as well as CRD-C-588 and C-621. When mixed to a mortar or "plastic" consistency, it shall have minimum one day and 28 day compressive strength of 6,000 and 9,000 psi, respectively.

2.04 INTERNAL CHIMNEY SEAL

A. Internal Chimney seal as manufactured by Cretex Specialty Products, or approved equal.

PART 3 - EXECUTION

3.01 INSTALLATION

A. Trench, backfill, and compact for work of this Section shall be in accordance with pertinent provisions of Section 31 23 33 – TRENCH EXCAVATION AND BACKFILL.

3.02 SETTING CASTINGS / ADJUSTING CASTINGS –

A. Adjusting Rings
   1. Set at elevation shown on Drawings. If directed by Engineer, set at elevations to match existing or proposed pavement.
   2. Adjust castings to grade using concrete and EPP rings:
      a. Only a single concrete ring will be allowed.
      b. Do not use concrete rings less than 4-inches in thickness
      c. Use a minimum of 2-inches of EPP rings.
      d. EPP Rings shall be placed at the top, just below the casting.

B. Precast or Block Existing Structures without removal and replacement precast manhole section.
   1. Remove existing rings and/or bricks following details shown on the plans.
   2. Adjustments of 6-inches or less be in accordance with paragraph 3.02.A
   3. Set at elevation shown on Drawings. If directed by Engineer, set at elevations to match existing or proposed pavement.
   4. Adjust castings to grade using concrete and EPP rings:
      a. A maximum of 3 concrete rings will be allowed.
      b. Do not use concrete rings less than 4-inches in thickness
      c. Use a minimum of 2-inches of EPP rings.
      d. EPP Rings shall be placed at the top, just below the casting.

C. Brick Manholes
   1. Remove exiting bricks to the depth identified in the plan.
   2. Follow details on plans to reconstruction with block or pre-cast sections.
   3. Adjust casting to grade in accordance with paragraph 3.02.A

3.03 CONCRETE RINGS:

A. Secure adjustment rings with mortar, engineer-approved mastic, or other material approved by the Engineer.

3.04 EPP RINGS

A. Installation and surface preparation shall be in accordance with the manufacturer's instructions as modified below.

   1. Installation and surface preparation shall be in accordance with the manufacturer's instructions.

2. The joint between the first grade ring and top of the manhole, catch basin, or structure shall be sealed using an adhesive/sealant meeting the requirements of Section 2.05.B.1.b.
3. If the top of the manhole, catch basin or pre-cast structure is not level or is irregular, then a cementitious non-shrink grout meeting the requirements of Section 2.06 shall be used. A bed of grout shall be placed on the top surface of the pre-cast structure and then the first grade ring shall be embedded and leveled into the bed of material.
4. The remaining joints between all manhole adjustment rings and the frame and cover or grate shall be sealed using an adhesive/sealant meeting the requirements of Section 2.05.B.1.b
5. No other materials shall be used in the construction of the grade adjustment area beyond those specified above. Prohibited materials include, but are not limited to wood or wood shims of any kind, concrete, brick, block, stones.

3.05 INTERNAL CHIMNEY SEAL

A. Install in accordance with Manufacturer's written instructions.

3.06 TESTING AND INSPECTING

A. Do not allow or cause any of Work of this Section to be covered up or enclosed until after it has been inspected.

B. Precast reinforced concrete manholes, inlets, catch basins, risers and tops shall be subject to rejection for failure to conform to any specification requirements.

C. Cleaning:

1. Clean structures prior to final inspection for acceptance.

END OF SECTION

III

Res. No. 153 - 22 - 23. By Alderpersons Mitchell and Filicky-Peneski.
March 6, 2023.

A RESOLUTION appointing the chairperson of the Finance and Personnel Committee to take certain actions and exercise certain authority of the common council as has been delegated to the city administrator during the current vacancy in the position of city administrator.

WHEREAS, Section 2-341 of the Sheboygan Municipal Code provides for the appointment of a city administrator; and

WHEREAS, Section 2-342 of the Sheboygan Municipal Code provides that said city administrator shall perform the duties and have the authority and powers prescribed by the common council; and

WHEREAS, the common council has, by ordinance, policy, and practice, delegated certain of its authority and power to the city administrator such that the administrator has become a key piece of the efficient operation of city government; and

WHEREAS, the position of city administrator is vacant and there is a need for the common council to appoint someone to carry out that delegated authority and power; and

WHEREAS, as part of the hiring and recruitment process for a new city administrator, it is the sense of the council that it should carefully consider a number of modifications to the role, job description, and delegated authority and power of the administrator, rather than rushing an immediate change before starting that hiring and recruitment process; and

WHEREAS, it is the sense of the council that there is a need for a one-time temporary provision allowing a member of the common council to exercise the delegated authority and power of the council so as to maintain the efficient operation of city government until the new administrator is hired and a more comprehensive set of ordinances and policies can be drafted that will include a robust chain of command and succession plan; and

WHEREAS, it is the sense of the council that the largest portion of the authority and power of the council delegated to the city administrator relates to financial and personnel matters, and, as such, it would behoove the city council to appoint a member of council who has significant experience on the council working on finance and personnel matters; and

F&P

WHEREAS, it is not the intent of the council in making that appointment to have that member of council fulfill the entire role of the city administrator or to serve as an "acting city administrator," but only to fulfill those necessary functions as to keep the city operating efficiently.

NOW, THEREFORE, BE IT RESOLVED: That the Common Council hereby delegates and appoints the chairperson of the Finance and Personnel Committee to act in place of the city administrator to perform such authority and power as is required for the efficient operation of the City, including all power and authority to approve department head decisions as have been delegated to the administrator by virtue of the provisions of the Sheboygan Municipal Code, until such time as a new city administrator has been appointed or the common council deems the temporary position no longer needed.

_____

_____

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

Gen. Ord. No. 29 - 22 - 23. By Alderperson Perrella. March 6, 2023.

AN ORDINANCE granting Sheboygan Self Storage, LLC, its successors and assigns, the privilege of encroaching upon described portions of South 13th Street and Kentucky Avenue right of way in the City of Sheboygan for the purpose of addressing the existing building structure, emergency egress, and adding a sun shade feature.

THE COMMON COUNCIL OF THE CITY OF SHEBOYGAN DO ORDAIN AS FOLLOWS:

Section 1. Subject to the terms and conditions contained herein, Sheboygan Self Storage, LLC, its successors and assigns, is hereby granted the privilege of encroaching upon South 13th Street and Kentucky Avenue right of way as follows:

> A Part of the South 13th Street Right-of-way and Kentucky Avenue Right-of-way adjacent to Block 257 of the Original Plat of Sheboygan, being part of the Southeast 1/4 of the Northeast 1/4, Section 27, T15N, R23E, City of Sheboygan, Sheboygan County , Wisconsin described as follows:
>
> Commencing at the Southeast Corner of Block 257 of the Original Plat of Sheboygan; thence N89°48'59"W 220.68 feet along the South line of said Block 257 to the POINT OF BEGINNING of this description; thence S00°34'04"W 0.38 feet along the East wall of said Building No. 1234; thence N89°58'27"W 110.47 feet along the South Wall of said Building; thence S00°01'33"W 4.00 feet; thence N89°58'27''W 34.03 feet; thence N00°30'21"E 44.04 feet; thence N89°31'49"W 1.00 feet; thence N00°30'21"E 8.00 feet; thence S89°31'49"E 5.00 feet; thence N00°30'21"E 87.59 feet along the West Wall of said Building No. 1234; thence N89°46'16"E 0.36 feet; thence S00°04'20"E 134.84 feet along the West line of Lot 7 of said Block 257; thence S89°48'59"E 138.75 feet along the South line of said Block 257 to the point of beginning. This described portion contains 557 square feet or 0.013 acres.

for the purpose of addressing the existing building structure, emergency egress, and adding a sun shade feature.

Section 2. The privilege as granted above is granted only on the condition that by the acceptance of the privilege, the said Sheboygan Self Storage, LLC, its successors and assigns:

a. Shall become primarily responsible and liable for all and any damage to persons or property caused by and arising from the grant and exercise of such privilege.

CityPlan

b. Shall remove the encroachment allowed herein within ten (10) days after notice so to remove given by the State of Wisconsin or the City of Sheboygan; in the event of the failure so to remove, the said Showcase Painting & Drywall, its successors and assigns: shall pay the costs of removal by the State of Wisconsin or the City of Sheboygan, waiving all claim or claims for damages resulting from such removal, whether the removal is done by the said Sheboygan Self Storage, LLC, its successors and assigns, or by the State of Wisconsin or by the City of Sheboygan

c. Shall pay such compensation to the City of Sheboygan for the grant of this privilege as may be determined by a board consisting of the Mayor, the Director of Public Works and the City Attorney; the compensation shall be paid into the General Fund.

d. Shall make such construction and/or alterations and maintain the same subject to the approval of the City Building Inspector and Director of Public Works, and shall waive the right to contest in any manner the validity of this ordinance or the amount of compensation charged.

Section 3. The provisions of §66.045(1)(2) of the Wisconsin Statutes are incorporated herein by reference to all intents and purposes as if set out fully.

Section 4. The City Clerk is authorized and directed to record a certified copy of this ordinance in the office of the Register of Deeds for Sheboygan County, Wisconsin, the costs thereof to be charged to the General Fund.

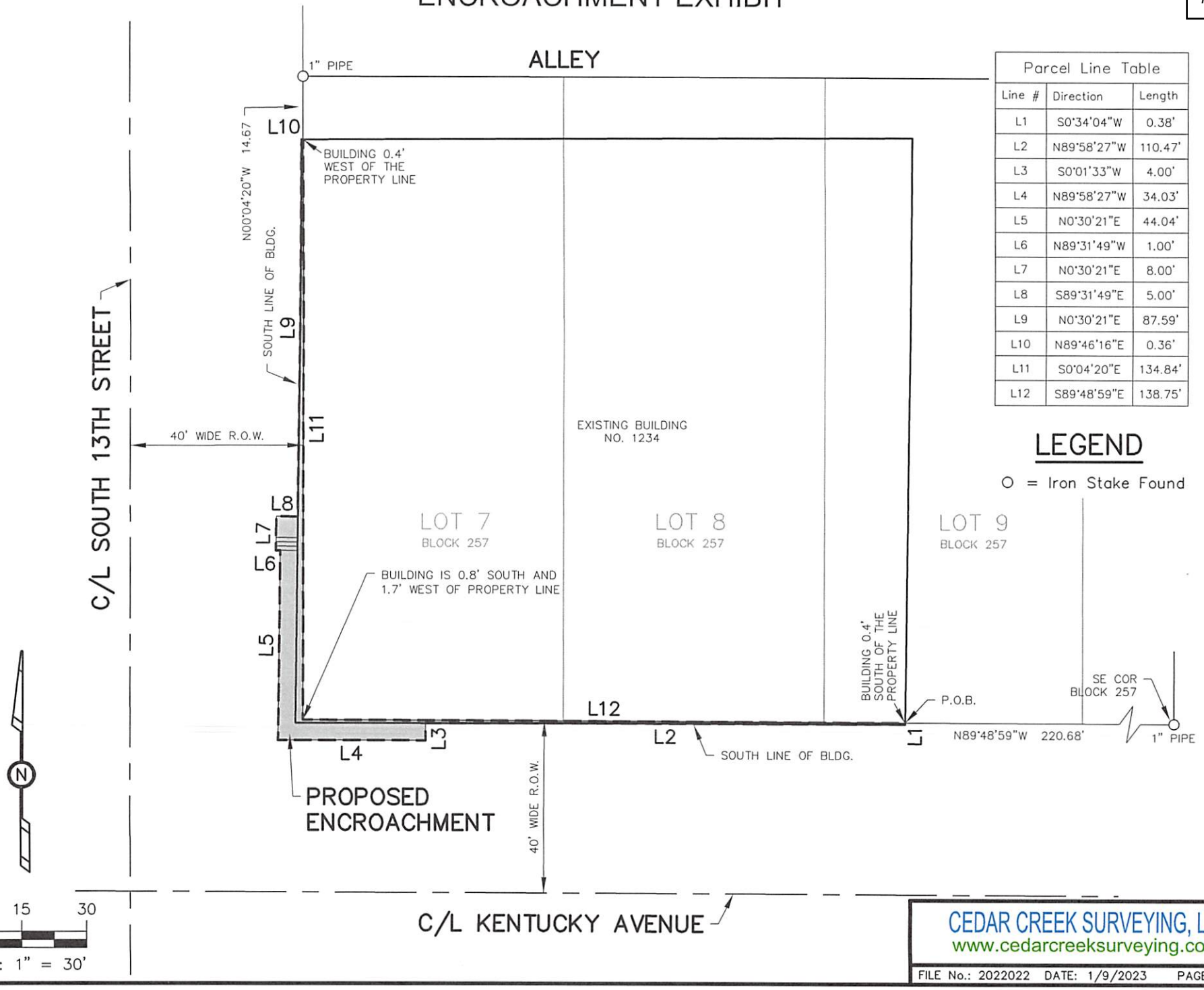
Section 5. This ordinance shall take effect and be in full force from and after its passage and publication and upon payment of the consideration to be determined hereunder, provided, however, that in the event of failure to exercise the privilege herein granted and the payment of such consideration within six (6) months from the effective date hereof, then and in that event such privilege shall be rendered null and void.

I HEREBY CERTIFY that the foregoing Ordinance was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

ENCROACHMENT EXHIBIT



Parcel Line Table		
Line #	Direction	Length
L1	S0°34'04"W	0.38'
L2	N89°58'27"W	110.47'
L3	S0°01'33"W	4.00'
L4	N89°58'27"W	34.03'
L5	N0°30'21"E	44.04'
L6	N89°31'49"W	1.00'
L7	N0°30'21"E	8.00'
L8	S89°31'49"E	5.00'
L9	N0°30'21"E	87.59'
L10	N89°46'16"E	0.36'
L11	S0°04'20"E	134.84'
L12	S89°48'59"E	138.75'

LEGEND

O = Iron Stake Found

CEDAR CREEK SURVEYING, LLC
www.cedarcreeksurveying.com

FILE No.: 2022022 DATE: 1/9/2023 PAGE:

Legal Description of Encroachment Area adjacent to Parcel #59281507730

A Part of the South 13th Street Right-of-way and Kentucky Avenue Right-of-way adjacent to Block 257 of the Original Plat of Sheboygan, being part of the Southeast 1/4 of the Northeast 1/4, Section 27, T15N, R23E, City of Sheboygan, Sheboygan County, Wisconsin described as follows:

Commencing at the Southeast Corner of Block 257 of the Original Plat of Sheboygan; thence N89°48'59"W 220.68 feet along the South line of said Block 257 to the POINT OF BEGINNING of this description; thence S00°34'04"W 0.38 feet along the East wall of said Building No. 1234; thence N89°58'27"W 110.47 feet along the South Wall of said Building; thence S00°01'33"W 4.00 feet; thence N89°58'27"W 34.03 feet; thence N00°30'21"E 44.04 feet; thence N89°31'49"W 1.00 feet; thence N00°30'21"E 8.00 feet; thence S89°31'49"E 5.00 feet; thence N00°30'21"E 87.59 feet along the West Wall of said Building No. 1234; thence N89°46'16"E 0.36 feet; thence S00°04'20"E 134.84 feet along the West line of Lot 7 of said Block 257; thence S89°48'59"E 138.75 feet along the South line of said Block 257 to the point of beginning.

This described portion contains 557 square feet or 0.013 acres.

III

Other Matters

Res. No. 155 - 22 - 23. By Alderpersons Dekker and Rust. March 6, 2023.

A RESOLUTION authorizing the appropriate City officials to enter into a contract with Vinton Construction Company for the construction of the Calumet Drive Pavement Repair.

WHEREAS, the City of Sheboygan has advertised for bids to construct the Calumet Drive Panel Replacement (the "Project"); and

WHEREAS, three bids were received in response to that advertisement; and

WHEREAS, the low bid was from Vinton Construction Company for $397,467.23; and

WHEREAS, the City Engineer has reviewed the bids and determined that the low bid met all of the specifications.

NOW, THEREFORE, BE IT RESOLVED: That the appropriate City officials are hereby authorized to enter into the attached agreement with Vinton Construction Company for the construction of the Project.

BE IT FURTHER RESOLVED: That the appropriate City officials are authorized to draw funds from the following account upon the agreement being fully executed by all parties, to pay for the construction done pursuant to the agreement:

Account No. 400300-641200 (Capital Projects - Public Works - Street Improvements) $397,467.23

RW

_____

_____

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20 . _____, City Clerk

Approved _____ 20 . _____, Mayor

AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between City of Sheboygan ("Owner") and Vinton Construction Company ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: municipal street and utility construction.

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Calumet Drive Pavement Repair, Geele Avenue to Main Avenue, City Bid Number: 2478-23.

ARTICLE 3 – ENGINEER

3.01 The part of the Project that pertains to the Work has been designed by the City of Sheboygan.

3.02 The Engineering Division, Department of Public Works, City of Sheboygan, Sheboygan, WI will assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. The Work will be substantially completed on or before August 4, 2023 and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the 14th day following substantial completion.

4.03 *Milestones*

A. Parts of the Work must be substantially completed on or before the following Milestone(s) dates:

1. Milestone 1: May 26, 2023

4.04 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of

requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner the amount identified in paragraph 19.01 of the Supplementary Conditions for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.

2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner the amount identified in paragraph 19.01 of the Supplementary Conditions for each day that expires after such time until the Work is completed and ready for final payment.

3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

4. Milestones: Contractor shall pay Owner the amount identified in paragraph 19.01 of the Supplementary Conditions for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of each Milestone, until Milestone is achieved.

B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

4.05 *Special Damages*

C. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

D. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item) as stated in Contractor's Bid, attached hereto as an exhibit.

B. The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions,

estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on the third Wednesday of the Month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract

a. 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and

b. 0 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

6.04 *Interest*

A. All amounts not paid when due shall bear interest at the rate of 0 percent per annum.

ARTICLE 7 – CONTRACT DOCUMENTS

7.01 *Contents*

A. The Contract Documents consist of the following:

1. This Agreement.
2. Bonds:
    a. Performance bond (together with power of attorney).
    b. Payment bond (together with power of attorney).
3. Specifications as listed in the table of contents of the project manual (copy of list attached and incorporated by reference).
4. Drawings as listed in the table of contents of the drawings (copy of list attached and incorporated by reference).
5. Addenda (not attached but incorporated by reference)
    a. None.
6. Exhibits to this Agreement (enumerated as follows):
    a. Contractor's Bid consisting of 1 page.
7. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    a. Notice to Proceed,
    b. Work Change Directives,
    c. Change Orders,
    d. Field Order,
    e. Task Orders.

B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 7.

D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8 – ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 *Contractor's Representations*

A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:

1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to

existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.

5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.

6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.

7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

8.02 *Contractor's Certifications*

A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

(Continued on next page)

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

OWNER:

City of Sheboygan

By: _____
(signature)

Name, Title: Ryan Sorenson, Mayor

Date: _____

Attest:

By: _____
(signature)

Name, Title: Meredith DeBruin, City Clerk

Date: _____

Signatures authorized pursuant to Res. ___-22-23.

