



Board of Public Works MEETING AGENDA

April 10, 2023 - 4:30 PM
Council Chambers
3805 S. Casper Dr.

Published: April 6, 2023

AGENDA

1. **PRIVILEGE OF THE FLOOR**
2. **CALL TO ORDER**
3. **ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE**
4. **APPROVAL OF MINUTES**
 - A. March 20, 2023 Meeting Minutes
5. **NEW BUSINESS**
 - A. ITEM 05-23 Recommendation to Common Council for the Approval of the 2023 LRIP Roadway Rehabilitation and Inspection Contract
6. **UPDATES**
 - A. RD-20-04 Small Road
 - B. RD-21-05 Lincoln Avenue
7. **ADJOURN**

Supplemental Information:

- The meeting agenda and agenda packet are available online at www.NewBerlin.org. The minutes are published online and are approved at the next regularly scheduled meeting.
- It is possible that action will be taken on any of the items on the agenda and that the agenda may be discussed in any order.
- You may provide comments to the City Clerk via email at CitizenComments@NewBerlin.org. Comments will be forwarded to the Mayor and members of the governing body. Emailed comments are not read during the meeting.
- The City of New Berlin strives to host inclusive, accessible meetings that enable all individuals to engage and participate fully. Any person who has a qualifying disability under the Americans with Disabilities Act that requires that the meeting be accessible, please contact City Clerk Rubina R. Medina at (262) 786-8610 or via email at CityClerk@NewBerlinWI.gov at least 48 hours before the scheduled meeting time. Efforts will be made to accommodate the needs of disabled individuals through appropriate aids and/or services.
- It is also possible that members of and possibly a quorum of other governmental bodies of the municipality may be in attendance at the above-stated meeting to gather information; no action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to in the above notice.



Board of Public Works MEETING MINUTES

March 20, 2023 - 4:30 PM
Council Chambers
3805 S. Casper Dr.

Please note: Minutes are unofficial until approved at the next regular scheduled meeting.

MINUTES

1. PRIVILEGE OF THE FLOOR

2. CALL TO ORDER

Mayor Ament called the Board of Public Works meeting to order at 04:30 PM.

3. ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE

City Clerk Administrative Specialist Sarah Holtz took the roll call as follows:

Alderpersons Present: Board Member Seidl, Mayor Ament, Alderperson Garrigues, Alderperson Maxey, Alderperson Horbinski

Staff Present: City Engineer Tammy Simonson, Assistant City Engineer Lucas Pichler, City Clerk Administrative Assistant Sarah Holtz

Sarah Holtz stated that a quorum was established and the meeting was properly noticed.

4. APPROVAL OF MINUTES

March 20, 2023 Meeting Minutes

MOTION: Motion to approve

VOTE: Motion by: Commissioner Seidl
Second by: Alderman Maxey
Motion passed: 5-0

A. December 19, 2022 Board of Public Works Meeting Minutes

B. February 20, 2023 Board of Public Works Meeting Minutes

5. NEW BUSINESS

ITEM 3-23 Recommendation to Common Council for the Approval of the 2023 Roadway Maintenance Joint, Crack Cleaning and Sealing Contract.

Assistant City Engineer Lucas Pichler gave an overview of the project, which involves cleaning, routing and sealing cracks on roadways that were rated with a pavement condition of 70-100 in 2021. The next pavement inspection will be completed in the summer of 2023. The Base Bid for the project included 160 roadway segments which equates to roughly 30 miles of road. Alternate A consists of crack sealing the north and south parking lots of City Hall, but due to costs, will not be included in the 2023 contract approval. The work is to be completed by end of September 2023.

MOTION: Motion to approve

VOTE: Motion by: Alderman Garrigues
Second by: Commissioner Seidl
Motion approved: 5-0

ITEM 4-23 Discussion and possible action to Approve Resolution 23-8 to Reject all Bids concerning the 2023 LRIP Roadway Rehabilitation Project

City Engineer Tammy Simonson gave an overview of the project, which consists of rehabilitating 7.2 miles of roadway throughout the City. Rehabilitation consists of: storm water inlet adjustment and reconstruction, curb and gutter repairs, and pavement rehabilitation by milling and asphalt overlay or pulverizing and asphalt overlay.