Address for giving notices:
City of Sheboygan – Engineering Division
2026 New Jersey Avenue
Sheboygan, WI 53081

Approved as to form and Execution:

By: _____
(signature)

Name, Title: Charles C. Adams, City Attorney

Date: _____

CONTRACTOR:

Vinton Construction Company

By: _____
(signature)

Name, Title: _____
(printed)

Date: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Address for giving notices:

_____

_____

_____

2478-23 Calumet Drive Pavement Repair (#8389486)
Owner: Sheboygan WI, City of
Solicitor: Sheboygan WI, City of
02/24/2023 10:00 AM CST

						LaLonde Contractors, Inc.		Vinton Construction Company		Buteyn-Peterson Construction Company	
Section Title	Line Item	Item Code	Item Description	UofM	Quantity	Unit Price2	Extension3	Unit Price4	Extension5	Unit Price6	Extension7
CALUMET DR											
	1	Base Bid	Mobilization	LS	1	$11,914.20	$11,914.20	$49,500.00	$49,500.00	$30,000.00	$30,000.00
	2	Base Bid	Traffic Control (Excluding PCMS Boards)	LS	1	$17,250.00	$17,250.00	$17,250.00	$17,250.00	$17,250.00	$17,250.00
	3	Base Bid	PCMS Boards	Days	40	$75.00	$3,000.00	$75.00	$3,000.00	$75.00	$3,000.00
	4	Base Bid	Detour Signing	LS	1	$2,500.00	$2,500.00	$2,500.00	$2,500.00	$2,500.00	$2,500.00
	5	Base Bid	Removing Pavement	SY	1700	$10.97	$18,649.00	$15.00	$25,500.00	$18.50	$31,450.00
	6	Base Bid	Removing Concrete Sidewalk (Undistributed)	SY	35	$16.43	$575.05	$9.00	$315.00	$20.00	$700.00
	7	Base Bid	Adjusting Storm Manholes Minor	Each	11	$900.00	$9,900.00	$0.01	$0.11	$700.00	$7,700.00
	8	Base Bid	Adjusting Storm Manholes Major	Each	3	$1,050.00	$3,150.00	$0.01	$0.03	$1,200.00	$3,600.00
	9	Base Bid	Adjusting Sanitary Manholes Minor	Each	11	$900.00	$9,900.00	$0.01	$0.11	$700.00	$7,700.00
	10	Base Bid	Adjusting Sanitary Manholes Major	Each	2	$1,050.00	$2,100.00	$0.01	$0.02	$1,200.00	$2,400.00
	11	Base Bid	Adjusting Inlets Minor	Each	6	$950.00	$5,700.00	$850.00	$5,100.00	$800.00	$4,800.00
	12	Base Bid	Inlet Repairs	Each	13	$950.00	$12,350.00	$400.00	$5,200.00	$300.00	$3,900.00
	13	Base Bid	Inlet Castings	Each	6	$800.00	$4,800.00	$800.00	$4,800.00	$765.00	$4,590.00
	14	Base Bid	Storm Manhole Frame and Lid	Each	14	$700.00	$9,800.00	$0.01	$0.14	$655.00	$9,170.00
	15	Base Bid	Sanitary Manhole Frame and Lid	Each	13	$600.00	$7,800.00	$0.01	$0.13	$520.00	$6,760.00
	16	Base Bid	Concrete Sidewalk 4-Inch (Undistributed)	SF	300	$7.38	$2,214.00	$10.00	$3,000.00	$10.00	$3,000.00
	17	Base Bid	Concrete Pavement 9-Inch	SY	1590	$71.61	$113,859.90	$75.83	$120,569.70	$75.83	$120,569.70
	18	Base Bid	Concrete Curb and Gutter 30-inch Integral	LF	450	$28.80	$12,960.00	$21.24	$9,558.00	$21.24	$9,558.00
	19	Base Bid	Dowel Bars	Each	1045	$15.10	$15,779.50	$16.00	$16,720.00	$16.00	$16,720.00
	20	Base Bid	Pavement Ties	Each	435	$10.43	$4,537.05	$10.00	$4,350.00	$10.00	$4,350.00
	21	Base Bid	Sawing Concrete	LF	2100	$2.25	$4,725.00	$3.00	$6,300.00	$3.00	$6,300.00
	22	Base Bid	Inlet Protection	Each	19	$60.00	$1,140.00	$70.00	$1,330.00	$75.00	$1,425.00
BASE BID TOTAL							**$274,603.70**		**$274,993.24**		**$297,442.70**
PLAZA - ALT 1											
	23	Alt 1	Mobilization	LS	1	$1,313.75	$1,313.75	$1,000.00	$1,000.00	$5,000.00	$5,000.00
	24	Alt 1	Traffic Control	LS	1	$500.00	$500.00	$500.00	$500.00	$500.00	$500.00
	25	Alt 1	Construction Staking	LS	1	$2,200.00	$2,200.00	$2,200.00	$2,200.00	$2,200.00	$2,200.00
	26	Alt 1	Removing Concrete Sidewalk	SY	645	$21.08	$13,596.60	$9.00	$5,805.00	$10.00	$6,450.00
	27	Alt 1	Base Aggregate Dense 1 1/4-Inch	Tons	40	$55.85	$2,234.00	$16.00	$640.00	$30.00	$1,200.00
	28	Alt 1	Concrete Sidewalk 6-Inch	SF	5810	$13.36	$77,621.60	$9.50	$55,195.00	$8.75	$50,837.50
	29	Alt 1	Inlet Protection	Each	2	$60.00	$120.00	$70.00	$140.00	$75.00	$150.00
	30	Alt 1	Safety Fence	LF	375	$4.50	$1,687.50	$4.90	$1,837.50	$5.00	$1,875.00
	31	Alt 1	Sawing Concrete Pavement	LF	310	$2.25	$697.50	$3.00	$930.00	$4.00	$1,240.00
PLAZA - ALT 1 - TOTAL							**$99,970.95**		**$68,247.50**		**$69,452.50**
OUTFALL - ALT 2											
	32	Alt 2	Mobilization	LS	1	$3,813.75	$3,813.75	$16,500.00	$16,500.00	$4,000.00	$4,000.00
	33	Alt 2	Traffic Control	LS	1	$750.00	$750.00	$750.00	$750.00	$750.00	$750.00
	34	Alt 2	Construction Staking	LS	1	$1,800.00	$1,800.00	$1,619.56	$1,619.56	$1,619.56	$1,619.56
	35	Alt 2	Removing Concrete Sidewalk	SY	110	$13.41	$1,475.10	$9.00	$990.00	$8.00	$880.00

						LaLonde Contractors, Inc.		Vinton Construction Company		Buteyn-Peterson Construction Company	
Section Title	Line Item	Item Code	Item Description	UofM	Quantity	Unit Price2	Extension3	Unit Price4	Extension5	Unit Price6	Extension7
	36	Alt 2	Removing Culvert Pipe 24-Inch	LF	92	$40.00	$3,680.00	$38.50	$3,542.00	$20.00	$1,840.00
	37	Alt 2	Excavation Common	CY	205	$51.00	$10,455.00	$0.01	$2.05	$30.00	$6,150.00
	38	Alt 2	Base Aggregate Dense 3/4-Inch	Tons	50	$43.05	$2,152.50	$28.00	$1,400.00	$25.00	$1,250.00
	39	Alt 2	Base Aggregate Dense 1 1/4-Inch	Tons	120	$20.00	$2,400.00	$28.00	$3,360.00	$20.00	$2,400.00
	40	Alt 2	Heavy Riprap	CY	60	$45.00	$2,700.00	$119.00	$7,140.00	$150.00	$9,000.00
	41	Alt 2	Geotextile Type HR	SY	125	$3.00	$375.00	$5.50	$687.50	$5.00	$625.00
	42	Alt 2	Concrete Sidewalk 5-Inch	SF	980	$7.80	$7,644.00	$8.50	$8,330.00	$8.00	$7,840.00
	43	Alt 2	Topsoil	SY	250	$8.00	$2,000.00	$7.34	$1,835.00	$5.00	$1,250.00
	44	Alt 2	Seed	LBS	5	$75.00	$375.00	$8.62	$43.10	$10.00	$50.00
	45	Alt 2	Fertilizer	CWT	0.5	$150.00	$75.00	$142.16	$71.08	$50.00	$25.00
	46	Alt 2	Erosion Mat Class II Type B	SY	170	$4.00	$680.00	$2.61	$443.70	$3.00	$510.00
	47	Alt 2	Hydro-Seed	SY	85	$10.00	$850.00	$1.26	$107.10	$3.00	$255.00
	48	Alt 2	Inlet Protection	Each	1	$60.00	$60.00	$108.20	$108.20	$75.00	$75.00
	49	Alt 2	Silt Fence	LF	180	$3.00	$540.00	$2.85	$513.00	$3.00	$540.00
	50	Alt 2	PVC Storm Sewer 24-Inch	LF	28	$195.00	$5,460.00	$210.00	$5,880.00	$235.00	$6,580.00
	51	Alt 2	24-Inch Apron Endwalls Metal	Each	1	$550.00	$550.00	$636.00	$636.00	$500.00	$500.00
	52	Alt 2	Sawing Concrete Pavement	LF	16	$2.25	$36.00	$10.00	$160.00	$5.00	$80.00
	53	Alt 2	Inlet Protection	Each	1	$60.00	$60.00	$108.20	$108.20	$75.00	$75.00
OUTFALL - ALT 2 - TOTAL							**$47,931.35**		**$54,226.49**		**$46,294.56**
BASEBID, ALT 1, AND ALT 2 TOTAL							**$422,506.00**		**$397,467.23**		**$413,189.76**

Note: Per phone call with Ron Raboine (Vinton) after Bid Opening, the unit prices of $0.01 are correct.

PROJECT MANUAL

BID NUMBER:
2478-23

Calumet Drive Pavement Repair
Geele Avenue to Main Avenue

February 2023

CITY OF SHEBOYGAN
PUBLIC WORKS
Engineering Division
2026 New Jersey Ave
Sheboygan, WI 53081

Calumet Drive Pavement Repair
Geele Avenue to Main Avenue

SECTION	TITLE	Pages
00 00 00	**PROCUREMENT AND CONTRACTING REQUIREMENTS**	
	Introductory Information	
00 01 01	Cover	1
00 01 10	Table of Contents	2
	Procurement Requirements	
00 11 13	Advertisement for Bids	2
00 21 13	Instructions for Bidders	10
00 41 43	Bid Form	6
00 41 44	Unit Price Worksheet	1
00 41 44.1	Quest Unit Price Worksheet	1
00 42 13	Bid Bond	2
00 45 13	Bidder's Proof of Responsibility	4
00 45 20	Proof of Responsibility and Non-Collusion Affidavit - Subcontractor	3
00 45 50	List of Subcontractors	1
	Contracting Requirements	
00 52 00	Agreement	7
00 55 00	Notice to Proceed	1
00 61 13	Performance Bond Form	3
00 61 14	Payment Bond Form	3
00 62 11	Submittal Form	1
00 62 76	Application for Payment	2
00 63 63	Change Order Form	2
00 65 16	Certificate of Substantial Completion	1
00 65 18	Contractor's Affidavit of Compliance Certification and Release	1
00 65 19	Consent of Surety to Final Payment	1
00 72 00	Standard General Conditions of the Construction Contract – 2018	78
00 73 00	Supplementary Conditions	13
	GENERAL REQUIREMENTS	
01 11 00	Summary of Work	2
01 14 00	Work Restrictions	5
01 21 00	Allowances	1
01 43 00	Quality Assurance	2
01 55 26	Traffic Control	2
01 57 19	Temporary Environmental Controls	2
01 71 23	Alternates	1
01 71 23	Construction Staking	2
01 78 00	Closeout Requirements	2
01 78 19	Project Record Requirements	2
31 00 00	**EARTHWORK**	
31 25 00	Erosion Control and Site Maintenance	3

SECTION	TITLE	Pages
32 00 00	**EXTERIOR IMPROVEMENTS**	
32 10 00	Pavement, Curb and Gutter, and Sidewalk	5
33 00 00	**UTILITIES**	
33 05 61	Concrete Manholes, Catch Basins and Inlets	5

ADVERTISEMENT FOR BIDS

Calumet Drive Pavement Repair
Geele Avenue to Main Avenue

Bid No. 2478-23

Owner and Work: The City of Sheboygan hereby gives notice that sealed public bids will be received for Calumet Drive Pavement Repair, Geele Avenue to Main Avenue

The majority work of this contract is generally described as follows:

- 1,700 SY of Removing Pavement,
- 1,600 SY of Concrete Pavement,
- 450 SF of Concrete Curb and Gutter,
- 27 EA of Adjusting Manholes and Inlets,

South Pier Drive Plaza Alternate is generally described as follows:

- 5,800 SF of Concrete Removal and Replacement.

Calumet Drive, Outfall Near Mueller Road Alternate is generally described as follows:

- 92 SY of Concrete Removal and Replacement,
- 200 CY of Excavation Common,
- 170 Tons of Base Aggregate,
- 60 CY of Heavy Rip Rap,
- 28 LF of 24-inch Storm Sewer.

Time and Place of Bid Opening: Bids will be received until 10:00 AM Local Time on Friday, February 24, 2023. Bids will be received using the QuestCDN vBid website. No Paper bids will be accepted. Prospective bidders must be on the plan holders list through QuestCDN for bids to be accepted. To access the bid form, download the project documents and select the online bidding button on the online advertisement. As soon as practical, after said closing time, all bids will be opened online and a summary of the bids will be available. A public opening will be held at the Municipal Services Building located at 2026 New Jersey Avenue, Sheboygan, WI.

Bidding Documents: Complete digital project bidding documents are available at www.questcdn.com. You may download the digital plan documents for a non-refundable fee of $42 from the QuestCDN Website.

Quest eBidDoc Number for this project is: 8389486

QuestCDN: Please contact QuestCDN.com at 952-233-1632 or info@questcdninfo.com for assistance in free membership registration, downloading, bidding and working with this digital project information.

Pre-Bid Qualification: All bidders shall be required to file or have on file a valid Bidder's Proof of Responsibility form with the Engineering Division, City of Sheboygan, not less than five (5) days prior to the time of opening of these bids. Only bidders who have demonstrated their qualifications to perform the work will be permitted to bid. Forms are included in the proposed contract documents.

Subcontractors: The apparent Successful Bidder, and any other Bidder so requested, shall within ten (10) days after Bid opening, submit to the City a Bidder's Proof of Responsibility Affidavit and Non-Collusion Affidavit from each Subcontractor. Forms are included in the proposed contract documents.

PROJECT MAN					
CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Advertisement for Bids		
		Section:	00 11 13		
		Bid Number:	2478-23	Page:	2 of 2

Bid Security: A satisfactory Bid Bond, payable to the City of Sheboygan, WI, in an amount not less than five (5%) percent of the bid.

Legal Provisions: This contract letting shall be subject to the provisions of Section 62.15, 66.0901, and 779.15 of the Wisconsin Statutes.

Ryan J. Sazama, P.E., A.I.A.
City Engineer

TABLE OF CONTENTS

Page

ARTICLE 1 – DEFINED TERMS 2
ARTICLE 2 – COPIES OF BIDDING DOCUMENTS 2
ARTICLE 3 – QUALIFICATIONS OF BIDDERS 2
ARTICLE 4 – SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE 3
ARTICLE 5 – BIDDER'S REPRESENTATIONS 4
ARTICLE 6 – PRE-BID CONFERENCE 5
ARTICLE 7 – INTERPRETATIONS AND ADDENDA 5
ARTICLE 8 – BID SECURITY 5
ARTICLE 9 – CONTRACT TIMES 6
ARTICLE 10 – LIQUIDATED DAMAGES 6
ARTICLE 11 – SUBSTITUTE AND "OR-EQUAL" ITEMS 6
ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS, AND OTHERS 6
ARTICLE 13 – PREPARATION OF BID 7
ARTICLE 14 – BASIS OF BID 8
ARTICLE 15 – SUBMITTAL OF BID 8
ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID 8
ARTICLE 17 – OPENING OF BIDS 9
ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE 9
ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT 9
ARTICLE 20 – BONDS AND INSURANCE 10
ARTICLE 21 – SIGNING OF AGREEMENT 10

ARTICLE 1 – DEFINED TERMS

1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions.

1.02 QuestCDN has the following meaning:

A. The term "QuestCDN" is used to describe the Quest Construction Data Network website or the Quest vBid online bidding website, available at http://www.questcdn.com//.

ARTICLE 2 – COPIES OF BIDDING DOCUMENTS

2.01 Complete sets of the Bidding Documents may be obtained from the Issuing Office in the number and format stated in the bid advertisement.

2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

2.03 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license for any other use.

ARTICLE 3 – QUALIFICATIONS OF BIDDERS

3.01 Prospective Bidders are required to furnish or have on file a valid Bidder's Proof of Responsibility form (Form 00 45 13) with the City of Sheboygan Engineering Division not less than five (5) days prior to the time of opening of these bids. Forms for filing of such Proof of Responsibility are attached to the contract documents for the use of all interested bidders.

3.02 Said form shall fully develop the bidder's financial ability, adequacy of plant, equipment and organization, prior experience or competency to perform the work contemplated and other pertinent and material facts.

3.03 The City reserves the right to require separate Statements for bidding on each public contract. In no event shall this Statement of Bidder's Qualifications be used to qualify bidders for public contracts after one (1) year from Statement's date.

3.04 The City reserves the right to consider as unqualified any bidder that does not habitually perform, with his own forces, the major portions of the work under this contract and/or has performed unacceptable or substandard work for the City under previous City contracts.

3.05 A Bidder's failure to submit required qualification information within the times indicated will disqualify Bidder from bidding on the Contract.

3.06 No requirement in this Article 3 to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder's qualifications.

3.07 Bidder is advised to carefully review those portions of the Bid Form requiring Bidder's representations and certifications.

ARTICLE 4 – SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE

4.01 Site and Other Areas

A. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by Owner for the use of the Contractor. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by Contractor.

4.02 Existing Site Conditions

A. Subsurface and Physical Conditions; Hazardous Environmental Conditions

1. The Supplementary Conditions identify:

a. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site.

b. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

c. reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.

d. Technical Data contained in such reports and drawings.

2. Engineer will make copies of reports and drawings referenced above available to any Bidder on request. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy Bidder is entitled to rely, as provided in the General Conditions, has been identified and established in the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any Technical Data or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

3. If the Supplementary Conditions do not identify Technical Data, the default definition of Technical Data set forth in Article 1 of the General Conditions will apply.

Underground Facilities: Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or adjacent to the Site are set forth in the Contract Documents and are based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others.

B. Adequacy of Data: Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 5.03, 5.04, and 5.05 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 5.06 of the General Conditions.

4.03 Site Visit and Testing by Bidders

A. Bidder shall conduct the required Site visit during normal working hours, and shall not disturb any ongoing operations at the Site.

B. Bidder is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.

C. On request, and to the extent Owner has control over the Site, and schedule permitting, the Owner will provide Bidder access to the Site to conduct such additional examinations, investigations, explorations, tests, and studies as Bidder deems necessary for preparing and submitting a successful Bid. Owner will not have any obligation to grant such access if doing so is not practical because of existing operations, security or safety concerns, or restraints on Owner's authority regarding the Site.

D. Bidder shall comply with all applicable Laws and Regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by Owner or by property owners or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.

E. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

4.04 Other Work at the Site

A. Reference is made to Specification Section 01 11 00 –Summary of work in the Project Bidding Documents for the identification of the general nature of other work of which Owner is aware (if any) that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) and relates to the Work contemplated by these Bidding Documents. If Owner is party to a written contract for such other work, then on request, Owner will provide to each Bidder access to examine such contracts (other than portions thereof related to price and other confidential matters), if any.

ARTICLE 5 – BIDDER'S REPRESENTATIONS

5.01 It is the responsibility of each Bidder before submitting a Bid to:

A. examine and carefully study the Bidding Documents, and any data and reference items identified in the Bidding Documents;

B. visit the Site, conduct a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfy itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;

C. become familiar with and satisfy itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work;

D. carefully study all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings;

E. consider the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs;

F. agree, based on the information and observations referred to in the preceding paragraph, that at the time of submitting its Bid no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;

G. become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;

H. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder;

I. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work; and

J. agree that the submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 6 – PRE-BID CONFERENCE

6.01 A pre-bid conference will not be conducted for this Project.

ARTICLE 7 – INTERPRETATIONS AND ADDENDA

7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda delivered to all parties recorded as having received the Bidding Documents. Questions received less than three days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

7.02 Addenda may be issued to clarify, correct, supplement, or change the Bidding Documents.

ARTICLE 8 – BID SECURITY

8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of 5 percent of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a Bid bond (on the form included in the Bidding Documents) issued by a surety meeting the requirements of Paragraphs 6.01 and 6.02 of the General Conditions.

8.02 The Bid security of the apparent Successful Bidder will be retained until Owner awards the contract to such Bidder, and such Bidder has executed the Contract Documents, furnished the required contract security, and met the other conditions of the Notice of Award, whereupon the

Bid security will be released. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited. Such forfeiture shall be Owner's exclusive remedy if Bidder defaults.

8.03 The Bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Contract or 91 days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.

8.04 Bid security of other Bidders that Owner believes do not have a reasonable chance of receiving the award will be released within seven days after the Bid opening.

ARTICLE 9 – CONTRACT TIMES

9.01 The number of days within which, or the dates by which, Milestones, if identified are to be achieved and the Work is to be substantially completed, and completed and ready for final payment, are set forth in the Agreement.

ARTICLE 10 – LIQUIDATED DAMAGES

10.01 Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

ARTICLE 11 – SUBSTITUTE AND "OR-EQUAL" ITEMS

11.01 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration during the bidding and Contract award process of possible substitute or "or-equal" items. In cases in which the Contract allows the Contractor to request that Engineer authorize the use of a substitute or "or-equal" item of material or equipment, application for such acceptance may not be made to and will not be considered by Engineer until after the Effective Date of the Contract.

11.02 All prices that Bidder sets forth in its Bid shall be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of "or-equal" or substitution requests are made at Bidder's sole risk.

ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS, AND OTHERS

12.01 A Bidder shall be prepared to retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of the Work if required by the Bidding Documents (most commonly in the Specifications) to do so. If a prospective Bidder objects to retaining any such Subcontractor, Supplier, or other individual or entity, and the concern is not relieved by an Addendum, then the prospective Bidder should refrain from submitting a Bid.

12.02 Subsequent to the submittal of the Bid, Owner may not require the Successful Bidder or Contractor to retain any Subcontractor, Supplier, or other individual or entity against which Contractor has reasonable objection.

12.03 Bidder shall submit with the bid a list of proposed subcontractors in accordance with Wisconsin Statute Section 66.0901(7). The list may not be added to nor altered without the written consent of the City.

12.04 The apparent Successful Bidder, and any other Bidder so requested, shall within ten days after Bid opening, submit to the City a Bidder's Proof of Responsibility and Non-Collusion Affidavit (Document 00 45 20) from each Subcontractor.

If City, after due investigation, has reasonable objection to any proposed Subcontractor, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder shall submit a substitute, Bidder's Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and making the Contract award.