MOTION: Motion to approve

VOTE: Motion by: Alderman Horbinski
Second by: Alderman Garrigues
Motion passed: 5-0

A. ITEM 3-23 Recommendation to Common Council for the Approval of the 2023 Roadway Maintenance Joint, Crack Cleaning and Sealing Contract

B. ITEM 4-23 Discussion and possible action to Approve Resolution 23-8 to Reject all Bids concerning the 2023 LRIP Roadway Rehabilitation Project

6. UPDATES

There are no updates at this time.

7. ADJOURN

Mayor Ament made a motion to adjourn at 4:39 pm

MOTION: Motion to approve

VOTE: Motion by: Alderman Maxey
Second by: Alderman Garrigues
Motion approved: 5-0

***Respectfully Submitted,
Sarah Holtz, City Clerk Administrative Specialist***

STAFF REPORT

EXECUTIVE SUMMARY

APPLICANT: City of New Berlin

PROJECT: 2023 LRIP Roadway Rehabilitation Project

LOCATIONS: City-wide

D.R.C. RECOMMENDATION: Recommend to the Common Council the awarding of a construction contract to the lowest responsive, responsible bidder, Stark Pavement Corp. for the 2023 LRIP Roadway Rehabilitation Project in an amount of \$2,226,250.80 and awarding an inspection services contract to raSmith, Inc. in the amount of \$126,676 for Roadway Rehabilitation and \$23,370 for Roadway Maintenance. With inspection and contingencies, the not-to-exceed total project cost for Roadway Rehabilitation is \$2,500,000.00 from account 04251100 59040 C2023 and \$23,370 from 15110029 59040.

1. In February and March 2023 the City of New Berlin solicited bids for the 2023 LRIP Roadway Rehabilitation Project. The project consists of resurfacing approximately 7.2 miles of roadway throughout the City. Rehabilitation consists of: storm water inlet adjustment and reconstruction, curb and gutter repairs, and pavement rehabilitation by milling and asphalt overlay or pulverizing and asphalt overlay.
2. On March 8, 2023, the City received three (3) Bids for the 2023 LRIP Roadway Rehabilitation Project. On March 9, 2023 it was discovered that the project had not been advertised by publishing a class 2 notice as required by State Statute 62.15(3). While the bids received were within the approved budget, the bids could not be awarded as the bidding process did not follow the process outlined in State Statutes.
3. A Class 2 notification was placed in the March 22nd and 29th paper and on April 5, 2023, the City received three (3) Bids for the 2023 LRIP Roadway Rehabilitation Project. The apparent low bidder is Stark Pavement Corp. of Brookfield, WI.
4. A summary of the Bid Tab is attached to the Staff Report.
5. The Common Council approved \$3,000,000 for the Project in the 2023 CIP budget.
6. On April 5, 2023 the City received three (3) Proposals for Inspection services for the Roadway Rehabilitation and the Roadway Maintenance Contracts. The selected firm is raSmith, Inc. of Brookfield, WI.

DETAILS IN ATTACHED STAFF REPORT

CITY OF NEW BERLIN
DEPARTMENT OF COMMUNITY DEVELOPMENT
BOARD OF PUBLIC WORKS STAFF REPORT
Meeting of April 10, 2023

City of New Berlin 2023 LRIP Roadway Rehabilitation Contract

DATE STAFF REPORT CREATED: April 6, 2023

APPLICANT: City of New Berlin

REQUEST / DESCRIPTION OF PROJECT: The project consists of rehabilitating 7.2 miles of roadway throughout the City. Rehabilitation consists of: storm water inlet adjustment and reconstruction, curb and gutter repairs, and pavement rehabilitation by milling and asphalt overlay or pulverizing and asphalt overlay.

Below is a list of the streets that were included in the Base Bid with the method of rehabilitation.