12.05 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors. Declining to make requested substitutions will constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor so listed and against which City makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to subsequent revocation of such acceptance as provided in Paragraph 7.06 of the General Conditions.

ARTICLE 13 – PREPARATION OF BID

13.01 The Electronic Bid Worksheet is available from QuestCDN. To access the electronic bid worksheet, download the project documents, then select online bidding on QuestCDN. A summary of the items and units is included in the documents for reference. The official bid worksheet is only available on QuestCDN

13.02 A Bid by a corporation shall be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation shall be shown.

13.03 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The partnership's address for receiving notices shall be shown.

13.04 A Bid by a limited liability company shall be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the firm's address for receiving notices shall be shown.

13.05 A Bid by an individual shall show the Bidder's name and address for receiving notices.

13.06 A Bid by a joint venture shall be executed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The joint venture's address for receiving notices shall be shown.

13.07 All names shall be printed in ink below the signatures.

13.08 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers and dates of which shall be filled in on the Bid Form.

13.09 Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.

ARTICLE 14 – BASIS OF BID

14.01 Unit Price

A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Worksheet under the required section.

If Alternates are present, include a separate unit price for each Alternate provided on the Bid Form. The price for the Alternates will be the amount added to or deleted from the Base Bid if the Owner selects the Alternate. In the evaluation of Bids, Owner may select any combination of Alternates or Owner may choose not to accept any Alternate Bids.

B. The "Bid Price" (sometimes referred to as the extended price) for each unit price Bid item will be the product of the "Estimated Quantity" (which Owner or its representative has set forth in the Bid Worksheet) for the item and the corresponding "Bid Unit Price" offered by the Bidder. The total of all unit price Bid items will be the sum of these "Bid Prices"; such total will be used by Owner for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions and as modified in the Supplementary Conditions.

C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

14.02 Allowances

A. For cash allowances the Bid price shall include such amounts as the Bidder deems proper for Contractor's overhead, costs, profit, and other expenses on account of cash allowances, if any, named in the Contract Documents, in accordance with Paragraph 13.02.B of the General Conditions.

ARTICLE 15 – SUBMITTAL OF BID

15.01 A Bid shall be received no later than the date and time prescribed in the advertisement or invitation to bid and shall be submitted using QuestCDN as prescribed in the advertisement or invitation to bid.

15.02 Only Bidders qualified in accordance with Article 3 will be allowed to access the Quest Bid Worksheet. Engineer will grant access to online Quest Bid Worksheet on QuestCDN. If bidder is qualified in accordance with Article 3 and needs access to Bid Worksheet, bidder shall contact Engineer.

15.03 Bid Security and other required documents shall be submitted using QuestCDN.

15.04 Paper bids or Bids received after the date and time prescribed for the opening of bids, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the Bidder unopened.

ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID

16.01 Bids may be modified and revised using QuestCDN until the such time the bids are opened as indicated in the advertisement or invitation to bid

16.02 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid,

and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

ARTICLE 17 – OPENING OF BIDS

17.01 Bids will be opened at the time and place indicated in the advertisement or invitation to bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the bids have been reviewed.

ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE

18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT

19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible. If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, then the Owner will reject the Bid as nonresponsive; provided that Owner also reserves the right to waive all minor informalities not involving price, time, or changes in the Work.

19.02 If Owner awards the contract for the Work, such award shall be to the responsible Bidder submitting the lowest responsive Bid. Only after authorization for such award is made by the City of Sheboygan Common Council, to whom all proposals will be referred for consideration, will the contract be awarded.

19.03 Evaluation of Bids

A. In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Worksheet or prior to the Notice of Award.

B. Bids will be evaluated and the low Bidder determined pursuant to Article 19:

1. If no Alternate is present, bids will be compared on the basis of the “Base Bid” and this amount will be the basis for determining the lowest Bidder.

2. If an Alternate is present, bids will be compared on the basis of the “Adjusted Base Bid” and this amount will be the basis for determining the lowest Bidder. The sum of the Total Base Bid and any combination of Alternates accepted by the Owner will determine the “Adjusted Base Bid.”

19.04 In evaluating whether a Bidder is responsible, Owner will consider the qualifications of the Bidder and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.

19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers.

ARTICLE 20 – BONDS AND INSURANCE

20.01 Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the Agreement (executed by Successful Bidder) to Owner, it shall be accompanied by required bonds and insurance documentation.

ARTICLE 21 – SIGNING OF AGREEMENT

21.01 When Owner issues a Notice of Award to the Successful Bidder, it shall be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 15 days thereafter, Successful Bidder shall execute and deliver the required number of counterparts of the Agreement (and any bonds and insurance documentation required to be delivered by the Contract Documents) to Owner. Within ten days thereafter, Owner shall deliver one fully executed counterpart of the Agreement to Successful Bidder, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.

ARTICLE 1 – THE PROJECT

1.01 The Project, of which the Work under the Bid is a part, is generally described as follows: **Calumet Drive Pavement Repair, Geele Avenue to Main Avenue**, for the City of Sheboygan, Wisconsin, City Bid Number: 2478-23.

ARTICLE 2 – BID RECIPIENT

2.01 This Bid is submitted to:

City of Sheboygan
2026 New Jersey Ave
Sheboygan, WI 53081

2.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 3 – BIDDER'S ACKNOWLEDGEMENTS

3.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 4 – BIDDER'S REPRESENTATIONS

4.01 *In submitting this Bid, Bidder represents that:*

A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

Addendum No.	Addendum, Date
_____	_____
_____	_____
_____	_____
_____	_____

B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2)

reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.

F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.

G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.

H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.

I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.

J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 5 – BIDDER'S CERTIFICATION

5.01 *Bidder certifies that:*

A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;

B. Bidder is fully informed respecting the preparation and contents of the attached Bid and all of the pertinent circumstances respecting such Bid

C. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;

D. Bidder has not solicited or induced any individual or entity to refrain from bidding; and

E. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 5.01.D:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at

artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

F. The price or prices quoted in the attached bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the bidder or any of its agents, representatives, owners, employees or parties in interest, including this affiant.

ARTICLE 6 – BASIS OF BID

6.01 Bidder will complete the Work in accordance with the Contract Documents for the price submitted on the QuestCDN website.

6.02 Bidder acknowledges that (1) each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and (2) estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

ARTICLE 7 – TIME OF COMPLETION

7.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates indicated in the Agreement.

7.02 Bidder accepts the provisions of the Agreement and paragraph 19.01 of the Supplementary Conditions as to liquidated damages.

ARTICLE 8 – ATTACHMENTS TO THIS BID

8.01 The following documents are submitted using QuestCDN and made a condition of this Bid:

A. QuestCDN Bid Unit Price Worksheet as submitted on QuestCDN.

B. Required Bid security;

C. List of Subcontractors (Document 00 45 50).

ARTICLE 9 – DEFINED TERMS

9.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 10 – BIDDER'S PROOF OF RESPONSIBILY AFFIDAVIT

10.01 *Bidder certifies that*:

A. The bidder maintains a permanent place of business.

B. The bidder is authorized to do business in the State of Wisconsin.

C. The bidder possesses all valid, effective licenses, registrations, or certificates required for the bidder or its employees by federal, state, county or local law, necessary for the type of work it seeks to perform, including, but not limited to, licenses, registrations or certifications for any type of trade work or specialty work.

D. For projects funded in whole or in part by federal or state funding, that the bidder, or any agent, partner, employee or officer of the bidder, is not debarred, suspended, proposed for debarment or declared ineligible from contracting with any unit of federal, state or local government.

E. The bidder complies with 42 U.S.C. § 2000e and Federal Executive Order No. 11246 as amended by Executive Order No. 11375 (known as the Equal Opportunity Employer provision).

F. The bidder has general liability, workers' compensation and automobile insurance at levels sufficient to protect the city given the size of the project.

G. The bidder has complied with 40 U.S.C §§ 3141-3148 (Federal Davis-Bacon related Acts), and all rules and regulation therein, for projects undertaken by the contactor that are covered by these laws, for the past five (5) years.

H. For projects funded in whole or in part by federal or state funding, and where the contract amount exceeds $100,000, the bidder participates in a Registered Apprenticeship Program.

I. For projects funded in whole or in part by federal or state funding, that the Bidder has a written substance abuse prevention program meeting the requirements of Wis. Stat § 103.503.

J. The employees who will perform work on the project are properly classified as employees or independent contractors under all applicable state and federal laws.

K. The bidder has not been the subject of any investigation, order or judgment from any state or federal agency or court concerning an employment practice, including but not limited to, classification of employees, unemployment insurance, wage and hour laws, discrimination. If the bidder has been the subject of any investigation, order or judgment from any state or federal agency or court concerning an employment practice, the contactor must provide copies of the investigation, order or judgment.

L. Within the last five (5) years, the bidder has not been found by a final decision of a court or government agency in violation of any other law relating to its contracting business, including but not limited to environmental laws, bid-rigging or price fixing, antitrust or tax laws, where the penalty for such violation resulted in the imposition of fine, back pay damages or any other type of penalty in the amount of more than $10,000.

M. The bidder's employees who will perform work on the project are:

1. Covered under a current workers' compensation policy; and

2. Properly classified under such policy.

N. The bidder complies with all laws regarding health insurance coverage for employees.

O. The bidder has adequate financial resources to complete the public contract, as well as all other work the bidder is presently under contract to complete.

P. The bidder is bondable for the terms of the proposed public works contract.

Q. If required in the Director's discretion, the bidder has a record, viewable by the City upon request, of satisfactorily completing at least five projects of similar size and complexity within the last five years. Criteria that will be considered in determining satisfactory completion of projects may include, but is not limited to:

1. Completion of contracts in accordance with drawing and specifications;
2. Diligent execution of the work and completed contracts according to the established time schedules unless extensions are granted by the owner; and
3. Fulfilled guarantee requirements of the contract documents.

R. The bidder has, and diligently maintains, a written safety program.

S. The bidder has not received a serious, willful or repeated violation from OSHA in the last ten (10) years.

T. The bidder has not defaulted on any project in the past three (3) years.

ARTICLE 11 – SUBCONTRACTORS

11.01 Bidder agrees that Successful Bidder, and any other Bidder so requested, shall within ten (10) days after Bid opening, submit to the City a Proof of Responsibility Affidavit and Non-Collusion Affidavit from each Subcontractor (Document 00 45 20).

(Continued on Next Page)

ARTICLE 12 – BID SUBMITTAL

BIDDER: *[Indicate correct name of bidding entity]*

_____

By:
[Signature] _____

[Printed name] _____
(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:
[Signature] _____

[Printed name] _____

Title: _____

Submittal Date: _____

Address for giving notices:

_____

_____

_____

Telephone Number: _____

Fax Number: _____

Contact Name and e-mail address: _____

_____

CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Unit Price Worksheet		
		Section:	00 41 44		
		Bid Number:	2478-23	Page:	1 of 1

PART 1 – GENERAL

1.01 SUMMARY

A. The bid worksheet on the following page(s) is representative of the official bid worksheet located on the QuestCDN website.

B. The bid worksheet located on the QuestCDN website takes precedence over the bid worksheet in this section.

PART 2 – PRODUCTS

(NOT USED)

PART 3 – EXECUTION

(NOT USED)

END OF SECTION

Section Title	Line Item	Item Code	Item Description	UofM	Total	Unit Price	Extension
CALUMET DR	Required				Quantity		
		1 Base Bid	Mobilization	LS	1		
		2 Base Bid	Traffic Control (Excluding PCMS Boards)	LS	1		
		3 Base Bid	PCMS Boards	Days	40		
		4 Base Bid	Detour Signing	LS	1		
		5 Base Bid	Removing Pavement	SY	1700		
		6 Base Bid	Removing Concrete Sidewalk (Undistributed)	SY	35		
		7 Base Bid	Adjusting Storm Manholes Minor	Each	11		
		8 Base Bid	Adjusting Storm Manholes Major	Each	3		
		9 Base Bid	Adjusting Sanitary Manholes Minor	Each	11		
		10 Base Bid	Adjusting Sanitary Manholes Major	Each	2		
		11 Base Bid	Adjusting Inlets Minor	Each	6		
		12 Base Bid	Inlet Repairs	Each	13		
		13 Base Bid	Inlet Castings	Each	6		
		14 Base Bid	Storm Manhole Frame and Lid	Each	14		
		15 Base Bid	Sanitary Manhole Frame and Lid	Each	13		
		16 Base Bid	Concrete Sidewalk 4-Inch (Undistributed)	SF	300		
		17 Base Bid	Concrete Pavement 9-Inch	SY	1590		
		18 Base Bid	Concrete Curb and Gutter 30-inch Integral	LF	450		
		19 Base Bid	Dowel Bars	Each	1045		
		20 Base Bid	Pavement Ties	Each	435		
		21 Base Bid	Sawing Concrete	LF	2100		
		22 Base Bid	Inlet Protection	Each	19		
PLAZA - ALT 1	Optional						
		23 Alt 1	Mobilization	LS	1		
		24 Alt 1	Traffic Control	LS	1		
		25 Alt 1	Construction Staking	LS	1		
		26 Alt 1	Removing Concrete Sidewalk	SY	645		
		27 Alt 1	Base Aggregate Dense 1 1/4-Inch	Tons	40		
		28 Alt 1	Concrete Sidewalk 6-Inch	SF	5810		
		29 Alt 1	Inlet Protection	Each	2		
		30 Alt 1	Safety Fence	LF	375		
		31 Alt 1	Sawing Concrete Pavement	LF	310		
OUTFALL - ALT 2	Optional						
		32 Alt 2	Mobilization	LS	1		
		33 Alt 2	Traffic Control	LS	1		
		34 Alt 2	Construction Staking	LS	1		
		35 Alt 2	Removing Concrete Sidewalk	SY	110		
		36 Alt 2	Removing Culvert Pipe 24-Inch	LF	92		
		37 Alt 2	Excavation Common	CY	205		
		38 Alt 2	Base Aggregate Dense 3/4-Inch	Tons	50		
		39 Alt 2	Base Aggregate Dense 1 1/4-Inch	Tons	120		
		40 Alt 2	Heavy Riprap	CY	60		
		41 Alt 2	Geotextile Type HR	SY	125		
		42 Alt 2	Concrete Sidewalk 5-Inch	SF	980		
		43 Alt 2	Topsoil	SY	250		
		44 Alt 2	Seed	LBS	5		
		45 Alt 2	Fertilizer	CWT	0.5		
		46 Alt 2	Erosion Mat Class II Type B	SY	170		
		47 Alt 2	Hydro-Seed	SY	85		
		48 Alt 2	Inlet Protection	Each	1		
		49 Alt 2	Silt Fence	LF	180		
		50 Alt 2	PVC Storm Sewer 24-Inch	LF	28		
		51 Alt 2	24-Inch Apron Endwalls Metal	Each	1		
		52 Alt 2	Sawing Concrete Pavement	LF	16		
		53 Alt 2	Inlet Protection	Each	1		

BID BOND

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER *(Name and Address)*:

SURETY *(Name, and Address of Principal Place of Business)*:

OWNER *(Name and Address)*:

BID

Bid Due Date:

Description *(Project Name— Include Location)*:

BOND

Bond Number:

Date:

Penal sum _____ $ _____

(Words) (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER	**SURETY**
_____ (Seal)	_____ (Seal)
Bidder's Name and Corporate Seal	Surety's Name and Corporate Seal
By: _____	By: _____
Signature	Signature (Attach Power of Attorney)
_____	_____
Print Name	Print Name
_____	_____
Title	Title
Attest: _____	Attest: _____
Signature	Signature
Title	Title

Note: Addresses are to be used for giving any required notice.
Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.

2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.

3. This obligation shall be null and void if:

3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or

3.2 All Bids are rejected by Owner, or

3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).

4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.

5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.

6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after the Bid due date.

7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.

8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.

9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.

10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

CITY OF SHEBOYGAN
PUBLIC WORKS

Bidder's Proof of Responsibility

This Proof of Responsibility is required pursuant to Section 66.0901 of the Wisconsin Statutes and Section 2-400 of the City of Sheboygan Municipal Code.

This form must be filed with the Engineering Division not less than five (5) days prior to the time set for opening of bids. Completed responses will be evaluated to determine whether the prospective bidder is qualified to submit a bid. The City reserves the right if it is not satisfied with the sufficiency of the completed response, to request additional information.

Prequalification shall be valid for one year from the approval date. The Director of Public Works may suspend or revoke prequalification status for good cause. Such decision shall be made in writing and the contractor shall be provided timely notice and an opportunity to be heard by the Director.

It shall be the obligation of the contractor to timely renew its prequalification and to report information regarding any material changes to its business or operations that are relevant to its prequalification application, including information that would affect its ability to make the certifications required by this ordinance. Any such information must be reported within fifteen (15) days of the contractor's knowledge of the information. Failure to report information may result in suspension or revocation of the contractor's prequalification, debarment from City contracts for a period of up to three years and other sanctions available under applicable law.

Prequalification Statement

1. Name of Bidder: _____
   ☐ Corporation ☐ Partnership ☐ Individual
2. Bidder's Address: _____
   City _____ State/Zip _____
   Telephone: _____ Fax: _____
   Email: _____
3. When Organized: _____ When Incorporated: _____
4. Are you authorized to do business in the State of Wisconsin? ☐ Yes ☐ No
5. How many years have you been engaged in the contracting business under the present firm name? _____
6. Contracts on hand. Attach a list of present contracts, including a schedule as to estimated completion date and gross amount of each contract.:
7. General character of work performed by your firm.

_____

_____

_____

(If additional space is required, file separate sheet with details.)

CITY OF SHEBOYGAN PUBLIC WORKS

Bidder's Proof of Responsibility

8. Major Equipment. Attach a list of major Equipment owned.

9. Completed Contracts. Attach a list of contracts which have been awarded to you in the last three years. The list shall include: Name, Owner, Amount, Engineer/Architect

10. Show Background and Experiences of the principal members of your personnel including the officers.

Name	Position Held or Office Held	Years of Construction Experience	Magnitude and Type of Work	Capacity

(If additional space is required, file separate sheet with details.)

11. Have you ever failed to complete any work awarded to you? ☐ Yes ☐ No
If yes, file separate sheet with details.

12. Have you ever defaulted on a contract? ☐ Yes ☐ No
If yes, file separate sheet with details.

13. Are any of the above-listed principal members debarred, suspended, proposed for debarment or declared ineligible from contracting with any unit of federal, state or local government? ☐ Yes ☐ No
If yes, file separate sheet with details.

14. Have you ever been the subject of any investigation, order or judgment from any state or federal agency or court concerning an employment practice? ☐ Yes ☐ No
If Yes, attach a copy of the investigation, order or judgment.

15. Within the last 5 years, have you been found by a court or government agency to be in violation of any law relating to your contracting business including, but not limited to environmental laws, bid-rigging or price-fixing, antitrust or tax laws, where the penalty for such violation resulted in a fine, damages or other penalty equal to or greater than $10,000? ☐ Yes ☐ No
If Yes, attach a copy of the final order.

16. Are you in compliance with 42 U.S.C. 2000e (Federal Equal Opportunity Employment)? ☐ Yes ☐ No

17. Are you in compliance with 40 U.S.C. §§ 3141-3148 (Federal Davis Bacon Act)? ☐ Yes ☐ No

18. Do you participate in a Registered Apprenticeship Program validated by the U.S. Dept. of Labor or the WI Dept. of Workforce Development? ☐ Yes ☐ No

19. Do you have a written substance abuse prevention program that meets the requirements of Wis. Stat. §103.503? ☐ Yes ☐ No

20. Do you have a written safety plan? ☐ Yes ☐ No

21. Have you received a serious, willful or repeated violation from OSHA in the last 10 years? ☐ Yes ☐ No

Contractor's Financial Statement

22. The latest completed financial statement prepared by a qualified or independent accountant or accounting firm listing the same requested information below may be attached if it contains the same information requested below.

Condition at Close of Business on _____

ASSETS

a.	Cash	$
b.	Accounts Receivable	$
c.	Real Estate Equity	$
d.	Materials in Stock	$
e.	Equipment, Book Value	$
f.	Furniture & Fixtures, Book Value	$
g.	Other Assets:	$
	TOTAL ASSETS:	$

LIABILITIES

h.	Accounts, Notes & Interest Payable	$
i.	Other Liabilities	$
	TOTAL LIABILITIES	$
	NET WORTH	$

23. Credit available. Furnish written evidence, preferably from banks.

24. Additional information may be submitted if desired., .

CITY OF SHEBOYGAN PUBLIC WORKS

Bidder's Proof of Responsibility

Affidavit

STATE OF _____)
) SS.
COUNTY OF _____)

_____ being duly sworn, deposes and says that he/she is the
(Print Officer/Owner Name)

_____ of _____
(Print Title) (Name of Firm)

and that the answers to the foregoing questions and all statements therein contained are true and correct, and that any owner, bonding company, or other agency, herein named is hereby authorized to supply the municipality, City of Kenosha, with any information deemed necessary to verify this statement.

_____ _____
(Signature of Officer/Owner) (Date)

Subscribed and sworn before me on this _____ day of _____ , _____
Day Month Year

_____
Notary Public

_____
Print Name

_____
County, State

My commission expires: _____

.