Street Name	Section From	Section To	Length	Treatment
Beechwood Tr	Poplar Rd	Spruce Rd	0.13	3" Mill & 3" Overlay
Poplar Rd	Redwood Dr	Beechwood Tr	0.14	3" Mill & 3" Overlay
Wilbur Dr	Cottonwood Rd	Sunny Slope Rd	0.35	3" Mill & 3" Overlay
Churchview Dr	159th St	Moorland Rd	0.31	Pulverize & 5" Overlay
National Ave Service Dr	159th St	National Ave	0.13	Pulverize & 5" Overlay
St Francis Dr	Coffee Rd	Moorland Rd	0.33	Pulverize & 5" Overlay
157Th St	St Francis Dr	Church View Dr	0.18	Pulverize & 5" Overlay
158Th St	St Francis Dr	Church View Dr	0.30	Pulverize & 5" Overlay
Wehr Rd	Wehr Rd	Rustic Ridge Dr	0.19	3" Mill & 3" Overlay
Rustic Ridge Ct	Termini	Rustic Ridge Dr	0.12	3" Mill & 3" Overlay
Rustic Ridge Dr	Cari Adam Dr	Coffee Rd	0.65	3" Mill & 3" Overlay
Johnson Rd	Coffee Rd	Rustic Ridge Dr	0.08	3" Mill & 3" Overlay
Cari Adam Dr	Cari Adam Dr	Rustic Ridge Dr	0.09	3" Mill & 3" Overlay
Ann Louise Dr	Racine Ave	Oak Park Dr	0.32	2.5" Mill & 2.5" Overlay
Ann Louise Ct	Termini	Ann Louise Dr	0.09	2.5" Mill & 2.5" Overlay
Oak Park Dr	Termini	Termini	0.21	2.5" Mill & 2.5" Overlay
Observatory Rd	Calhoun Rd	Racine Ave	1.75	Pulverize & 5" Overlay
La Salle Dr	Marquette Dr	Cherrytree Ln	0.04	3" Mill & 3" Overlay
Cortez Dr	Greentree Dr	La Salle Dr	0.16	3" Mill & 3" Overlay
Cortez Dr	S. of Marquette Dr	Greentree Dr	0.10	3" Mill & 3" Overlay
Cortez Dr	Marquette Dr	S. of Marquette Dr	0.05	3" Mill & 3" Overlay
Greentree Dr	Cortez Dr	Grange Ave	0.27	3" Mill & 3" Overlay
La Salle Dr	Cherrytree Ln	Marquette Dr	0.09	3" Mill & 3" Overlay
La Salle Dr	Grange Ave	Cherrytree Ln	0.44	3" Mill & 3" Overlay
Nicole Ct	Termini	Greentree Dr	0.03	3" Mill & 3" Overlay
Ash Ct	Termini	Aspen Ct	0.07	2.5" Mill & 2.5" Overlay
Aspen Ct	Termini	Ash Ct	0.06	2.5" Mill & 2.5" Overlay
Forest Ave	Termini	Beloit Rd	0.17	2.5" Mill & 2.5" Overlay
Lindenwood Dr	Lindenwood Ct	Forest Ave	0.04	2.5" Mill & 2.5" Overlay
North Oak Blvd	Sunny Slope Rd	Forest Ave	0.23	2.5" Mill & 2.5" Overlay
North Oak Ct	Termini	North Oak Blvd	0.08	2.5" Mill & 2.5" Overlay

A Map showing the project locations for 2023 is included as Attachment A to the Contract.

BIDS RECEIVED: 3 Bids - A summary of the Quotes received is attached.

SELECTED CONTRACTOR: Stark Pavement Corp.

INSPECTION: Three (3) inspection firms were solicited for proposals. DCD received three proposals and recommends selecting raSmith, Inc. for construction inspection services. The proposal from raSmith, Inc. for this project is attached.

FISCAL IMPACT:

Roadway Rehabilitation:

Base Bid:	\$ 2,226,250.80	
Contingencies (~6%):	\$ 147,073.20	
Inspection Contract (~5%):	<u>\$ 126,676.00</u>	
Total Project Costs:	\$ 2,500,000.00	04251100 59040 C2023

Roadway Maintenance:

Inspection Contract (~5%)	\$ 23,370.00	15110029 59040
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SOURCE OF FUNDS

2023 Roadway Rehabilitation CIP Account:	04251100 59040 C2023
2023 Roadway Maintenance:	15110029 59040

D.C.D. RECOMMENDATION: Recommend to the Common Council the awarding of a construction contract to the lowest responsive, responsible bidder, Stark Pavement Corp. for the 2023 LRIP Roadway Rehabilitation Project in an amount of \$2,226,250.80 and awarding an inspection services contract to raSmith, Inc. in the amount of \$126,676 for Roadway Rehabilitation and \$23,370 for Roadway Maintenance. With inspection and contingencies, the not-to-exceed total project cost for Roadway Rehabilitation is \$2,500,000.00 from account 04251100 59040 C2023 and \$23,370 from 15110029 59040.