APPROVED BY:

_____ _____
Director of Public Works (or designee) Date

ARTICLE 1 – PROOF OF RESPONSIBILY AFFIDAVIT

1.01 *Subcontractor certifies that*:

A. The Subcontractor maintains a permanent place of business.

B. The Subcontractor is authorized to do business in the State of Wisconsin.

C. The Subcontractor possesses all valid, effective licenses, registrations, or certificates required for the Subcontractor or its employees by federal, state, county or local law, necessary for the type of work it seeks to perform, including, but not limited to, licenses, registrations or certifications for any type of trade work or specialty work.

D. For projects funded in whole or in part by federal or state funding, that the Subcontractor, or any agent, partner, employee or officer of the Subcontractor, is not debarred, suspended, proposed for debarment or declared ineligible from contracting with any unit of federal, state or local government.

E. The Subcontractor complies with 42 U.S.C. § 2000e and Federal Executive Order No. 11246 as amended by Executive Order No. 11375 (known as the Equal Opportunity Employer provision).

F. The Subcontractor has general liability, workers' compensation and automobile insurance at levels sufficient to protect the city given the size of the project.

G. The Subcontractor has complied with 40 U.S.C §§ 3141-3148 (Federal Davis-Bacon related Acts), and all rules and regulation therein, for projects undertaken by the contactor that are covered by these laws, for the past five (5) years.

H. For projects funded in whole or in part by federal or state funding, and where the contract amount exceeds $100,000, the Subcontractor participates in a Registered Apprenticeship Program.

I. For projects funded in whole or in part by federal or state funding, that the Subcontractor has a written substance abuse prevention program meeting the requirements of Wis. Stat § 103.503.

J. The employees who will perform work on the project are properly classified as employees or independent Subcontractors under all applicable state and federal laws.

K. The Subcontractor has not been the subject of any investigation, order or judgment from any state or federal agency or court concerning an employment practice, including but not limited to, classification of employees, unemployment insurance, wage and hour laws, discrimination. If the Subcontractor has been the subject of any investigation, order or judgment from any state or federal agency or court concerning an employment practice, the contactor must provide copies of the investigation, order or judgment.

L. Within the last five (5) years, the Subcontractor has not been found by a final decision of a court or government agency in violation of any other law relating to its contracting business, including but not limited to environmental laws, bid-rigging or price fixing, antitrust or tax laws, where the penalty for such violation resulted in the imposition of fine, back pay damages or any other type of penalty in the amount of more than $10,000.

M. The Subcontractor's employees who will perform work on the project are:

1. Covered under a current workers' compensation policy; and
2. Properly classified under such policy.

N. The Subcontractor complies with all laws regarding health insurance coverage for employees.

O. The Subcontractor has adequate financial resources to complete the public contract, as well as all other work the Subcontractor is presently under contract to complete.

P. The Subcontractor is bondable for the terms of the proposed public works contract.

Q. If required in the Director's discretion, the Subcontractor has a record, viewable by the City upon request, of satisfactorily completing at least five projects of similar size and complexity within the last five years. Criteria that will be considered in determining satisfactory completion of projects may include, but is not limited to:

1. Completion of contracts in accordance with drawing and specifications;
2. Diligent execution of the work and completed contracts according to the established time schedules unless extensions are granted by the owner; and
3. Fulfilled guarantee requirements of the contract documents.

R. The Subcontractor has, and diligently maintains, a written safety program.

S. The Subcontractor has not received a serious, willful or repeated violation from OSHA in the last ten (10) years.

T. The Subcontractor has not defaulted on any project in the past three (3) years.

ARTICLE 2 – NON-COLLUSION AFFIDAVIT

A. Subcontractor is fully informed respecting the preparation and contents of the subcontractor's Proposal submitted by the subcontractor to the Contractor, listed above, for certain work in connection with the contract pertaining to the Project in City of Sheboygan, Wisconsin

B. Such subcontractor's Proposal is genuine and is not a collusive or sham proposal:

C. Neither the subcontractor nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm, or person to submit a collusive or sham proposal in connection with such Contract or to refrain from submitting a proposal in connection with such Contract, or has in any manner, directly or indirectly, sought by unlawful agreement or connivance with any other Bidder, firm or person to fix the price or prices in said subcontractor's Proposal or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the (Local Public Agency) or any person interested in the proposed Contract; and

D. The price or prices quoted in the subcontractor's Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees or parties in interest, including this affiant.

(Continued on Next Page)

Subcontractor: *[Indicate correct name of entity]*

_____

By:
[Signature] _____

[Printed name] _____
(If Subcontractor is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:
[Signature] _____

[Printed name] _____

Title: _____

Submittal Date: _____

PROJECT MAN...					
CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	List of Subcontractors		
		Section:	00 45 50		
		Bid Number:	2478-23	Page:	1 of 1

Project Name: **Calumet Drive Pavement Repair – Geele Avenue to Main Avenue**

List proposed subcontractors below. If no subcontractors are proposed check the box next to "No Subcontractors". This form is still required to be submitted if no Subcontractors are proposed. Add Additional sheets as may be necessary.

☐ No Subcontractors.

Name of Proposed Subcontractors			Class of Work
1	Name:		
	Address:		
2	Name:		
	Address:		
3	Name:		
	Address:		
4	Name:		
	Address:		
5	Name:		
	Address:		
6	Name:		
	Address:		
7	Name:		
	Address:		
8	Name:		
	Address:		

AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between City of Sheboygan ("Owner") and //Contractor// ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: municipal street and utility construction.

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Calumet Drive Pavement Repair, Geele Avenue to Main Avenue, City Bid Number: 2478-23.

ARTICLE 3 – ENGINEER

3.01 The part of the Project that pertains to the Work has been designed by the City of Sheboygan.

3.02 The Engineering Division, Department of Public Works, City of Sheboygan, Sheboygan, WI will assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. The Work will be substantially completed on or before August 4, 2023 and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the 14th day following substantial completion.

4.03 *Milestones*

A. Parts of the Work must be substantially completed on or before the following Milestone(s) dates:

1. Milestone 1: May 26, 2023

4.04 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration

proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner the amount identified in paragraph 19.01 of the Supplementary Conditions for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.

2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner the amount identified in paragraph 19.01 of the Supplementary Conditions for each day that expires after such time until the Work is completed and ready for final payment.

3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

4. Milestones: Contractor shall pay Owner the amount identified in paragraph 19.01 of the Supplementary Conditions for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of each Milestone, until Milestone is achieved.

B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

4.05 *Special Damages*

C. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

D. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item) as stated in Contractor's Bid, attached hereto as an exhibit.

B. The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on the third Wednesday of the Month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract

a. 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and

b. 0 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

6.04 *Interest*

A. All amounts not paid when due shall bear interest at the rate of 0 percent per annum.

ARTICLE 7 – CONTRACT DOCUMENTS

7.01 *Contents*

A. The Contract Documents consist of the following:

1. This Agreement.
2. Bonds:
   a. Performance bond (together with power of attorney).
   b. Payment bond (together with power of attorney).
3. Specifications as listed in the table of contents of the project manual (copy of list attached and incorporated by reference).
4. Drawings as listed in the table of contents of the drawings (copy of list attached and incorporated by reference).
5. Addenda (not attached but incorporated by reference)
   a. Number **{Number}** dated **{Date}**.
   b. Number **{Number}** dated **{Date}**.
   c. Number **{Number}** dated **{Date}**.
6. Exhibits to this Agreement (enumerated as follows):
   a. Contractor's Bid consisting of **{Total Pages}**.
7. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
   a. Notice to Proceed,
   b. Work Change Directives,
   c. Change Orders,
   d. Field Order,
   e. Task Orders.

B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 7.

D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8 – ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 *Contractor's Representations*

A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:

1. Contractor has examined and carefully studied the Contract Documents, including Addenda.

2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.

4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.

5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.

6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.

7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

8.02 *Contractor's Certifications*

A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner,

(b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

(Continued on next page)

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

OWNER:

City of Sheboygan

By: _____
(signature)

Name,
Title: Ryan Sorenson, Mayor

Date: _____

Attest:

By: _____
(signature)

Name,
Title: Meredith DeBruin, City Clerk

Date: _____

Signatures authorized pursuant to Res. ___-22-23.

Address for giving notices:
City of Sheboygan – Engineering Division
2026 New Jersey Avenue
Sheboygan, WI 53081

Approved as to form and Execution:

By: _____
(signature)

Name, Charles C. Adams, City Attorney
Title:

Date: _____

CONTRACTOR:

{Contractor}_____

By: _____
(signature)

Name,
Title: _____
(printed)

Date: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Address for giving notices:

_____

_____

_____

Project Name: Click here to enter text.

Bid Number: Click here to enter text.

Contractor: Click here to enter text.

TO CONTRACTOR:

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on [_____, 20__]. *[see Paragraph 4.01 of the General Conditions]*

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work shall be done at the Site prior to such date. In accordance with the Agreement, [the date of Substantial Completion is _____, and the date of readiness for final payment is_____] and the number of days to achieve readiness for final payment is _____].

Before starting any Work at the Site, Contractor must comply with the following:

[Note any access limitations, security procedures, or other restrictions]

By: _____
Engineer/Project Manager

Title: _____

Date: _____

EJCDC
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

PERFORMANCE BOND

CONTRACTOR *(name and address)*:

SURETY *(name and address of principal place of business)*:

OWNER *(name and address)*:

CONSTRUCTION CONTRACT
Effective Date of the Agreement:
Amount:
Description *(name and location)*:

BOND
Bond Number:
Date *(not earlier than the Effective Date of the Agreement of the Construction Contract)*:
Amount:
Modifications to this Bond Form: ☐ None ☐ See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

_____ *(seal)*
Contractor's Name and Corporate Seal

By: _____
Signature

_____
Print Name

_____
Title

Attest: _____
Signature

_____
Title

SURETY

_____ *(seal)*
Surety's Name and Corporate Seal

By: _____
Signature *(attach power of attorney)*

_____
Print Name

_____
Title

Attest: _____
Signature

_____
Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

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1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

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10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

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EJCDC
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

PAYMENT BOND

CONTRACTOR *(name and address)*:

SURETY *(name and address of principal place of business)*:

OWNER *(name and address)*:

CONSTRUCTION CONTRACT

Effective Date of the Agreement:
Amount:
Description *(name and location)*:

BOND

Bond Number:
Date *(not earlier than the Effective Date of the Agreement of the Construction Contract)*:
Amount:
Modifications to this Bond Form: ☐ None ☐ See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

_____ *(seal)*
Contractor's Name and Corporate Seal

By: _____
Signature

_____
Print Name

_____
Title

Attest: _____
Signature

_____
Title

SURETY

_____ *(seal)*
Surety's Name and Corporate Seal

By: _____
Signature *(attach power of attorney)*

_____
Print Name

_____
Title

Attest: _____
Signature

_____
Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

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1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.

4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.

5. The Surety's obligations to a Claimant under this Bond shall arise after the following:

   5.1 Claimants who do not have a direct contract with the Contractor,

      5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and

      5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).

   5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).

6. If a notice of non-payment required by Paragraph 5.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.

7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

   7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

   7.2 Pay or arrange for payment of any undisputed amounts.

   7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.

11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

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12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. **Definitions**

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default**: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:

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CITY OF SHEBOYGAN
SUBMITTAL FORM
DOCUMENT 00 62 11

DATE: Click here to enter a date.

CITY BID NUMBER: Click here to enter text.

SUBMITTAL #: Click here to enter text.

PROJECT TITLE: Click here to enter text.

SUBMITTED BY: Click here to enter text.

CONTRACTOR: Click here to enter text.

SPECIFICATION SECTION OR DRAWING NUMBER:

Click here to enter text.

DESCRIPTION OF ITEMS INCLUDED IN SUBMITTAL:

Click here to enter text.

DOCUMENTS ATTACHED: ☐ Shop Drawings ☐ Product Data ☐ Test Results ☐ Other

COMMENTS:

Click here to enter text.

Contractor's Application for Payment No.

	Application Period:	Application Date:
To	From (Contractor):	Via (Engineer): N/A
Project:	City Bid Number:	Contractor's Project No.:

Application For Payment

Change Order Summary

Approved Change Orders

Number	Additions	Deductions
TOTALS		
NET CHANGE BY CHANGE ORDERS		

1. ORIGINAL CONTRACT PRICE..... $ _____

2. Net change by Change Orders..... $ _____

3. Current Contract Price (Line 1 ± 2)..... $ _____

4. TOTAL COMPLETED AND STORED TO DATE
(Column F total on Progress Estimates)..... $ _____

5. RETAINAGE:

a. 5% X _____ **Work Completed**..... $ _____

b. X _____ **Stored Material**..... $ _____

c. Total Retainage (Line 5.a + Line 5.b)..... $ _____

6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5.c)..... $ _____

7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)..... $ _____

8. AMOUNT DUE THIS APPLICATION..... $ _____

9. BALANCE TO FINISH, PLUS RETAINAGE
(Column G total on Progress Estimates + Line 5.c above)..... $ _____

Contractor's Certification

The undersigned Contractor certifies, to the best of its knowledge, the following:
(1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment;
(2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interest, or encumbrances); and
(3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

Contractor Signature

By:	Date:

Payment of: $ _____
(Line 8 or other - attach explanation of the other amount)

is recommended by: _____ _____
(Engineer/Project Manager) (Date)

Payment of: $ _____
(Line 8 or other - attach explanation of the other amount)

is approved by: _____ _____
(City of Sheboygan) (Date)

Progress Estimate - Unit Price Work

Contractor's Application

For (Contract):								Application Number:			
Application Period:								Application Date:			
A					B	C	D	E	F		
Item		Contract Information				Estimated Quantity Installed	Value of Work Installed to Date	Materials Presently Stored (not in C)	Total Completed and Stored to Date (D + E)	% (F / B)	Balance to Finish (B - F)
Bid Item No.	Description	Item Quantity	Units	Unit Price	Total Value of Item ($)						
	Page Totals										

CITY OF SHEBOYGAN
PUBLIC WORKS

Contract Change Order

Change Order Number: _____

Project: _____ **Date of Issuance:** _____

Bid Number: _____ **Effective Date:** _____

Contractor: _____

Change in Contract Price Summary

Original Contract Price:	
Increase/(Decrease) from Previously Accepted Change Orders:	
Contract Price Prior to this Change Order:	
Increase/(Decrease) of this Change Order:	
Contract Price Incorporating this Change Order:	

Change in Contract Times Summary

	Substantial Completion	Ready for Final Payment
Original Completion Date (or days):		
Increase/(Decrease) from Previously Accepted Change Orders:		
Completion Date (or days) Prior to this Change Order:		
Increase/(Decrease) of this Change Order:		
Completion Date (or days) Incorporating this Change Order:		

The Contract is modified as follows upon execution of this Change Order:

Add the Following Items of Work

Item #:	Description	Qty.	Unit	Unit Price	Extension

Total Additional Work:

Revise the Following Items of Work

		Original				Revised			
Item #:	Description	Quantity	Units	Unit Price	Extension	Quantity	Units	Unit Price	Extension
N/A									
		Original Total:				**Revised Total:**			

Total Revised Work *(Revised - Original)*:

	Contract
Total Additional Work:	
Total Revised Work:	
Net Change in Contract:	

Final quantities to be determined based on actual quantities constructed and measured.

CITY OF SHEBOYGAN
PUBLIC WORKS

Contract Change Order

Change Order Number: _____

Project: _____ **Date of Issuance:** _____

Bid Number: _____ **Effective Date:** _____

Contractor: _____

Revise the Project Manual and Specifications as Follo

Signatures

Recommended By: _____ Engineer/Project Manager — Date: _____

Accepted By: _____ Contractor (Authorized) — Date: _____

Accepted By: _____ City of Sheboygan — Date: _____

Project Name: Click here to enter text.

Bid Number: Click here to enter text.

Contractor: Click here to enter text.

This ☐Preliminary ☐Final Certificate of Substantial Completion applies to:

☐ All Work

☐ The following specified portions of the Work:

//Enter text here//

Date of Substantial Completion: Click here to enter a date.

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Work or portion thereof designated above is hereby established, subject to the provisions of the Contract pertaining to Substantial Completion. The date of Substantial Completion in the final Certificate of Substantial Completion marks the commencement of the contractual correction period and applicable warranties required by the Contract.

A punch list of items to be completed or corrected is attached to this Certificate, if appropriate. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract.

The following documents are attached to and made a part of this Certificate: Click here to enter text.

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract.

EXECUTED BY CITY:		RECEIVED:	
By:	Engineer/Project Manager	By:	Contractor (Authorized Signature)
Title:		Title:	
Date:		Date:	

PROJECT MAN					
CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Contractor's Affidavit of Compliance		
		Section:	00 65 18		
		Bid Number:	2478-23	Page:	1 of 1

PROJECT NAME: **Calumet Drive Pavement Repair, Geele Avenue to Main Avenue**

I CERTIFY to the best of my knowledge and belief that all work has been performed and materials supplied in strict accordance with the terms and conditions of the corresponding contract documents between the CITY OF SHEBOYGAN, hereinafter called the OWNER, and _____, hereinafter called the Contractor, for the above referenced project.

I further certify and declare that, except as listed below, all bills for materials, supplied, utilities, and for all other things furnished or caused to be furnished by the CONTRACTOR and used in the execution of the contract will be fully paid upon receipt of Final Payment and that there are no unpaid obligations, liens, claims, security interests, encumbrances, liabilities, and/or demands of State or Federal Agencies, subcontractors, materialmen, mechanics, laborers, or any others resulting from or arising out of any work done, caused to be done, or ordered to be done by the Contractor under the contract.

EXCEPTIONS: (If none, write "NONE," Contractor shall furnish a bond, acceptable to the Owner, for each exception)

In consideration of the prior and final payments made and all payments made for authorized changes, the Contractor releases and forever discharges the OWNER from any and all obligations, liens, claims, security interests, encumbrances, and/or liabilities arising by virtue of the contract and authorized changes between the parties, either verbal or in writing, and any and all claims and demands of every kind and character whatsoever against the OWNER, arising out of or in any way relating to the contract and authorized changes.

I further certify and agree that the warranty period is defined as commencing with Substantial Completion (or with each Substantial Completion if there is more than one) of the Project, or any portion thereof, and continuing for one (1) calendar year from the date of Final Acceptance of the entire project unless otherwise modified in writing as part of the Substantial Completion of Final Acceptance.

This statement is made for the purpose of inducing the Owner to make FINAL PAYMENT under the terms of the contract, relying on the trust and statements contained herein.

_____
Signed

_____
Title

Subscribed and sworn to before me
this _____ day of _____, 20____.

_____

_____

My commission expires _____ (Seal)

PROJECT MAN					
CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Consent of Surety to Final Payment		
		Section:	00 65 19		
		Bid Number:	2478-23	Page:	1 of 1

TO OWNER: City of Sheboygan
2026 New Jersey Avenue
Sheboygan, WI

PROJECT NAME: Calumet Drive Pavement Repair, Geele Avenue to Main Avenue

DATE: _____

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the

Surety Name: _____

Address: _____

_____

_____, Surety,

on bond of,

Contractor Name: _____

Address: _____

_____

_____, Contractor,

hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall not relieve the Surety of any of its obligations to

City of Sheboygan
2026 New Jersey Avenue
Sheboygan, WI , Owner,

as set for in said Surety's bond.

_____
(Surety)

Attest:
(Seal):

_____
(Signature of Authorized Representative)

_____
(Print Name and Title)

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

TABLE OF CONTENTS

Page

Article 1—Definitions and Terminology 1
1.01 Defined Terms 1
1.02 Terminology 6
Article 2—Preliminary Matters 7
2.01 Delivery of Performance and Payment Bonds; Evidence of Insurance 7
2.02 Copies of Documents 7
2.03 Before Starting Construction 8
2.04 Preconstruction Conference; Designation of Authorized Representatives 8
2.05 Acceptance of Schedules 8
2.06 Electronic Transmittals 9
Article 3—Contract Documents: Intent, Requirements, Reuse 9
3.01 Intent 9
3.02 Reference Standards 10
3.03 Reporting and Resolving Discrepancies 10
3.04 Requirements of the Contract Documents 11
3.05 Reuse of Documents 11
Article 4—Commencement and Progress of the Work 12
4.01 Commencement of Contract Times; Notice to Proceed 12
4.02 Starting the Work 12
4.03 Reference Points 12
4.04 Progress Schedule 12
4.05 Delays in Contractor's Progress 12
Article 5—Site; Subsurface and Physical Conditions; Hazardous Environmental Conditions 14
5.01 Availability of Lands 14
5.02 Use of Site and Other Areas 14
5.03 Subsurface and Physical Conditions 15
5.04 Differing Subsurface or Physical Conditions 16

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5.05 Underground Facilities 18
5.06 Hazardous Environmental Conditions at Site 19
Article 6—Bonds and Insurance 22
6.01 Performance, Payment, and Other Bonds 22
6.02 Insurance—General Provisions 22
6.03 Contractor's Insurance 24
6.04 Builder's Risk and Other Property Insurance 25
6.05 Property Losses; Subrogation 26
6.06 Receipt and Application of Property Insurance Proceeds 27
Article 7—Contractor's Responsibilities 27
7.01 Contractor's Means and Methods of Construction 27
7.02 Supervision and Superintendence 28
7.03 Labor; Working Hours 28
7.04 Services, Materials, and Equipment 28
7.05 "Or Equals" 29
7.06 Substitutes 30
7.07 Concerning Subcontractors and Suppliers 31
7.08 Patent Fees and Royalties 32
7.09 Permits 33
7.10 Taxes 33
7.11 Laws and Regulations 33
7.12 Record Documents 34
7.13 Safety and Protection 34
7.14 Hazard Communication Programs 35
7.15 Emergencies 35
7.16 Submittals 36
7.17 Contractor's General Warranty and Guarantee 38
7.18 Indemnification 39
7.19 Delegation of Professional Design Services 40
Article 8—Other Work at the Site 41
8.01 Other Work 41
8.02 Coordination 41
8.03 Legal Relationships 42

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Article 9—Owner's Responsibilities 43
9.01 Communications to Contractor 43
9.02 Replacement of Engineer 43
9.03 Furnish Data 43
9.04 Pay When Due 43
9.05 Lands and Easements; Reports, Tests, and Drawings 43
9.06 Insurance 43
9.07 Change Orders 43
9.08 Inspections, Tests, and Approvals 44
9.09 Limitations on Owner's Responsibilities 44
9.10 Undisclosed Hazardous Environmental Condition 44
9.11 Evidence of Financial Arrangements 44
9.12 Safety Programs 44
Article 10—Engineer's Status During Construction 44
10.01 Owner's Representative 44
10.02 Visits to Site 44
10.03 Resident Project Representative 45
10.04 Engineer's Authority 45
10.05 Determinations for Unit Price Work 45
10.06 Decisions on Requirements of Contract Documents and Acceptability of Work 45
10.07 Limitations on Engineer's Authority and Responsibilities 45
10.08 Compliance with Safety Program 46
Article 11—Changes to the Contract 46
11.01 Amending and Supplementing the Contract 46
11.02 Change Orders 46
11.03 Work Change Directives 47
11.04 Field Orders 47
11.05 Owner-Authorized Changes in the Work 47
11.06 Unauthorized Changes in the Work 48
11.07 Change of Contract Price 48
11.08 Change of Contract Times 49
11.09 Change Proposals 49
11.10 Notification to Surety 51

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Article 12—Claims 51
12.01 Claims 51
Article 13—Cost of the Work; Allowances; Unit Price Work 52
13.01 Cost of the Work 52
13.02 Allowances 56
13.03 Unit Price Work 56
Article 14—Tests and Inspections; Correction, Removal, or Acceptance of Defective Work 57
14.01 Access to Work 57
14.02 Tests, Inspections, and Approvals 57
14.03 Defective Work 58
14.04 Acceptance of Defective Work 58
14.05 Uncovering Work 59
14.06 Owner May Stop the Work 59
14.07 Owner May Correct Defective Work 59
Article 15—Payments to Contractor; Set-Offs; Completion; Correction Period 60
15.01 Progress Payments 60
15.02 Contractor's Warranty of Title 63
15.03 Substantial Completion 63
15.04 Partial Use or Occupancy 64
15.05 Final Inspection 65
15.06 Final Payment 65
15.07 Waiver of Claims 66
15.08 Correction Period 67
Article 16—Suspension of Work and Termination 68
16.01 Owner May Suspend Work 68
16.02 Owner May Terminate for Cause 68
16.03 Owner May Terminate for Convenience 69
16.04 Contractor May Stop Work or Terminate 69
Article 17—Final Resolution of Disputes 70
17.01 Methods and Procedures 70
Article 18—Miscellaneous 70
18.01 Giving Notice 70
18.02 Computation of Times 70

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18.03 Cumulative Remedies 70
18.04 Limitation of Damages 71
18.05 No Waiver 71
18.06 Survival of Obligations 71
18.07 Controlling Law 71
18.08 Assignment of Contract 71
18.09 Successors and Assigns 71
18.10 Headings 71

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.

3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

5. *Bidder*—An individual or entity that submits a Bid to Owner.

6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.

7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.

8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.

9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.

10. *Claim*

a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by

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Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.

b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.

c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.

d. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.

13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.

14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.

15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.

16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.

17. *Cost of the Work*—See Paragraph 13.01 for definition.

18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.

20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.

21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or

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communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.

23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.

24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.

    a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.

    b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.

    c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.

25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.

29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.

30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.

31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.

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32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.

34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals.

36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.

39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part

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thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.

44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.

45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

46. *Technical Data*

    a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.

    b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.

    c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.

47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

48. *Unit Price Work*—Work to be paid for on the basis of unit prices.

49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

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50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 *Terminology*

A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. *Day*: The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective*: The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

1. does not conform to the Contract Documents;

2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or

3. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).

E. *Furnish, Install, Perform, Provide*

1. The word "furnish," when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.

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4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words "furnish," "install," "perform," or "provide," then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

F. *Contract Price or Contract Times*: References to a change in "Contract Price or Contract Times" or "Contract Times or Contract Price" or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term "or both" is not expressed.

G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).

B. *Evidence of Contractor's Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.

C. *Evidence of Owner's Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

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2.03 *Before Starting Construction*

A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

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2.06 *Electronic Transmittals*

A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.

B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.

C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.

C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.

D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.

E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

G. Nothing in the Contract Documents creates:

1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or

2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

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3.02 *Reference Standards*

A. *Standards Specifications, Codes, Laws and Regulations*

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements*: Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

2. *Contractor's Review of Contract Documents*: If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take

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precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:

a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.

C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

A. Contractor and its Subcontractors and Suppliers shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or

2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

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ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work may be done at the Site prior to such date.

4.03 *Reference Points*

A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.

B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.

B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

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C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:

1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
2. Abnormal weather conditions;
3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
4. Acts of war or terrorism.

D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:

1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.

E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:

1. The circumstances that form the basis for the requested adjustment;
2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.

Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the

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effect of the delay, disruption, or interference on the critical path to completion of the Work.

F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.

G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.

2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise;

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(b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

B. *Removal of Debris During Performance of the Work*: During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.

C. *Cleaning*: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading of Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;

2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and

3. Technical Data contained in such reports and drawings.

B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

C. *Reliance by Contractor on Technical Data*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

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D. *Limitations of Other Data and Documents*: Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

A. *Notice by Contractor*: If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:

1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
2. is of such a nature as to require a change in the Drawings or Specifications;
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

B. *Engineer's Review*: After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

C. *Owner's Statement to Contractor Regarding Site Condition*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement

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to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

D. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

E. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

    a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;

    b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

    c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:

    a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;

    b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or

    c. Contractor failed to give the written notice required by Paragraph 5.04.A.

3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.

4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities.

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Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:

1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;

2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;

4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and

5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.

B. *Notice by Contractor*: If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.

C. *Engineer's Review*: Engineer will:

1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;

2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;

3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and

4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.

During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

D. *Owner's Statement to Contractor Regarding Underground Facility*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written

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statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.

E. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

F. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

   a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;

   b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and

   c. Contractor gave the notice required in Paragraph 5.05.B.

2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.

3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;

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2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and

3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.

E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

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F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.

G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.

H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

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ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.

B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.

C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.

E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.

F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.

G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.

H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.

B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the

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required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.

C. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.

D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.

F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.

G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

H. Contractor shall require:

1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and

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2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.

I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.

K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.

M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.

N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

A. *Required Insurance*: Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.

B. *General Provisions*: The policies of insurance required by this Paragraph 6.03 as supplemented must:

1. include at least the specific coverages required;

2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;

3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;

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4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and

5. include all necessary endorsements to support the stated requirements.

C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:

1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;

2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;

3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and

5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.

B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.

C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.

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D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.

E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.

2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.

B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.

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1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.

C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.

D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.

C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.

B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at

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Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.

B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.

C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.

B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

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7.05 *"Or Equals"*

A. *Contractor's Request; Governing Criteria*: Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.

1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:

   a. in the exercise of reasonable judgment Engineer determines that the proposed item:

      1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

      2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;

      3) has a proven record of performance and availability of responsive service; and

      4) is not objectionable to Owner.

   b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:

      1) there will be no increase in cost to the Owner or increase in Contract Times; and

      2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.

B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.

C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.

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E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 *Substitutes*

A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.

1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.

2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:

   a. will certify that the proposed substitute item will:

      1) perform adequately the functions and achieve the results called for by the general design;

      2) be similar in substance to the item specified; and

      3) be suited to the same use as the item specified.

   b. will state:

      1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;

      2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and

      3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.

   c. will identify:

      1) all variations of the proposed substitute item from the item specified; and

      2) available engineering, sales, maintenance, repair, and replacement services.

   d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in

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Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.

B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.

C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.

F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.

B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.

C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.

D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or

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otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.

E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.

F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.

G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.

I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.

J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.

K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.

L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.

M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any

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license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.

B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.09 *Permits*

A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.10 *Taxes*

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.11 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to

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such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.

C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12 *Record Documents*

A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.13 *Safety and Protection*

A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.

B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.

C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any

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of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.

F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.

G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.

H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).

J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

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7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

1. Before submitting a Shop Drawing or Sample, Contractor shall:

a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

b. determine and verify:

1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;

2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;

c. confirm that the Submittal is complete with respect to all related data included in the Submittal.

2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

B. *Submittal Procedures for Shop Drawings and Samples*: Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.

1. *Shop Drawings*

a. Contractor shall submit the number of copies required in the Specifications.

b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.

2. *Samples*

a. Contractor shall submit the number of Samples required in the Specifications.

b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer

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may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Engineer's Review of Shop Drawings and Samples*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.

3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.

6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.

7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.

8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. *Resubmittal Procedures for Shop Drawings and Samples*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.

2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two

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resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.

3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

E. *Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:

a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.

b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.

c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.

2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03. 2.04, and 2.05.

F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 *Contractor's General Warranty and Guarantee*

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.

B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:

1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and

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2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.

C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:

1. Observations by Engineer;

2. Recommendation by Engineer or payment by Owner of any progress or final payment;

3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. Use or occupancy of the Work or any part thereof by Owner;

5. Any review and approval of a Shop Drawing or Sample submittal;

6. The issuance of a notice of acceptability by Engineer;

7. The end of the correction period established in Paragraph 15.08;

8. Any inspection, test, or approval by others; or

9. Any correction of defective Work by Owner.

E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity

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directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.

B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.19 *Delegation of Professional Design Services*

A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.

B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.

C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.

E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:

1. Checking for conformance with the requirements of this Paragraph 7.19;

2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and

3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.

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G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.

B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.

C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.

D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be

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set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:

1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
2. An itemization of the specific matters to be covered by such authority and responsibility; and
3. The extent of such authority and responsibilities.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.

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C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

9.03 *Furnish Data*

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.

B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.

C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

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9.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.

B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

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B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.

B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

A. Engineer has the authority to reject Work in accordance with Article 14.

B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.

C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.

D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any

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Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.

B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.

C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders covering:

1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;

2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;

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3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and

4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.

B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Work Change Directives*

A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

B. If Owner has issued a Work Change Directive and:

1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.

2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.

B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving

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the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.

B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.

C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.

B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);

2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or

3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).

C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will be determined as follows:

1. A mutually acceptable fixed fee; or

2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;

b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;

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c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;

d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;

e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and

f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.

B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

A. *Purpose and Content*: Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

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B. *Change Proposal Procedures*

1. *Submittal*: Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.

2. *Supporting Data*: The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.

   a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.

   b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

   The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

3. *Engineer's Initial Review*: Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.

4. *Engineer's Full Review and Action on the Change Proposal*: Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.

C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

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11.10 *Notification to Surety*

A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12—CLAIMS

12.01 *Claims*

A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:

1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;

2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;

3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and

4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.

B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.

D. *Mediation*

1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.

2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal

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and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.

E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.

F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.

G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:

1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.

B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe

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benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
5. Other costs consisting of the following:
    a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
    b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
        1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.
    c. *Construction Equipment Rental*
        1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment,

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machinery, or parts must cease when the use thereof is no longer necessary for the Work.

2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.

3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded*: The term Cost of the Work does not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.

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2. The cost of purchasing, renting, or furnishing small tools and hand tools.
3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
6. Expenses incurred in preparing and advancing Claims.
7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee*

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
    a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
    b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
        1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
        2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

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13.02 *Allowances*

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances*: Contractor agrees that:

1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.

C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:

a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

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b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.

2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.

3. Adjusted unit prices will apply to all units of that item.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 *Tests, Inspections, and Approvals*

A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.

B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:

1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;

2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;

3. by manufacturers of equipment furnished under the Contract Documents;

4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and

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5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.

F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

A. *Contractor's Obligation*: It is Contractor's obligation to assure that the Work is not defective.

B. *Engineer's Authority*: Engineer has the authority to determine whether Work is defective, and to reject defective Work.

C. *Notice of Defects*: Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.

D. *Correction, or Removal and Replacement*: Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.

E. *Preservation of Warranties*: When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

F. *Costs and Damages*: In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved

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by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.

C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.

1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.

2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then

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Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 *Progress Payments*

A. *Basis for Progress Payments*: The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.

B. *Applications for Payments*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

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3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

   a. the Work has progressed to the point indicated;

   b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and

   c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

   a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or

   b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

   a. to supervise, direct, or control the Work;

   b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;

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c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;

d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.

6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:

a. the Work is defective, requiring correction or replacement;

b. the Contract Price has been reduced by Change Orders;

c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:

a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;

c. Contractor has failed to provide and maintain required bonds or insurance;

d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;

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e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;

f. The Work is defective, requiring correction or replacement;

g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

h. The Contract Price has been reduced by Change Orders;

i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;

j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;

k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or

l. Other items entitle Owner to a set-off against the amount recommended.

2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

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C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.

F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.

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2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.

2. The final Application for Payment must be accompanied (except as previously delivered) by:

   a. all documentation called for in the Contract Documents;

   b. consent of the surety, if any, to final payment;

   c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

   d. a list of all duly pending Change Proposals and Claims; and

   e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment

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bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

B. *Engineer's Review of Final Application and Recommendation of Payment*: If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Notice of Acceptability*: In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.

D. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.

E. *Final Payment Becomes Due*: Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

15.07 *Waiver of Claims*

A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

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15.08 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. correct the defective repairs to the Site or such adjacent areas;
2. correct such defective Work;
3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.

B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.

C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.

D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

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ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);

2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;

3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or

4. Contractor's repeated disregard of the authority of Owner or Engineer.

B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:

1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and

2. enforce the rights available to Owner under any applicable performance bond.

C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.

D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.

E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as

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to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.

G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and

3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.

B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

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ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

A. *Disputes Subject to Final Resolution*: The following disputed matters are subject to final resolution under the provisions of this article:

1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and

2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.

B. *Final Resolution of Disputes*: For any dispute subject to resolution under this article, Owner or Contractor may:

1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;

2. agree with the other party to submit the dispute to another dispute resolution process; or

3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:

1. in person, by a commercial courier service or otherwise, to the recipient's place of business;

2. by registered or certified mail, postage prepaid, to the recipient's place of business; or

3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be

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as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

18.07 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Assignment of Contract*

A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

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GENERAL

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC® C-700 (2013 Edition). All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.

INDEX

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY 2

SC – 1.02 Terminology 2

ARTICLE 2 – PRELIMINARY MATTERS 2

SC-2.02 Copies of Documents 2

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF WORK 3

SC-4.01 Commencement of Contract Times; Notice to Proceed 3

SC-4.03 Reference Points 3

SC-4.05 Delays in Contractor's Progress 3

ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS 3

SC-5.03 – Subsurface and Physical Conditions 3

SC-5.06 – Hazardous Environmental Conditions 4

ARTICLE 6 – BONDS AND INSURANCE 4

SC-6.01 Bonds and Insurance 4

SC-6.03 Contractor's Insurance 4

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES 8

SC-7.02 Supervision and Superintendence 8

SC-7.03 Labor; Working Hours 8

SC-7-12 Record Documents 9

ARTICLE 8 – OTHER WORK AT THE SITE 10

SC – 8.02 Coordination 10

SC – 8.03 Legal Relationships 10

SC – 8.04 Claims Between Contractors 10

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION 11

SC – 10.08 Compliance with Safety Program 11

ARTICLE 11 –CHANGES TO THE CONTRACT 11

SC – 11.06 Change Proposals 11

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK 11

SC – 13.03 Unit Price Work 11

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD 12

SC – 15.01 Progress Payments 12

SC - 15.01 Progress Payments 12

SC – 15.06 Final Payment 12

ARTICLE 19 – LIQUIDATED DAMAGES 12

SC-19.01 Liquidated Damages Schedule 12

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

Add the following as paragraph 1.01.A.49"

49. Designer – The individual or entity, if named as such in the agreement, and with which Owner has contracted for the design of the Work.

Add the following as paragraph 1.01.B:

B. Wherever the term City or CITY is used in these documents, it shall refer to the City of Sheboygan, Sheboygan County, Wisconsin, as represented by its elected officials. The terms "City" and "Owner" in this respect shall be considered synonymous

SC – 1.02 Terminology

Add the following as new paragraph 1.02.H:

H. Business Day:

1. The words "business day" mean every day the calendar shows, except Saturdays, Sundays, and City-Specified holidays, measured from midnight to the next midnight.

ARTICLE 2 – PRELIMINARY MATTERS

SC-2.02 Copies of Documents

Delete paragraph 2.02.A. in its entirety and insert the following:

A. Owner shall furnish to Contractor one copy of the fully executed Agreement. Owner will not furnish printed copies of the Project Manual or the Drawings. The electronic portable document format (PDF) Project Manual and Drawings furnished during bidding shall be used by Contractor.

Delete paragraph 2.02.B. in its entirety and insert the following:

B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications. Owner shall make such original printed

record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

Delete paragraph 2.03.A.3 in its entirety and insert the following:

3. a preliminary Schedule of Values for lump sum items with Bid Unit Prices in excess of $100,000, and for which no payment method is defined in the specifications, which includes quantities and prices of items which when added together equal the Bid Unit Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF WORK

SC-4.01 Commencement of Contract Times; Notice to Proceed

Delete the last sentence of paragraph 4.01.A. in its entirety and replace with the following:

In no event will the Contract Times commence to run later than the 115th day after the day of Bid opening or the 30th day after the Effective Date of the Agreement, whichever date is earlier, unless otherwise specified the Section 01 11 00 – SUMMARY OF WORK.

SC-4.03 Reference Points

Delete paragraph 4.03.A and replace with the following:

A. Engineer shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work. Contractor shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Engineer. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by a Wisconsin licensed Professional Land Surveyor, in good standing, with qualifications approved by the Engineer, to do the re-staking.

SC-4.05 Delays in Contractor's Progress

Delete paragraph 4.05.C.2 and replace with the following:

C. Abnormal Weather Conditions – Conditions of extreme or unusual weather for a given region, elevation, or season as determined by Engineer. Extreme or unusual weather that is typical for a given region, elevation, or season should not be considered Abnormal Weather Conditions.

ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

SC-5.03 – Subsurface and Physical Conditions

Add the following new paragraphs immediately after Paragraph 5.03.A.3:

4. The reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely are identified in Specification 01 11 00 – Summary of Work.

5. The drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely are identified in Specification 01 11 00 – Summary of Work

6. Contractor may examine copies of reports and drawings identified in SC-5.03.A.4 and SC-5.03.A.5 that were not included with the Bidding Documents at City of Sheboygan Department of Public Works by requesting a meeting to occur during regular business hours, or may request copies from Engineer.

SC-5.06 – Hazardous Environmental Conditions

Add the following new paragraphs immediately after Paragraph 5.06.A.3:

4. The reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely are identified in Specification 01 11 00 – Summary of Work.

5. The drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely are identified in Specification 01 11 00 – Summary of Work.

6. Contractor may examine copies of reports and drawings identified in SC-5.06.A.1 and SC-5.06.A.5 that were not included with the Bidding Documents at City of Sheboygan Department of Public Works by requesting a meeting to occur during regular business hours, or may request copies from Engineer.

ARTICLE 6 – BONDS AND INSURANCE

SC-6.01 Bonds and Insurance

Add the following to the end of paragraph 6.01.E.

Owner will make no further progress payments under the Agreement until Contractor provides the required bond.

SC-6.03 Contractor's Insurance

Add the following new paragraph immediately after Paragraph 6.03.J:

D. *Other Additional Insureds*: As a supplement to the provisions of Paragraph 6.03.C of the General Conditions, the commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies must include as

additional insureds (in addition to Owner and Engineer) the following: Designer, if identified in the Agreement.

E. *Workers' Compensation and Employer's Liability*: Contractor shall purchase and maintain workers' compensation and employer's liability insurance, including, as applicable, United States Longshoreman and Harbor Workers' Compensation Act, Jones Act, stop-gap employer's liability coverage for monopolistic states, and foreign voluntary workers' compensation (from available sources, notwithstanding the jurisdictional requirement of Paragraph 6.02.B of the General Conditions).