Attachments:

Summary of Bids Received
Inspection Quotes Received
Contract & Location Maps

RD-23-01 2023 LRIP Roadway Rehabilitation Project
 Bid Results
 April 5, 2023 @ 10:00 A.M.

BIDDER	BID BOND	PRE-QUAL STATEMENT	BASE BID	RANKING
Stark Pavement Corp.	X	X	\$ 2,226,250.80	1
Payne & Dolan, Inc.	X	X	\$ 2,411,342.75	2
Wolf Paving Co., Inc.	X	X	\$ 2,423,065.51	3
Engineer's Estimate			\$ 2,524,463.15	

RD-23-01 2023 LRIP Roadway Rehabilitation Project
CONTRACT RD-23-01

Base Bid				Stark Pavement Corp.		Payne & Dolan, Inc.		Wolf Paving Co., Inc.		Engineer's Estimate	
ITEM NO.	ITEM	QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
1	Tack Coat	5,176	GAL	\$ 3.05	\$ 15,786.80	\$ 5.25	\$ 27,174.00	\$ 3.00	\$ 15,528.00	\$ 2.15	\$ 11,128.40
2	Butt Joints	2,224	LF	\$ 3.15	\$ 7,005.60	\$ 1.60	\$ 3,558.40	\$ 5.00	\$ 11,120.00	\$ 7.10	\$ 15,790.40
3	Saw Cutting Pavement	3,201	LF	\$ 1.50	\$ 4,801.50	\$ 2.25	\$ 7,202.25	\$ 1.95	\$ 6,241.95	\$ 1.70	\$ 5,441.70
4	Common Excavation	4,371	CY	\$ 9.50	\$ 41,524.50	\$ 18.00	\$ 78,678.00	\$ 17.73	\$ 77,497.83	\$ 13.50	\$ 59,008.50
5	Pulverize & Relay	39,733	SY	\$ 1.70	\$ 67,546.10	\$ 1.65	\$ 65,559.45	\$ 2.10	\$ 83,439.30	\$ 2.30	\$ 91,385.90
6	Remove Asphaltic Pavement by Milling, 2.5-Inch	20,257	SY	\$ 1.95	\$ 39,501.15	\$ 1.90	\$ 38,488.30	\$ 2.20	\$ 44,565.40	\$ 2.55	\$ 51,655.35
7	Remove Asphaltic Pavement by Milling, 3-Inch	43,509	SY	\$ 1.85	\$ 80,491.65	\$ 2.20	\$ 95,719.80	\$ 2.35	\$ 102,246.15	\$ 2.40	\$ 104,421.60
8	Base Repair	4,141	CY	\$ 37.50	\$ 155,287.50	\$ 55.00	\$ 227,755.00	\$ 66.00	\$ 273,306.00	\$ 52.40	\$ 216,988.40
9	Manhole Adjustment, Cast Iron Paving Rings	62	EACH	\$ 280.00	\$ 17,360.00	\$ 235.00	\$ 14,570.00	\$ 150.00	\$ 9,300.00	\$ 230.65	\$ 14,300.30
10	Water Valve or Water Box Adjustment	40	EACH	\$ 80.00	\$ 3,200.00	\$ 68.00	\$ 2,720.00	\$ 125.00	\$ 5,000.00	\$ 105.35	\$ 4,214.00
11	Remove & Replace Concrete Curb & Gutter	709	LF	\$ 59.30	\$ 42,043.70	\$ 71.00	\$ 50,339.00	\$ 57.00	\$ 40,413.00	\$ 50.20	\$ 35,591.80
12	Asphalt Leveling, 5 LT 58-28 S, 1-Inch	2,752	TON	\$ 67.10	\$ 184,659.20	\$ 75.00	\$ 206,400.00	\$ 74.00	\$ 203,648.00	\$ 77.75	\$ 213,968.00
13	Asphalt Surface, 4 LT 58-28 S, 2-Inch	10,052	TON	\$ 66.75	\$ 670,971.00	\$ 65.00	\$ 653,380.00	\$ 65.00	\$ 653,380.00	\$ 71.60	\$ 719,723.20