Workers' Compensation and Related Policies	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
Jones Act (if applicable)	
Bodily injury by accident—each accident	$1,000,000
Bodily injury by disease—aggregate	$1,000,000
Employer's Liability	
Each accident	Statutory
Each employee	Statutory
Policy limit	Statutory
Stop-gap Liability Coverage	
For work performed in monopolistic states, stop-gap liability coverage must be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of:	$

F. *Commercial General Liability—Claims Covered*: Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against claims for:

1. damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees,

2. damages insured by reasonably available personal injury liability coverage, and

3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.

G. C*ommercial General Liability—Form and Content*: Contractor's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:

1. Products and completed operations coverage.

    a. Such insurance must be maintained for three years after final payment.

b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.

2. Blanket contractual liability coverage, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.

3. Severability of interests and no insured-versus-insured or cross-liability exclusions.

4. Underground, explosion, and collapse coverage.

5. Personal injury coverage.

6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.

7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04 "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.

H. *Commercial General Liability—Excluded Content*. The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:

1. Any modification of the standard definition of "insured contract" (except to delete the railroad protective liability exclusion if Contractor is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).

2. Any exclusion for water intrusion or water damage.

3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.

4. Any exclusion of coverage relating to earth subsidence or movement.

5. Any exclusion for the insured's vicarious liability, strict liability, or statutory liability (other than worker's compensation).

6. Any limitation or exclusion based on the nature of Contractor's work.

7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.

I. Commercial General Liability—Minimum Policy Limits

Commercial General Liability	Policy limits of not less than:
General Aggregate	$2,000,000
Products—Completed Operations Aggregate	$2,000,000
Personal and Advertising Injury	$2,000,000
Bodily Injury and Property Damage—Each Occurrence	$1,000,000

J. *Automobile Liability*: Contractor shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis.

Automobile Liability	Policy limits of not less than:
Bodily Injury	
Each Person	$1,000,000
Each Accident	$1,000,000
Property Damage	
Each Accident	$1,000,000
[or]	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	$1,000,000

K. *Umbrella or Excess Liability*: Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

Excess or Umbrella Liability	Policy limits of not less than:
Each Occurrence	$2,000,000
General Aggregate	$1,000,000

L. *Using Umbrella or Excess Liability Insurance to Meet CGL and Other Policy Limit Requirements*: Contractor may meet the policy limits specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy's policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy, as specified herein. If such umbrella or excess liability policy was required under this Contract, at a specified minimum policy limit, such umbrella or excess policy must retain a minimum limit of $[specify amount] after accounting for partial attribution of its limits to underlying policies, as allowed above.

M. *Contractor's Pollution Liability Insurance*: Contractor shall purchase and maintain a policy covering third-party injury and property damage, including cleanup costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance must be maintained for no less than three years after final completion.

Contractor's Pollution Liability	Policy limits of not less than:
Each Occurrence/Claim	N/A
General Aggregate	N/A

.

N. *Contractor's Professional Liability Insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance must cover negligent acts, errors, or omissions in the performance of professional design or related services by the insured or others for whom the insured is legally liable. The insurance must be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. The retroactive date on the policy must pre-date the commencement of furnishing services on the Project.

Contractor's Professional Liability	Policy limits of not less than:
Each Claim	$1,000,000
Annual Aggregate	$1,000,000

.

O. *Railroad Protective Liability Insuranc*e: Prior to commencing any Work within 50 feet of railroad-owned and controlled property, Contractor shall (1) endorse its commercial general liability policy with ISO CG 24 17, removing the contractual liability exclusion for work within 50 feet of a railroad, (2) purchase and maintain railroad protective liability insurance meeting the following requirements, (3) furnish a copy of the endorsement to Owner, and (4) submit a copy of the railroad protective policy and other railroad-required documentation to the railroad, and notify Owner of such submittal.

Railroad Protective Liability Insurance	Policy limits of not less than:
Each Claim	As required by Railroad
Aggregate	As required by Railroad

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

SC-7.02 Supervision and Superintendence

Add the following paragraphs immediately after Paragraph 7.02.B

A. Contractor shall provide to Engineer and Owner the name and telephone number of the resident superintendent or another responsible person who will be available to contact during non-working hours, weekends and holidays.

SC-7.03 Labor; Working Hours

Add the following a new subparagraphs immediately after Paragraph 7.03.C:

1. Regular Working Hours shall be 7:00 am to 7:00 PM, local time, Monday through Friday.

2. Owner's Legal Holidays are as follows:

    a. New Year's Day
    Good Friday (Friday before Easter)
    Memorial Day
    Independence Day
    Labor Day
    Thanksgiving Day
    Day after Thanksgiving
    Christmas Eve Day
    Christmas Day
    New Year's Eve Day

    b. When a scheduled legal holiday falls on Saturday it will be observed on the previous Friday. A holiday that falls on Sunday will be observed the following Monday. The City retains the right to schedule holiday observance which bests suits its operations schedule.

SC-7-12 Record Documents

Delete the last sentence of paragraph 7.12.A and replace with the following:

Within 14 days following completion of the Work and prior to final payment, Contractor shall deliver these record documents to Engineer.

Add the following as Paragraph 7.15.B:

B. In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, and Contractor cannot be reached, Owner or Engineer may act to attempt to prevent threatened damage, injury, or loss. Owner or Engineer will give Contractor prompt written notice of such action and the cost of the correction or remedy shall be charged against Contractor. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Owner or Engineer in response to such an emergency, a Work Change Directive or Change Order will be issued.

ARTICLE 8 – OTHER WORK AT THE SITE

SC – 8.02 Coordination

Modify paragraph 8.02.A as follows:

Delete the words "the Supplementary Conditions" and replace with the words "Specification Section 01 11 00 – Summary of Work".

Modify paragraph 8.02 as follows:

Delete the words "the Supplementary Conditions" and replace with the words "Specification Section 01 11 00 – Summary of Work".

SC – 8.03 Legal Relationships

Modify the second sentence of paragraph 8.03.A as follows:

Delete the words "30 days" and replace with the words "10 days".

SC – 8.04 Claims Between Contractors

Add the following new section immediately following Section 8.03:

8.04 Claims Between Contractors

A. Should Contractor cause damage to the work or property of any separate contractor at the Site, or should any claim arising out of Contractor's performance of the Work at the Site be made by any separate contractor against Contractor, Owner, Engineer, Engineer's Consultants, or the construction coordination, Contractor shall promptly attempt to settle with such separate contractor by agreement or to otherwise resolve the dispute by arbitration or at law.

B. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Engineer, Engineer's Consultants, the construction coordinator and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising directly, indirectly, or consequentially out of any action, legal or equitable, brought by any separate contractor against Owner, Engineer, Engineer's Consultants, or the construction coordinator to the extent said claim is based on or arises out of Contractor's performance of the Work. Should a separate contractor cause damage to the Work or property of Contractor or should the performance of work by any separate contractor at the Site give rise to any other Claim, Contractor shall not institute any action, legal or equitable, against Owner, Engineer, Engineer's Consultants, or the construction coordinator or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from Owner, Engineer, Engineer's Consultants, or the construction coordinator on account of any such damage or Claim.

C. If Contractor is delayed at any time in performing or furnishing Work by any act or neglect of a separate contractor, and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, Contractor may make a Claim for an extension of times in accordance with Article 11. An extension of the Contract Times shall be Contractor's exclusive remedy with respect to Owner, Engineer, Engineer's Consultants, and construction coordinator for any delay, disruption, interference, or hindrance caused by any separate contractor. This paragraph does not prevent recovery from Owner, Engineer, Engineer's Consultant, or construction coordinator for activities that are their respective responsibilities.

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

SC – 10.08 Compliance with Safety Program

Add the following as paragraph 10.08

B. In the event Engineer determines that Contractor's safety plans, programs, and procedures do not provide adequate protection for Engineer, Engineer may direct its employees to leave the Site or implement additional safeguards for Engineer's protection. If taken, these actions will be in furtherance of Engineer's responsibility to its own employees only, and Engineer will not assume any responsibility for protection of any other persons affected by the Work. In the event Engineer observes situations which appear to have potential for immediate and serious injury to persons, Engineer may warn the persons who appear to be affected by such situations. Such warnings, if issued, shall be given based on general humanitarian concerns, and Engineer will not, by the issuance of any such warning, assume any responsibility to issue future warnings or any general responsibility for protection of persons affected by the Work.

ARTICLE 11 –CHANGES TO THE CONTRACT

SC – 11.06 Change Proposals

Modify the first sentence of paragraph 11.06.B.1 as follows:

Delete the words "30 days" and replace with the words "10 days".

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

SC – 13.03 Unit Price Work

Modify the paragraph 13.03.B and replace with the following:

The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparisons of Bids and determining initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities, unless noted otherwise in the specifications.

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

SC – 15.01 Progress Payments

Add the following as paragraph 15.01.B.4

1. The Application for Payment form to be used is EJCDC C-620 or City of Sheboygan Application for Payment Form 00 62 76, or a similar form approved by the Owner

SC - 15.01 Progress Payments

Modify the first sentence of paragraph 15.01.B.1 as follows:

Delete the words "20 Days" and replace with the words "thirty days".

Modify the second sentence of paragraph 15.01.D.1 as follows:

Delete the words "Ten days" and replace with the words "Forty-five days".

SC – 15.06 Final Payment

Add the following as Paragraph 15.06.A.2.f

f. Contractors Affidavit of Compliance (Document 00 65 18)

LIQUIDATED DAMAGES		
Original Contract Amount		
From more than:	To and including:	Calendar Day
$0	$100,000	$180
$100,000	$300,000	$295
$300,000	$500,000	$480
$500,000	$1,000,000	$665
$1,000,000	--------	$990

ARTICLE 19 – LIQUIDATED DAMAGES

SC-19.01 Liquidated Damages Schedule

Add the following as Article 19 – LIQUIDATED DAMAGES

19.01 The following table represents the Liquidated Damages applicable to City of Sheboygan Agreements as referenced in paragraph 4.03 of the Agreement:

LIQUIDATED DAMAGES		
Original Contract Amount		
From more than:	To and including:	Calendar Day
$0	$100,000	$180
$100,000	$300,000	$295
$300,000	$500,000	$480
$500,000	$1,000,000	$665
$1,000,000	--------	$990

PART 1 – GENERAL

1.01 SUMMARY

A. Summary of the Work including work by the City, City-Furnished Products, Work by Others, Sequence of work, Contractors use of the Premises.

B. Work under the project will generally consist of the items stated in 00 11 13 – Advertisement for Bids.

1.02 MILESTONES

A. Do not start work on Calumet Drive, between Geele Avenue and Main Avenue, until 6:00 AM on June 12, 2023

B. Milestone 1:

a. All work identified in Alternate 1, if accepted, must be substantially complete by the date identified in the Agreement.

1.03 PAYMENT PROCEDURES

A. Work specified in the Sections is considered incidental and payment shall be included as part of appropriate unit prices included on Bid Form.

1.04 WORK BY THE CITY

A. None.

1.05 TRAFFIC CONTROL

A. In addition to the sequence of work identified elsewhere in the specifications, schedule work to accommodate the following,

a. Perform work one stage at a time.
b. Install PCMS boards 1 week prior to work occurring and 1 week prior to changing stages.
c. Northbound Stage:
    i. Perform work in the two northbound lanes.
    ii. Maintain one lane of traffic in the southbound direction.
    iii. Do not store trucks or material in the closed southbound lane overnight.
d. Southbound Stage:
    i. Perform work in the two southbound lanes.
    ii. Maintain one lane of traffic in the northbound direction.
    iii. Do not store trucks or material in the closed northbound lane overnight.
e. Maintain Access to all driveways.
f. During the time period from June 30, 2023 to July 5, 2023 one lane of traffic in the northbound direction must remain open at all times.

1.06 PERMITS

A. The following permits have been obtained or will be obtained by the City of Sheboygan prior to the start of Construction:

a. WisDOT – Permission to Detour State Trunk Highway Traffic.

1.07 SUBSURFACE AND PHYSICAL CONDITIONS

A. The reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data, and specifically identifies the Technical Data in the report upon which Contractor may rely are:

a. None.

B. The drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data, and specifically identifies the Technical Data upon which Contractor may rely are:

a. None.

1.08 HAZARDOUS ENVIRONMENTAL CONDITIONS

A. The reports known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and the Technical Data (if any) upon which Contractor may rely are

a. None.

B. The drawings known to Owner relating to Hazardous Environmental Conditions at or adjacent to the Site, and Technical Data (if any) contained in such Drawings upon which Contractor may rely are

a. None.

PART 2 – PRODUCTS

2.01 CITY FURNISHED PRODUCTS

A. None.

PART 3 – EXECUTION

(NOT USED)

END OF SECTION

PART 1 – GENERAL

1.01 SUMMARY

A. Provide all items, articles, materials, operations or method, labor, supervision, equipment, incidentals, taxes and permits necessary to complete the Work as described within the Contract Documents. Install all items furnished by City as mentioned or scheduled within the Contract Documents.

1.02 PAYMENT PROCEDURES

A. Work specified in the Section is considered incidental and payment shall be included as part of appropriate unit prices included on Bid Form.

1.03 SEQUENCE OF WORK

A. Existing facilities shall remain in service and available for public use during construction, unless specified in this or other sections.

1.04 CONTRACTOR USE OF THE PREMISES

A. Limit all operations to City right-of-ways or Easements; restore damaged properties outside of right-of-ways or easements at no cost to the City.

1.05 REFERENCE STANDARDS OR SPECIFICATIONS

A. When other specifications documents are referenced within this project manual any text within those documents discussing contract administration, measurement or payment are not included, unless otherwise specified.

B. Where compliance with two or more industry standards or sets of requirements are specified, and the overlapping of those standards or requirements establishes different or conflicting minimums or levels of quality, the most stringent requirement (which is generally recognized to be also most costly) is intended and will be enforced, unless more detailed language written directly into Contract Documents clearly indicates that a less stringent requirement is acceptable.

1.06 NOTIFICATION TO THE PUBLIC

A. Notify affected residents and businesses a minimum of 7 business days prior to commencing work.

B. Notify affected residents and businesses a minimum of 3 business days prior to closing a driveway.

C. Notify Engineer 7 business days prior to closing a street. Engineer will notify Sheboygan Police, Fire and Ambulance, Sheboygan County Sheriff's Department and Sheboygan Transit.

1.07 ACCESS REQUIRMENTS

A. Maintain access to business and residents at all times, unless otherwise noted.

B. Provide continuous access for emergency vehicles.

C. Comply with Section 01 11 00 – Summary of work for additional access requirements, if any.

1.08 MAIL DELIVERY

A. Work with the U.S. Postal Service to assure mail delivery throughout the project. Some or all mail boxes may have to be moved, temporarily relocated or replaced in a new location. Relocating mail boxes, temporarily or permanently, shall be incidental to the contract, and meet the Postal Service criteria.

1.09 REMOVALS

A. Do not remove or damage any tree, shrub, or other land resource unless indicated for removal.

B. At limits of pavement, curb and gutter, driveway or sidewalk removal provide a full depth saw cut prior to removal. Provide straight, vertical sawcuts at all edges of existing asphalt and concrete materials to be matched by new pavement materials. This shall include curb and gutter, driveway aprons, sidewalk, and street pavement and patching work. If the sawed edges break prior to placement of the new pavement, curb and gutter, driveway or sidewalk, re-sawcut the existing edge.

1.10 PROJECT MEETINGS

A. Conduct bi-weekly progress meetings throughout the construction period. Meetings will be held at the Sheboygan Department of Public Works office.
   1. Items to be discussed at meeting shall include, but not be limited to:
      a. Review of progress since previous meeting.
      b. Review Outstanding Items since last meeting.
      c. Contractors Schedule (3-week look ahead).
      d. Submittal Schedule.

1.11 CONSTRUCTION STAKING

A. Layout of the work is the responsibility of the Contractor.

B. Comply with Section 01 71 23 – Construction Staking

1.12 SUBMITTALS

A. Work-Related Submittals:

   1. Shop Drawings:
      a. As defined in Paragraph 1.01.A.39 of the General Conditions, and in particular includes technical data and drawings specifically prepared for this Project, including fabrication and installation drawings, diagrams, data sheets, schedules, templates, patterns, reports, instructions, design mix formulas, measurements, and similar information not in standard printed form.

2. Product Data:
   a. Includes standard catalog type printed information on manufactured materials, equipment and systems that has not been specifically prepared for this Project, including manufactures' product specifications, manufacturers' instructions, catalog cut sheets, standard wiring diagrams, printed performance curves, mill reports, and standard color charts.
3. Test Results:
   a. Includes source and field quality inspection and test reports, actual performance curves, and certifications of results prepared specifically for equipment, material, and systems provided for this Project.
4. Miscellaneous Submittals:
   a. Work-related submittals that do not fit in previous categories, including schedules, guarantees, warranties, certifications, maintenance agreements, workmanship bonds, survey data and reports, physical work records, copies of industry standards, field measurements, extra materials, keys, and similar information, devices, and materials applicable to Work.

B. Action On Submittals

1. Unsolicited Submittals:
   a. Engineer will return unsolicited submittals without reviewing.
2. `Response:
   a. Marked: "Approved"
      1. Work covered by submittal may proceed provided it complies with Contract Documents. Acceptance of Work depends on that compliance.
   b. Marked: "Approved As Noted"
      1. Work covered by submittal may proceed provided it complies with Engineer's notations or corrections on submittal and with Contract Documents. Acceptance of work depends on that compliance. Resubmittal not required.
   c. Marked: "Not Approved"
      1. Work covered by submittal does not comply with Contract Documents. Do not proceed with Work covered by submittal.
      2. Prepare new submittal complying with Contract Documents and Engineer's notations.
   d. Marked: "Filed for Record"
      1. Work covered by the submittal does not require approval.
      2. Submitted documentation is filed with the project records.

1.13 MANUFACTURERS' DIRECTIONS

A. Manufactured articles, materials and equipment shall be stored, commissioned, operated, applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer, unless specified to the contrary.

B. Wherever specifications explicitly call for work to be performed or materials to be installed in accordance with the manufacturer's directions, furnish copies in accordance with the Submittals paragraphs of the specification section before installing the material or performing the work.

1.14 PROJECT OBSERVATION

A. All work under this proposal shall be subject to the observation by authorized personnel of the Engineer, and all findings, determinations and recommendations by the Engineer or its duly authorized agents shall be final and conclusive.

B. Provide the Engineer a three business day notice prior to the start of any work on the project. Any work done without three business day notice will be subject to non-payment. If observation of the work is not required, the Engineer shall inform the foreman and the work will be reviewed upon completion.

1.15 INCIDENTAL ITEMS OF WORK

A. Any items of work shown on the drawings or required by the specifications but not specifically included in the Bid shall be considered incidental items of work. The cost of incidental items of work shall be included in the prices bid for related work.

1.16 PERMITS

A. Acquire all necessary City permits. Contact the Building Inspection Department at 920-459-3477 to determine the associated fees and shall be incidental to the contract. These permits shall be obtained at the City of Sheboygan Building Inspection Department located on the 1st Floor of City Hall, 828 Center Avenue, Sheboygan, Wisconsin.

B. Comply with the City licensing requirements established by the City of Sheboygan Building Inspection Department for plumbing, HVAC, electrical and building construction. These applications are obtained in the Building Inspection Department, located on the 1st Floor of City Hall, 828 Center Avenue, Sheboygan, Wisconsin.

C. Comply with permits, if any, identified is Section 01 11 00 – Summary of Work.

1.17 EXISTING FACILITIES

A. Provide a minimum of a 3 business day notice to owners of existing utilities prior to excavation activities.

B. The requirements of Section 182.0175 of the Wisconsin State Statutes apply to work under this contract.

1.18 DELIVERY, STORAGE, AND HANDLING

A. Adjust weight, type, capacity, haul routes, and method of operation of hauling vehicles such that there is no damage to existing streets, subgrade, or base course.

B. Engineer has final authority to revise haul routes, procedures, and operation times.

C. Keep haul routes clean and free of construction material and debris.

D. Construction equipment, materials and stockpiles shall not be left within 100 feet of any commercial establishment during non-working hours or when no working is occurring.

E. Parking restrictions shall be obeyed at all times in the vicinity of schools.

1.19 WATER UTILITY AND HYDRANT USE

A. Do not operate any hydrants, valves or other apparatus owned by the Sheboygan Water Utility.

B. Should water from hydrants be needed during construction, the contractor shall apply, in person, for a hydrant use permit at the Sheboygan Water Utility Office, 72 Park Avenue. Any damage to Water Utility apparatus shall be repaired at the Contractor's expense.

C. Coordinate with Sheboygan Water Utility to repair any damaged water service laterals or water mains. Sheboygan Water Utility will determine extent of repairs required. If a lead water service is exposed contract the Sheboygan Water Utility within 1 hour.

1.20 SANITARY FACILITIES

A. Provide and maintain sanitary chemical toilets located where approved and in sufficient number required for the work force employed by Contractor.

1.21 PUBLIC RECORDS LAW

A. The City of Sheboygan is subject to the Wisconsin public records law. Any submissions to the City in connection with this project may be disclosed in response to a public records request.

PART 2 – PRODUCTS

2.01 CITY FURNISHED PRODUCTS

A. City will furnish materials as specified in Section 01 64 00 – City Furnished Products of the Project Specific Manual. If section is not included in the Project Specific Manual, then no products will be furnished by City.

PART 3 – EXECUTION

(NOT USED)

END OF SECTION

PART 1 – GENERAL

1.01 SUMMARY

A. Section Includes:
1. Quality assurance.
2. Procedures to measure and report the quality and performance of the Work.
3. Requirements for Contractor Cooperation
4. Payment.

1.02 PRICE AND PAYMENT PROCEDURES

A. Measurement and Payment:
1. All Work and costs of this Section shall be incidental to the Project and included in the Total Base Bid.

1.03 SUBMITTALS

A. Prior to start of Work, submit testing laboratory name for various specified tests for approval by Engineer.

B. After each inspection or test, submit copies of report to Engineer no later than 3 business days after completion of inspection or test. Include:
1. Test date
2. Project Number and Title
3. Inspector or Tester
4. Date and time of sampling, testing or inspection
5. Location of inspection or test
6. Identification of product and applicable Specification Section.
7. Test Results
8. Conformance with Contract Documents.

C. Manufacturer's certificates of quality control or performance.

1.04 WORKMANSHIP

A. Comply with industry standards of the region, except where more restrictive tolerances or specified requirements indicate more rigid standards or more precise workmanship.

1.05 TESTS AND INSPECTIONS

A. Conform to the requirements of the General Conditions, except as modified herein.

B. Notify Engineer 48 hours prior to expected time for operations requiring tests and inspections.

C. Provide incidental labor and facilities to obtain and handle samples at Site or source, transport samples to laboratory, and facilitate tests and inspections for storing and curing of test samples.

D. Owner shall pay for all testing not identified in the specifications. Any test identified in the specifications is the responsibility of the contractor.

1. If any test fails to meet requirements, reimburse Owner for cost of all subsequent tests to ensure compliance.

E. Notify Engineer of pit and scale location and other correlated items prior to beginning Work.

1.06 LABORATORY RESPONSIBILITIES

A. Test samples and perform field tests.

B. Provide qualified personnel. Cooperate with Engineer and Contractor in performance of services.

C. Ascertain compliance with the requirements of the Contract Documents.

D. When requested by Engineer, provide interpretation of test results.

1.07 LIMITS ON TESTING LABORATORY AUTHORITY

A. Laboratory may not release, revoke, alter, or enlarge on requirements of Contract Documents.

B. Laboratory may not approve or accept any portion of the Work.

C. Laboratory may not assume any duties of Contractor.

D. Laboratory has no authority to stop Work.

1.08 MANUFACTURER'S CERTIFICATES

A. If requested by Engineer, submit manufacturer's certificate with shop drawings certifying that products meet or exceed specified requirements executed by responsible officer.

1.09 MANUFACTURER'S FIELD SERVICES

A. Provide qualified representative to observe field conditions; conditions of surfaces and installation; quality of workmanship; start-up of equipment; and test, adjust, and balance of equipment.

PART 2 – PRODUCTS

(NOT USED)

PART 3 – EXECUTION

(NOT USED)

END OF SECTION

PART 1 – GENERAL

1.01 SUMMARY

A. This Section identifies detour marking, warning signs and devices, temporary traffic signals, temporary pavement markings, guardrails, handrails, temporary fencing, flagpersons, and other equipment and materials required to protect vehicular and pedestrian traffic from construction activities.

B. Traffic regulations shall comply with chapters and Sections of the referenced documents. References to measurements and payments in the reference documents are superseded by this Section.

1.02 NOTIFICATIONS, ACCESS AND PROJECT REQUIREMENTS

A. Comply with Section 01 11 00 – Summary of Work

B. Comply with Section 01 14 00 – Work Restrictions.

1.03 REFERENCE STANDARDS

A. WisDOT: Wisconsin Department of Transportation

B. WisDOT Specification: State of Wisconsin, Department of Transportation, "Standard Specifications for Highway and Structure Construction", latest Edition.

C. WMUTCD: Wisconsin Manual on Uniform Traffic Control Devices, latest edition.

D. MUTCD: Federal Highway Administration, Manual on Uniform Traffic Control Devices, latest edition. In Wisconsin, this includes the latest edition of Wisconsin Supplement to Federal MUTCD.

E. Maintaining Agency: Agency having maintenance jurisdiction over roadway which may include WisDOT, and the City of Sheboygan.

1.04 SUBMITTALS

A. Submit Product Data in accordance with Section 01 33 00 – Submittal Procedures.
   1. Include in Submittal:
      a. Traffic control plan and detour, if required.
      b. Manufacturer's written instructions, including storage, handling, installation, and starting of product.

1.05 PAYMENT PROCEDURES

A. Unit Prices:
   1. Cost for traffic control shall be paid according to the various unit prices included in the Bid. If individual items are not included in the Bid, the cost of this work shall be considered incidental to adjacent utility and roadway construction work.

PART 2 – PRODUCTS

2.01 MATERIALS

A. Conform to the following material requirements:
   1. WMUTCD
   2. MUTCD
   3. WisDOT Specifications

2.02 PERSONNEL

A. Flagpersons shall be trained in accordance with State of Wisconsin regulations.

PART 3 – EXECUTION

3.01 GENERAL

A. Perform all work in accordance with WisDOT, WMUTCD and MUTCD requirements and as the shown on the plans.

END OF SECTION

PART 1 – GENERAL

1.01 SUMMARY

A. Maintain work areas free from environmental pollution that would be in violation of federal, state or local regulations.

B. Permits obtained by Owner are list in Section 01 11 00 – Summary of Work. All other permits not listed are to be obtained by Contractor.

1.02 PAYMENT PROCEDURES

A. Work specified in this section is considered incidental and payment shall be included as part of appropriate unit prices included in Bid Form.

PART 2 – PRODUCTS

(NOT USED)

PART 3 – EXECUTION

3.01 GENERAL

A. Confine construction activities to areas defined on the Drawings or elsewhere in the Contract Documents.

B. Grade site to drain. Maintain excavations free of water.

C. Protect site from puddling or running water.

1.03 ARCHAEOLOGICAL FINDS DURING CONSTRUCTION

A. There are no known archaeological remains at the Project site.

B. Should skeletons, artifacts, or other archaeological remains be uncovered:

2. Suspend operations of this Contract at the site of discovery.
3. Continue operations in other areas.
4. Notify Engineer immediately of the finding.

C. Should the discovery site require archaeological studies resulting in delays and/or additional work, Contractor will be compensated by an adjustment under pertinent provisions of the Contract.

4.03 PROTECTION OF STORM SEWERS

A. Prevent construction materials, concrete, earth or other debris from entering existing storm sewers or sewer construction.
B. Inlet protection required for all storm sewers with project limits.

4.04 PROTECTION OF WATERWAYS

A. Comply with federal, state and local regulations regarding pollution of lakes, streams, rivers or wetlands by dumping of refuse, rubbish, dredge material or debris.

B. Disposal of materials into waters of state must conform to requirements of Wisconsin DNR.

C. Comply with Wisconsin Department of Transportation "Product Acceptability List" (PAL), current edition and Wisconsin Department of Natural Resources Storm Water Management Technical Standards.

END OF SECTION

CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Alternates		
		Section:	01 71 23		
		Bid Number:	2478-23	Page:	1 of 1

PART 1 – GENERAL

1.01 SUMMARY

A. Section includes Alternates to Work defined in Contract Documents.

B. All Alternates described in this Section are required to be reflected on the Bid form as submitted by the Bidder.

C. Do not submit Alternates other than as described in this Section.

1.02 DEFINITIONS

A. Alternate: An amount proposed by Bidder and stated on Bid form for certain Work defined in Bidding Requirements that may be added to or deducted from Contract Price if Owner decides to accept corresponding change in either amount of construction to be completed, or in materials, equipment, or installation methods described in Contract Documents.

B. Cost: Net addition or deduction from Contract Price to incorporate Alternate into Work. No other adjustments will be made to Contract Price.

PART 2 – PRODUCTS

2.01 DESCRIPTION OF ALTERNATES

A. Alternate 1, Items with Item Code Alt 1: All times has shown on the plan titled “South Pier Drive - Plaza”

B. Alternate 2, Items Item Code Alt 2: All times has shown on the plan titled “Calumet Drive, Outfall Near Mueller Road”.

PART 3 – EXECUTION

(NOT USED)

END OF SECTION

PART 1 – GENERAL

1.01 SUMMARY

A. Provide such construction staking services as are required for proper completion of the Work including, but not necessarily limited to:

1. Establishing, staking, and maintaining lines and grades for the proposed work in accordance with the contract documents.
2. Identification of structures and facilities shown on the drawings.
3. Locations, if any, of facilities needed to refine or revise the design.

B. CADD files of the Drawings will be provided after contract is awarded. If a conflict exists between the CADD files and the printed, as bid, plan sheets, the plan sheets take precedence over the CADD files.

C. Benchmarks provided by Engineer or Designer are to establish primary vertical control for Work and are indicated on Drawings.

D. Monuments or references for primary horizontal control provided by Engineer or Designer and are for construction of Work are indicated on Drawings.

1.02 Payment Procedures

1. Work specified in this section is considered incidental and payment shall be included as part of appropriate unit prices included in Bid Form.

1.03 SUBMITTALS

A. Submit Cut Sheets, Grade Sheet, or similar documents generated through the staking process to Engineer within 24 hours of staking.

B. Upon request of the Engineer, submit:

1. Qualifications of persons proposed to be engaged for field engineering services.
2. Documentation and data developed pursuant to the requirements of this section.

1.04 QUALITY ASSURANCE

A. Use adequate numbers of skilled workers thoroughly trained and experienced in the necessary crafts and completely familiar with the specified requirements and methods needed for proper performance of the work of this Section.

B. Protect lot corners and survey monuments throughout Project area. If such corners and monuments are damaged by Contractor, replace by Wisconsin Professional Land Surveyor at Contractor's expense.

1.05 PROCEDURES

A. In addition to procedures directed by the Contractor for proper performance of the Contractor's responsibilities the Contractor or his representative shall:

1. Locate and protect primary control points before starting work on the site.
2. Preserve permanent reference points and staking during progress of the Work.
3. Contractor shall replace primary control points lost or destroyed according to the original survey control.
4. Provide supplemental control points as required to complete the work.

C. Check accuracy of line and grade by visual inspection, checks between stakes, and periodic checks (with surveying equipment) between primary control monuments and stakes.

D. Bear sole responsibility for correct transfer of construction lines and grades from Benchmarks and Monuments.

E. Provide an accurate pipe laser for alignment and grade control of all mains. The contractor shall be responsible for the maintenance, set-up, accuracy and operation of the laser and shall make periodic checks of the laser to ensure its accuracy. Standby lasers shall be provided, as necessary. If required by Engineer, Contractor shall provide blowers in the pipe line to maintain the accuracy of the laser during operation. The laser shall be of a quality to provide accurate alignment and grade and shall be subject to the approval of Engineer. Provide Engineer with a certificate of calibration, if requested.

F. Provide a transit for the accurate alignment of all mains. The contractor shall be responsible for the maintenance, set-up, accuracy and operation of the transit. The transit shall be of a quality to provide accurate alignment and shall be subject to the approval of Engineer. Provide Engineer with a certificate of calibration, if requested.

PART 2 – PRODUCTS

(NOT USED)

PART 3 – EXECUTION

(NOT USED)

END OF SECTION

PROJECT MAN					
CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Closeout Requirements		
		Section:	01 78 00		
		Bid Number:	2478-23	Page:	1 of 2

PART 1 – GENERAL

1.01 SUMMARY

A. Section includes requirements for Project Closeout and Final Payment including:
   1. Submittals,
   2. Inspections Procedures,
   3. Record Document Submittals.

1.02 PAYMENT PROCEDURES

A. Work specified in this section is considered incidental and payment shall be included as part of appropriate unit prices included in Bid Form.

1.03 SUBSTANTIAL COMPLETION

A. Comply with section 15.03 of the General Conditions.

1.04 FINAL COMPLETION

A. Comply with Section 15.05 and 15.06 of the General Conditions

1.05 RECORD DRAWINGS

A. Submit to Engineer a set of record documents as described in paragraph 7.11.A of the General Conditions and Section 01 78 39 – Project Record Documents.

PART 2 – PRODUCTS

(NOT USED)

PART 3 – EXECUTION

3.01 PROJECT CLOSEOUT CHECKLIST

A. The project closeout checklist at the end of this document will be used by the Engineer to document the closeout status of the project.

END OF SECTION

PROJECT MAN...					
CITY OF SHEBOYGAN PUBLIC WORKS	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Closeout Requirements		
		Section:	01 78 00		
		Bid Number:	2478-23	Page:	2 of 2

PROJECT CLOSEOUT CHECKLIST (Based on 2018 EJCDC General Conditions of the Contract)

Contract Status	Item to be Competed:	Reference	Completed/Submitted By:	Date Completed:
Substantial Completion				
	Letter requesting Substantial Completion	GC 15.03.A	Contractor	
	Draft of Punch List Items to be completed or corrected before final payment	GC 15.03.A	Contractor	
	Inspect work	GC 15.03.B	Owner/Contractor/Engineer	
	Notification if not ready for Substantial Completion	GC 15.03.B	Engineer/Owner	
	Certification of Substantial Completion Issued	GC 15.03.C	Engineer/Owner	
			Date of Substantial Completion	

Final Completion				
	Letter requesting Final Completion	GC 15.05.A	Contractor	
	Inspect work	GC 15.05.A	Owner/Contractor/Engineer	
			Date of Final Completion	

Final Payment				
	Submit Record Drawings	GC 15.06.A.1 GC 15.06.A.2.a GC 7.12 SC 7.12 01 78 39	Contractor	
	Consent of Surety to Final Payment	GC 15.06.A.2.b	Contractor	
	List of Pending Change Proposals and Claims	GC 15.06.A.2.d	Contractor	
	Lien Waivers	GC 15.06.A.2.e	Contractor	
	Contractor's Affidavit of Compliance	SC 15.06.A.2.f	Contractor	
	Final Pay Application	GC 15.06.A.1	Contractor	
	Notice of Acceptability	GC 15.06.C	Engineer	
	Final Payment	GC 15.06.E	Owner	
			Date of Final Payment	

PART 1 - GENERAL

1.01 SUMMARY

A. Throughout progress of the Work, maintain an accurate record of changes in the Contract Documents.

1.02 PAYMENTS

A. Work specified in this section is considered incidental and payment shall be included as part of appropriate unit prices included in Bid Form.

1.03 SUBMITTALS

A. Prior to submitting request for final completion, deliver one complete marked up set of Drawings to Engineer for use in preparation of record drawings.

PART 2 – PRODUCTS

(NOT USED)

PART 3 - EXECUTION

3.01 RECORD DRAWINGS

A. Maintain one record set of Drawings legibly annotated to show all changes made during construction and the final location of all underground piping and utilities.

1. The marked up set of Drawings shall be a compilation of all of the work completed. Individual sets from the various subcontractors will not be accepted.
2. The marked up set of Drawings shall graphically show the changes. Reference to RFI's, Change Orders will not be accepted.
3. The Record Drawings will show
   a. Grade changes, changes in elevations for footings, culverts, manholes etc.
   b. New or revised LC, PC, PI, and PT.
   c. Relocated driveway entrances.
   d. Changes in size, location, and slope of pipes.
   e. Changes to invert elevations.
   f. Undercut areas.
   g. Areas of geotextile fabric or geogrid.
   h. Omissions, errors and discrepancies discovered during construction.
   i. Features added, revised, or deleted by contract change orders.
   j. Corrected or new bench marks. Cross out those that no longer exist.
   k. Changes to drainage.
   l. Material type, size, and manufacturer where optional materials are allowed by specifications.
   m. Final dimensions, elevations, details, sizes, numbers, lengths, locations, etc., if different from the original plan.
   n. Locations of private utilities, if different from original plans.
   o. Any other information necessary to document site conditions.
4. Graphically depict changes by modifying or adding to plans, and details Using a red colored pencil or pen.

5. Wherever a revision is made, also make changes to related section views, details, legend, profiles, plans and elevation views, schedules, notes and call out designations, and mark accordingly to avoid conflicting data on all other sheets.
6. For deletions, cross out all features, data and captions that relate to that revision.

END OF SECTION

PART 1 – GENERAL

1.01 SUMMARY

A. Provide erosion control devices at the locations shown on the drawings and as specified herein.

B. Maintain the work site as specified herein.

C. This is a standard City Specification. Materials and Items of work in this specification may not be required for all projects. Refer to Bid form and Plans to determine materials and items of work required.

1.02 DEFINITIONS

A. WisDOT Specs: Wisconsin Department of Transportation Standards Specifications for Highway Construction, latest Edition.

B. WisDOT PAL: Wisconsin Erosion Control Product Acceptability List (PAL), latest edition.

C. WDNR: Wisconsin Department of Natural Resources.

D. Technical Standards: Wisconsin Department of Natural Resources Storm Water Management Technical Standards

1.03 PERMITS

A. Comply with permits, if any, identified is Section 01 11 00 – Summary of Work.

1.04 PAYMENT PROCEDURES

A. Cost for erosion control shall be paid according to the various unit prices included in the Bid. If individual items are not included in the Bid, the cost of this work shall be considered incidental to adjacent utility and roadway construction work.

B. Site Maintenance, unless otherwise specified, is incidental to adjacent utility and roadway construction work.

1.05 QUALITY ASSURANCE

A. Erosion Control products not included in WisDOT PAL are not acceptable.

B. Submit product data in accordance with Section 01 14 00 – Work Restrictions.

PART 2 – PRODUCTS

2.01 WisDOT PAL

A. All products shall be as specified in current version of WisDOT PAL and WDNR Technical Standards.

PART 3 – EXECUTION

3.01 EROSION CONTROL REQUIREMENTS

A. Contractor shall not begin work until after initial erosion and sediment control devices are in place and approved by Engineer.

B. Comply with notes, if any, including the drawings.

C. Erosion control permits establish minimum erosion control measures required.

D. Furnish additional erosion control measures as needed based on the work plan and to adjust to field conditions.

E. Inspect all manholes and catch basins weekly or when requested by Engineer for materials that may be deposited in them. Remove and dispose of deposited material.

F. All erosion control measures shall be implemented in accordance with WDNR Technical Standards, available at: http://dnr.wi.gov/topic/stormwater/standards/const_standards.html

G. Construct temporary tracking at all vehicle entrances/exits to the site. Each pad shall be 25 feet wide and a minimum of 50 feet in length. The pads will be at least 12-inch thick consisting of 3 inches to 6 inches clear washed stone. Install tracking pads prior to any traffic leaving the site. Clean up sediment that leaves the site as soon as practical, no later than the end of the work day. Maintain tracking pad by scraping or top-dressing with additional aggregate.

H. Install silt fence parallel to the contours located downslope from the construction areas. Remove sediment and properly disposed of when the deposits reach half the height of the fence.

I. Install inlet protection in all downslope drainage inlets. Remove sediment and properly disposed of and restore to its original dimensions when the sediment has accumulate to half the design depth of the device.

J. Should dust be generated, it will be controlled by spraying the exposed grade with water. Water shall be applied at rates so that runoff does not occur.

K. The use, storage and disposal of construction materials such as chemicals, cement, compounds and other construction/building materials used on the site shall be managed to prevent their transport off site. All waste materials shall be properly disposed of in compliance with all Federal, State and Local requirements.

L. Stabilize the site with topsoil, permanent seed, fertilizer, mulch or erosion mat as detailed on the drawings to establish vegetation as soon as site disturbing activities have been completed. All seeded areas shall be watered for the first six weeks. Watering shall take place whenever more than 7 days of dry weather elapse. Stockpiles that are inactive for more than 14 consecutive days will be stabilized. Areas of exposed soils that will not see any land disturbing activities for a period greater than 30 days will receive temporary stabilization.

M. Excavated trench material shall be placed on the high side of the trench. Immediately following the pipe installation, the trench shall be backfilled, compacted and stabilized at the end of the working day.

N. Construction site diversion shall be used to intercept, divert and safely convey runoff on the site in order to divert clean water away from disturbed areas or redirect sediment laden waters to an appropriate sediment control device. Sediment shall be removed and properly disposed of once the deposits reach half the height of the diversion structure.

3.02 SITE MAINTENANCE

A. Maintain the project area and surrounding area by removing waste and rubbish on a daily basis.

B. Do not flush out concrete trucks or any other equipment onto existing completed public streets, walks, gutters, terraces, or boulevards.

C. At the completion of the work, remove all hubs, lath, signs, excess excavation and construction materials. Sweep roadway surface to remove surface contaminants and other debris.

D. Do not drag, push, or scrape material across or along the finished pavement or surface course.

E. Before requesting acceptance of the work, clean out soil, silt, or debris of drainage installations and structures constructed under the contract. Remove materials in other drainage installations or structures due to contractor's operations.

END OF SECTION

`PART 1 – GENERAL

1.01 SUMMARY

A. Provide base aggregate, concrete pavement, concrete sidewalk, concrete curb and gutter, concrete driveway, pedestrian curb and asphalt pavement at the locations shown on the drawings.

B. This is a standard City Specification. Materials and Items of work in this specification may not be required for all projects. Refer to Bid form and Plans to determine materials and items of work required.