14	Asphalt Surface, 4 LT 58-28 S, 2.5-Inch	3,203	TON	\$ 68.95	\$ 220,846.85	\$ 64.00	\$ 204,992.00	\$ 64.00	\$ 204,992.00	\$ 70.65	\$ 226,291.95
15	Asphalt Binder, 3 LT 58-28 S, 3-Inch	7,539	TON	\$ 61.25	\$ 461,763.75	\$ 58.50	\$ 441,031.50	\$ 60.00	\$ 452,340.00	\$ 63.60	\$ 479,480.40
16	Asphalt Binder, Base Patch (<8-Foot Width), 3 LT 58-28 S, 3-Inch	3,826	SY	\$ 12.75	\$ 48,781.50	\$ 17.75	\$ 67,911.50	\$ 13.55	\$ 51,842.30	\$ 15.40	\$ 58,920.40
17	Asphalt Binder, Base Patch (>=8-Foot Width), 3 LT 58-28 S, 3-Inch	3,826	SY	\$ 13.00	\$ 49,738.00	\$ 13.85	\$ 52,990.10	\$ 12.90	\$ 49,355.40	\$ 13.80	\$ 52,798.80
18	Shouldering, Reclaimed Asphalt Pavement, 3/4" Dense	602	TON	\$ 43.50	\$ 26,187.00	\$ 55.00	\$ 33,110.00	\$ 34.50	\$ 20,769.00	\$ 35.90	\$ 21,611.80
19	Shoulder Restoration, Topsoil, Fertilizer, Seed, Matting, Watering	9,846	LF	\$ 3.00	\$ 29,538.00	\$ 4.50	\$ 44,307.00	\$ 2.83	\$ 27,864.18	\$ 4.30	\$ 42,337.80
20	Storm Inlet Repair, Tuck Point and Casting Adjustment	2	EACH	\$ 3,100.00	\$ 6,200.00	\$ 3,100.00	\$ 6,200.00	\$ 3,100.00	\$ 6,200.00	\$ 735.00	\$ 1,470.00
21	Storm Inlet Repair, Top Rebuild	1	EACH	\$ 3,600.00	\$ 3,600.00	\$ 3,839.45	\$ 3,839.45	\$ 3,600.00	\$ 3,600.00	\$ 854.00	\$ 854.00
22	Pavement Marking, Epoxy, 4-Inch Solid, White	17,885	LF	\$ 0.60	\$ 10,731.00	\$ 0.60	\$ 10,731.00	\$ 0.60	\$ 10,731.00	\$ 1.58	\$ 28,258.30
23	Pavement Marking, Epoxy, 4-Inch Solid, Yellow	12,329	LF	\$ 0.70	\$ 8,630.30	\$ 0.70	\$ 8,630.30	\$ 0.70	\$ 8,630.30	\$ 1.58	\$ 19,479.82
24	Pavement Marking, Epoxy, 4-Inch, Skip Dash, Yellow	4,401	LF	\$ 0.70	\$ 3,080.70	\$ 0.70	\$ 3,080.70	\$ 0.70	\$ 3,080.70	\$ 1.58	\$ 6,953.58
25	Pavement Marking, Epoxy, 18-Inch, Stop Bar, White	175	LF	\$ 17.00	\$ 2,975.00	\$ 17.00	\$ 2,975.00	\$ 17.00	\$ 2,975.00	\$ 13.65	\$ 2,388.75
26	Traffic Control	1	LUMP SUM	\$ 24,000.00	\$ 24,000.00	\$ 60,000.00	\$ 60,000.00	\$ 55,000.00	\$ 55,000.00	\$ 40,000.00	\$ 40,000.00
				Total	\$ 2,226,250.80	Total	\$ 2,411,342.75	Total	\$ 2,423,065.51	Total	\$ 2,524,463.15

April 5, 2023



CREATIVITY BEYOND ENGINEERING

An aerial photograph of a road construction site. A yellow excavator is working on a road surface. The road is surrounded by green grass and trees. A parking lot with several cars is visible on the right side of the road.