1.02 DEFINITIONS

A. WisDOT Specs: Wisconsin Department of Transportation Standards Specifications for Highway Construction, latest Edition.

1.03 PAYMENT PROCEDURES

A. Unit Prices:
   1. Payment for Base Aggregate is on a per ton or square yard basis furnished as specified in the bid form.
   2. If Base Aggregate is included in an item of work, as identified on the bid form, payment for providing base aggregate is included in the unit price for that item.
   3. Payment for Subgrade Reinforcement is on a square yard basis furnished specified on the bid form.
   4. Payment for Breaker Run is on a per ton or square yard basis furnished and compacted as specified in the bid form.
   5. Payment for Concrete Pavement, Concrete Sidewalk and Concrete Driveway is on square yard basis furnished as specified in the bid form.
   6. Payment for Concrete Curb and Gutter and Pedestrian Curb is on linear foot basis furnished as specified in the bid form.
   7. Payment for Asphalt Pavement is on a per TON basis furnished as specified in the bid form.
   8. Include the cost of work specified in this section in the appropriate Bid Item.
   9. Include cost of joint sealing in the appropriate Bid Items.
   10. Payment for pavement marking is on a per LF basis furnished as specified on the bid form.

1.04 SUBMITTALS

A. Submit Product Data in accordance with Section 01 14 00 – Work Restrictions.
   1. Include in Submittal:
      a. Source of Aggregate
      b. Production Test Results
      c. Test Results.

PART 2 – PRODUCTS

2.01 BASE AGGREGATE MATERIALS

A. Furnish aggregate from WisDOT approved sources.

B. Conform to WisDOT Spec Section 305 for gradation requirements.
   1. Place 1.25-inch gradation under all concrete pavement, concrete curb and gutter, asphalt pavement, and driveways.
   2. Place 3/4-inch gradation under all sidewalks.

2.02 SUBGRADE REINFORCEMENT

A. Tensar TraiAx TX140 Geogrid.

2.03 BREAKER RUN

A. Furnish aggregate from WisDOT approved sources.

B. Maximum size: 6-inches

2.04 CONCRETE

A. Furnish aggregate from WisDOT approved sources.

B. Conform to WisDOT Specification Section 501.

2.05 CURB RAMP DETECTABLE WARNING FIELDS

A. Furnish Neenah Foundry R-4984-24B (Natural Patina)

2.06 JOINT SEALER

A. Hot-Poured elastic joint sealer conforming to ASTM D3405

2.07 ASPHALTIC MIX, APSHALTIC MATERIAL AND TACK COAT

A. Furnish aggregate from WisDOT approved sources.

B. Conform to WisDOT Specification Sections 450, 455 and 460.

C. Mix Design and thickness as shown drawings.

2.08 PAINT

A. Furnish paint from WisDOT approved sources.

2.09 SEED, FERTILIZER, AND MULCH

A. All shall be placed by hydro-seed methods.
B. Seed Mixture: Conform to WisDOT Standard Specifications Sec. 630.2.1.5.1.1.2, #40. Apply at a rate of 2 lbs/1000 sq. ft.
C. Mulch: Cellulose fiber mulch applied at the rate of 1500 lbs/acre.
D. Tackifier: Organic tackifier applied at the rate of 70 lbs/acre.
E. Fertilizer: Conform to WisDOT Standard Specifications Sec. 629 for Type Fertilizer. Apply at rate of 7lbs/ 1000 sq. ft.
F. Hydro-seeding application equipment shall incorporate an agitation system that will suspend and homogeneously mix the slurry.

PART 3 – EXECUTION

3.01 SUB BASE PREPARATION

A. Check subbase for soundness and elevations. Prepare subbase for base course placement by scraping down or filling irregularities. Compact subbase prior to base course placement.

B. Proof roll the prepared subbase. Make multiple passes to test entire area. Remove and replace areas where displacement in base (yielding, heaving, cracking or other signs of instability), in the opinion of the Engineer, is more than 1 inch under a fully-loaded tandem-axle dump truck. Excavate and backfill displaced areas with new base course material, compact, and retest. Do not begin placement of base course until deficient areas have been corrected.

3.02 BASE AGGREGATE PLACEMENT

A. Conform to the requirements of WisDOT Spec Section 305 for placement requirements and as modified herein.

B. Base aggregate shall extend 36-inches outside pavement and curb and gutter, or as specified on the drawings.

C. Existing base aggregate may be re-used with the written approval of the Engineer.

D. Maintain drainage during and after placement of base aggregate.

3.03 CONCRETE FORMS

A. Construct forms to the exact sizes, shapes, lines, and dimensions shown, and as required to obtain accurate alignment, location, grades, and level and plumb work in the finished concrete. All forms must be inspected and approved by the Engineer or his authorized representative, prior to placement of concrete.

B. Forms shall be straight and of sufficient strength to resist the pressure of the concrete without bending, tipping, and other deformation. Bracing and staking of forms shall be such that the forms remain in both horizontal and vertical alignment until their removal.

C. Forms shall not be removed from freshly placed concrete until it has hardened sufficiently to resist spalling, cracking or any other damage.

D. Curb Machines may be used to construct curb provided the curb can be constructed to the requirements of the specifications.

3.04 CONCRETE PAVEMENT AND DRIVEWAYS

A. Construct Concrete Pavement in accordance with WisDOT Spec Section 415 at the location and to the thicknesses the plans show and as modified herein.

B. Seal all joints in concrete pavement:

1. Place joint sealer in accordance to the manufacturer's instructions. All longitudinal, transverse, and construction joints shall be sealed prior to allowing any traffic on the pavement.
2. Joints shall not be sealed until they have been inspected and approved by the Engineer.
3. Should any spalling of the sawed edges occur that would in the judgment of the Engineer detrimentally affect the joint-sealing ability, such spalled areas shall be patched with an approved epoxy which shall be allowed to harden prior to installation of the joint seal. Each patch shall be true to the intended neat lines of the finished cut joint.
4. Application of the joint sealer shall be made when the joint surfaces are clean and dry. Joints shall be cleaned and dried to accept the sealing material in accordance to the manufacturer's recommendations.
5. All longitudinal and transverse concrete pavement joints, including the joint between the pavement and the curb and gutter and any joints in the curb and gutter shall be sealed. The sealant shall be tooled flush with or recessed up to a maximum of 1/16" ± 1/64" below the concrete surface. Overbonding will not be allowed. Material remaining on the surface of the pavement shall be removed without damaging the sealant in the joint.

3.05 CONCRETE SIDEWALK

A. Construct Concrete Sidewalk in accordance with WisDOT Spec Section 602 at the location and to the dimensions the plans show.

B. Construct Curb Ramp Detectable Warning Fields in accordance with WisDOT Spec Section 602 at the locations the plans show.

3.06 CONCRETE CURB AND GUTTER AND PEDESTRIAN CURB

A. Construct Concrete Curb and Gutter and Pedestrian Curb in accordance with WisDOT Spec Section 601 at the location and to the dimensions the plans show and as modified herein.

B. When constructed adjacent to new or existing concrete pavement, seal all joints in accordance with the Paragraph 3.04.B of this specification section.

3.07 ASPHALT PAVEMENT

A. Construct Asphalt Pavement in accordance with WisDOT Spec Sections 450, 455 and 460 at the location and to the thicknesses the plans show.

3.08 MILLING

A. Mill existing roadway in accordance with WisDOT Spec Section 204 at the location and to the depth the plans show.

3.09 PAVEMENT MARKINGS

A. Contractor to provide pavement markings as delineated in the construction documents in accordance with the Wisconsin Department of Transportation's Standard Specification.

END OF SECTION

PART 1 – GENERAL

1.01 SUMMARY

A. Section Includes:

1. Precast concrete manholes, catch basins, and inlets.
2. Castings and other components.
3. Adjusting concrete manholes, catch basins, and inlets.

1.02 DEFINITIONS

A. Standard Specifications: Standard Specifications for Sewer and Water Construction In Wisconsin, December 22, 2003, including Addenda 1 and 2, dated December 22, 2004 and April 22, 2008, respectively.
B. ASTM: American Society for Testing and Materials

1.03 PAYMENT PROCEDURES:

A. Unit Prices:
1. Payment for Manholes, Inlets, and Catch Basins are on a per unit EACH basis furnished as specified in the bid form.
2. Payment for adjusting Manholes, Inlets, and Catch Basins installed under the contract is incidental to the cost of the Manholes, Inlets, and Catch Basins.
3. Adjusting Frames, Lids, and Covers for Manholes, Inlets, and Catch Basins installed under the contract are incidental to the cost of the Manholes, Inlets, and Catch Basins.
4. Payment for Adjusting Manholes, Inlets, and Catch Basins not installed as part of this contract is on a per EACH basis as specified below:
   a. If the finished rim elevation to the top of unmodified Manholes, Inlets, or Catch Basin is equal to or less than 18-inches, payment will be as a Minor Adjustment.
   b. If the finished rim elevation to the top of unmodified Manholes, Inlets, or Catch Basin is greater than 18-inches, payment will be as a Major Adjustment.
   c. If the adjustment requires removal or replacement of a cone section or riser section, payment will be made by a separate bid item per EACH location.
   d. Payment for Adjusting Manholes, Inlets, and Catch Basins does not include the cost of the Frame, Lids, or Covers.
5. Payment for Frames, Lids, and Covers for Manholes, Inlets, and Catch Basins to be replaced under this contract is on a per EACH basis furnished as specified in the bid form.
6. Payment for Adjusting Manhole Covers for HMA Paving
7. Payment for Chimney Seals is on a per EACH basis furnished for each manhole as specified in the bid form.
8. Payment for External Joint Seals is on a per EACH basis furnished for each manhole as specified in the bid form.
9. Include the cost of work specified in this section in the appropriate Bid Item.

1.04 SUBMITTALS

A. Product data:

1. Manufacturer's specifications and other data needed to prove compliance with specified requirements.

2. Manufacturers recommended installation procedures.
3. Provide certification reports attesting that materials supplied meet referenced specifications.
4. Shop drawings for precast structures showing elevations and dimensions.

B. Submit in accordance with Section 01 14 00 – WORK RESTRICTIONS.

1.05 HANDLING AND DELIVERY OF MATERIALS

A. Inspect materials during unloading process and notify Engineer of cracked, flawed or otherwise defective material,

1.06 MAINTAINING SEWER SYSTEM

A. Maintain flow in sewers on continuous basis while construction is underway.
B. Plug sewers with inflatable plug. Provide pumps, portable generators, hoses, and related items appurtenant to the Work.
C. Sewer service lines to individual users may be disconnected for a period not to exceed 4 hours.
D. Secure manholes and structures immediately after completion or before suspension of operations at the end of working day with casting or suitable alternative device.
E. Mark structures susceptible to being hit by construction or vehicular traffic.

1.07 QUALITY ASSURANCE

A. Individual pre-cast manhole sections may be rejected because of any of the following reasons:

1. Fractures or cracks passing through shell, except for single end crack not exceeding depth of joint.
2. Defects indicating imperfect proportioning, mixing, and molding.
3. Surface defects indicating honeycombed or open texture.
4. Internal diameter of section varying more than 1% from nominal diameter.
5. Any continuous crack having surface width of 0.01 in. or more and extending for length of 12 in or more, regardless of position.

PART 2 - PRODUCTS

2.01 SANITARY SEWER PRECAST CONCRETE MANHOLES

A. Precast Sections:

1. Conform to ASTM C478.
2. Dimensions: As indicated on Drawings.
3. Structure Bases:
   a. Pre-cast integral with bottom section of manhole.
   b. Extend base 6" beyond outside of barrel section.
   c. Pre-cast invert.
   d. Outside Drop: Manhole bottom section to be pre-cast as monolithic base containing lower elbow for drop.
4. No "see through" lift holes.
5. No Manhole Steps.

6. Eccentric Cone.
7. Adjustment: Total height of adjustment shall be a minimum of three (3) inches and a maximum of six (6) inches.
8. Joints between Precast Sections: Rubber o-ring gasket type or Butyl Rubber Sealant.
9. Pipe to Manhole Connection:
   a. Rubber boot with stainless steel band.
   b. Watertight.
10. Mark each precast section with name or trademark of manufacturer and date of manufacture. Marking shall be indented into manhole section or painted with waterproof paint.

2.02 STORM SEWER PRECAST CONCRETE MANHOLES

A. Precast Sections:

1. Conform to ASTM C478.
2. Dimensions: As indicated on Drawings.
3. Structure Bases:
   a. Pre-cast integral with bottom section of manhole.
   b. Extend base 6" beyond outside of barrel section.
   c. No Pre-cast invert.
4. No "see through" lift holes.
5. No Manhole Steps.
6. Eccentric Cone or flat-top.
7. Adjustment:
   a. Eccentric Cone: Total height of adjustment shall be a minimum of three (3) inches and a maximum of six (6) inches.
   b. Flat-top: Total height of adjustment shall be a minimum of eight (8) inches and a maximum of twelve (12) inches.
8. Joints between Precast Sections: Rubber o-ring gasket type or Butyl Rubber Sealant.
9. Pipe to Manhole Connection:
   a. Fill Annular Space with Cementitious Non-Shrink Grout.
   b. Watertight.
10. Mark each precast section with name or trademark of manufacturer and date of manufacture. Marking shall be indented into manhole section or painted with waterproof paint.

2.03 STORM SEWER PRECAST INLETS

A. Precast Sections:

1. Conform to ASTM C478.
2. Dimensions: As indicated on Drawings.
3. Structure Bases:
   a. Pre-cast integral with bottom section of manhole.
   b. No Pre-cast invert.
   c. Sump, as identified in Drawings.
4. No "see through" lift holes.
5. Adjustment:
   a. Total height of adjustment shall be a minimum of three (3) inches and a maximum of six (6) inches.
6. Joints between Precast Sections: Rubber o-ring gasket type or Butyl Rubber Sealant.

7. Pipe to Manhole Connection:
   a. Fill Annular Space with Cementitious Non-Shrink Grout.
   b. Watertight.
8. Mark each precast section with name or trademark of manufacturer and date of manufacture. Marking shall be indented into manhole section or painted with waterproof paint.

2.04 FRAMES AND COVERS

A. Grey Iron meeting ASTM A48, Class 35B

B. Manhole Castings – Sanitary:

1. Neenah Foundry Frame: R-1550
2. Neenah Foundry Lid: Type "B" solid lid with self-sealing gaskets and concealed pick holes.

C. Manhole Castings – Storm:

1. Neenah Foundry Frame: R-1550-A
2. Neenah Foundry Lid: R-1050, vented lid.

D. Curb Inlet Castings:

1. Neenah Foundry Frame: R-3067
2. Neenah Foundry Curb Box: R-3067-7004 with the words "Dump No Waste Drains to Lake"
3. Neenah Foundry Grate: Type L

E. Curb Inlet Casting with Driveway Plate:

1. Neenah Foundry Frame: R-3067 with Curb Plate
2. Neenah Foundry Grate: Type L

F. Off-Road Inlet Manhole Castings:

1. Neenah Foundry Frame: R-1550-A
2. Neenah Foundry Lid: R-2050.

2.05 ADJUSTING RINGS

A. Concrete Adjusting Rings:

1. Precast concrete with steel reinforcements, meeting ASTM G-478

B. Expanded Polypropylene (EPP) Rings:

1. Cretex Specialty Products - Pro-Ring.
   a. Grade, Finish, and Angle Rings permitted.
   b. M-1 Structural Adhesive/Sealant.

2.06 CEMENTITIOUS NON-SHRINK GROUT

A. Premixed, non-metallic, high strength, non-shrink grout which meets the requirements of ASTM C-191 and C-827 as well as CRD-C-588 and C-621. When mixed to a mortar or "plastic" consistency, it shall have minimum one day and 28 day compressive strength of 6,000 and 9,000 psi, respectively.

2.07 INTERNAL CHIMNEY SEAL

A. Internal Chimney seal as manufactured by Cretex Specialty Products, or approved equal.

2.08 CAST IN PLACE BENCH

A. Pour Cast-in-Place bench with Grade A Concrete.

2.09 EXTERNAL JOINT SEAL

A. Flexible rubberized seal conforming to ASTM C923 held in place with stainless steel compression bands or butyl adhesive tape conforming to ASTM C877 or heat shrink sleeve over visco-elastic adhesive sealant.

B. Minimum Width: 9-inches

C. Approved Products:

1. Mac Wrap, Mar Mac Manufacturing, Company Inc.
2. NPC External Joint Seal, NPC, Inc.
3. EZ-Wrap, Press-Seal Gasket Corporation
4. Riser—Wrap, Pipeline Seal and Insulator
5. Infi-Shield Gator Wrap, Sealing Systems, Inc.

PART 3 - EXECUTION

3.01 INSTALLATION

A. Trench, backfill, and compact for work of this Section shall be in accordance with pertinent provisions of Section 31 23 33 – TRENCH EXCAVATION AND BACKFILL.

3.02 MANHOLE INSTALLATION

A. Furnish and install structures in accordance with the Drawings.
B. Place precast manhole base on compacted granular subgrade of least 6-inches in depth.
C. Maximum allowable deviation from staked grade:
   1. Alignment: 0.30 feet.
   2. Elevation: 0.03 feet.
D. Place mortar in lift holes

3.03 STORM SEWER MANHOLE BENCH

A. Shape invert channels to be smooth and semicircular, conforming to inside of adjacent sewer sections.

B. Make changes in direction of flow with a smooth curve of as large a radius as size of manhole will permit.

C. Make changes in size and grade of channels smoothly and evenly.

D. Form invert channels directly manhole base, with concrete. On manholes with straight through pipe invert may be formed by laying full section sewer pipe through manhole and cleanly breaking out top half after surrounding concrete has hardened.

E. Smooth floor of manhole outside channels, and slope toward channels at not less than 1 inch per foot or more than 2 inches per foot.

3.04 SETTING CASTINGS / ADJUSTING CASTINGS –

A. New Structures
   1. Set at elevation shown on Drawings. If directed by Engineer, set at elevations to match existing or proposed pavement.
   2. Adjust castings to grade using concrete and EPP rings:
      a. Only a single concrete ring will be allowed.
      b. Do not use concrete rings less than 4-inches in thickness
      c. Use a minimum of 2-inches of EPP rings.
      d. EPP Rings shall be placed at the top, just below the casting.

B. Precast or Block Existing Structures without removal and replacement precast manhole section.
   1. Remove existing rings and/or bricks following details shown on the plans.
   2. Adjustments of 6-inches or less be in accordance with paragraph 3.04.A
   3. Set at elevation shown on Drawings. If directed by Engineer, set at elevations to match existing or proposed pavement.
   4. Adjust castings to grade using concrete and EPP rings:
      a. A maximum of 3 concrete rings will be allowed.
      b. Do not use concrete rings less than 4-inches in thickness
      c. Use a minimum of 2-inches of EPP rings.
      d. EPP Rings shall be placed at the top, just below the casting.

C. Precast or Block Existing Structures with removal and replacement of precast manhole sections.
   1. Remove and replace concrete barrel, cone sections, flat tops or block following details shown on the plans.
   2. Set castings in accordance with paragraph 3.04.A

D. Brick Manholes
   1. Remove exiting bricks to the depth identified in the plan.
   2. Follow details on plans to reconstruction with block or pre-cast sections.
   3. Adjust casting to grade in accordance with paragraph 3.04A

3.05 CONCRETE RINGS:

A. Secure adjustment rings with mortar, engineer-approved mastic, or other material approved by the Engineer.

3.06 EPP RINGS

A. Installation and surface preparation shall be in accordance with the manufacturer's instructions as modified below.

1. Installation and surface preparation shall be in accordance with the manufacturer's instructions.
2. The joint between the first grade ring and top of the manhole, catch basin, or structure shall be sealed using an adhesive/sealant meeting the requirements of Section 2.05.B.1.b.
3. If the top of the manhole, catch basin or pre-cast structure is not level or is irregular, then a cementitious non-shrink grout meeting the requirements of Section 2.06 shall be used. A bed of grout shall be placed on the top surface of the pre-cast structure and then the first grade ring shall be embedded and leveled into the bed of material.
4. The remaining joints between all manhole adjustment rings and the frame and cover or grate shall be sealed using an adhesive/sealant meeting the requirements of Section 2.05.B.1.b
5. No other materials shall be used in the construction of the grade adjustment area beyond those specified above. Prohibited materials include, but are not limited to wood or wood shims of any kind, concrete, brick, block, stones.

3.07 INTERNAL CHIMNEY SEAL

A. Install in accordance with Manufacturer's written instructions.

3.08 EXTERNAL JOINT SEAL

A. Install in accordance with Manufacturer's written instructions.

3.09 MANHOLE OVER EXISTING PIPE

A. Construct new manhole as specified, breaking upper half of existing pipe after base of manhole is completed so as not to obstruct flow of existing pipe.

3.10 TESTING AND INSPECTING

A. Do not allow or cause any of Work of this Section to be covered up or enclosed until after it has been inspected.

B. Precast reinforced concrete manholes, inlets, catch basins, risers and tops shall be subject to rejection for failure to conform to any specification requirements.

C. Cleaning:

1. Clean structures prior to final inspection for acceptance.

END OF SECTION