Construction Oversight Services: City of New Berlin 2023 LRIP Roadway Rehabilitation 2023 Roadway Maintenance

(262) 781-1000
rasmith.com

16745 West Bluemound Road
Brookfield, WI 53005-5938

Cover Letter

April 5, 2023

Ms. Tamara Simonson, P.E.
City Engineer
City of New Berlin
3805 South Casper Drive
New Berlin, WI 53151

raSmith

CREATIVITY BEYOND ENGINEERING

16745 West Bluemound Road
Brookfield, WI 53005-5938
(262) 781-1000

RE: 2023 LRIP Roadway Rehabilitation Project
2023 Roadway Maintenance Contract

Dear Ms. Simonson:

raSmith is looking forward to the opportunity to provide construction oversight services for the 2023 LRIP roadway rehabilitation and 2023 roadway maintenance projects in the City of New Berlin. Through our ongoing partnership with the City, we are aware of the project challenges and long-term benefits of improved infrastructure for the City of New Berlin. We offer the following benefits to help successfully complete these projects.

Extensive Experience

Our 40+ years of industry experience and know-how has resulted in the completion of numerous similar projects throughout southeastern Wisconsin. From curb & gutter repairs to water main installations, we provide a range of qualifications significant to meet the City's needs.

Customer Service

Our exemplary customer service is illustrated by communicating and collaborating with the designers, contractors, and owners to proactively identify and resolve any potential issues, and most importantly, to keep every project on track. We are cognizant of public perception and the important role we play in serving as the owner's representative.

Technical Expertise

Our project team uses a systematic approach to focus on the technical aspects of a project. We accomplish this through a variety of time- and cost-savings practices including GPS technology and 360-degree video services. Our team will choose the best approach from our resources to accomplish each task.

Based on the City's request for a price quote for construction oversight services, dated February 17, 2023, we have included a breakdown of hours by individuals including manager coordination, a not-to-exceed cost quotation, and a list of proposed inspectors. raSmith is committed to continuing our strong relationship with the City of New Berlin and the members of your community. Thank you for your time and consideration.

Sincerely,
raSmith



Paul Schafer, P.E.
Director of Construction Services
(262) 317-3381
paul.schafer@rasmith.com

Staff Capacity Chart

The chart below identifies staff who may be assigned to projects at the varying levels of project complexity identified by the City of New Berlin. Rates charged will be in accordance with the hourly rates included on the following page of this proposal. Each of the staff listed in the chart below has at least the number of years' experience required by the City for each level of project complexity.

Staff	Small, Non-Complex Projects	Larger, Moderately Complex Projects	Large, Complex Projects
Cheryl Bahr	x	x	
Liam Cimaglia	x	x	
Mike Frane	x	x	
Michael Gasper	x	x	
Richard Gebhart	x	x	
Matthew Garon	x		
Brian Gresky	x	x	x
Seth Keller	x	x	x
Bob Larson	x	x	
Mike Mentzel	x	x	x
William Nelson	x	x	x
David Reichert	x	x	x
Jacob Scholbe	x	x	
Jake Steinhart	x	x	
Genevieve Stollenwerk	x	x	
Jim Richter	x	x	
Bill Schnepf	x	x	
Steve Wlahovich	x	x	x
Steve Leszczynski	x	x	
Mark Nosonovsky	x	x	
Olu Elegbede	x		
Matt Henry	x	x	
Tyler Page	x	x	
Dylan Crawley	x	x	
Kuldeep Mann	x	x	

Fees & Hours Table

Professional Services - Paving Program Base					
	Project Manager	Main Representative	Additional Representatives		
Phase/Task by Hour/Personnel	\$165	\$114	\$102	Total Hours	Total Dollars
Precon Meeting	3	2		5	\$708
Resident Communication	12	6		18	\$2,604
Project Measurements/Preconstruction Photos	2	24		26	\$3,056
Pay Requests and Change Orders	24			24	\$3,840
Site Visits / Admin.	50			50	\$8,000
Traffic Control Inspection		8		8	\$912
Milling Inspection / Proof Rolls	30	90	40	160	\$19,140
Pulverizing / Proof Rolls	24	80		104	\$12,960
Concrete Curb and Gutter Inspection	4	8	8	20	\$2,368
Binder Repair Inspection	16	100	24	140	\$16,408
Paving Inspection	16	160	24	200	\$23,248
Base Repair	20	100	60	180	\$20,720
Storm Reconstructs / Adjustments	4		16	20	\$2,272
Shouldering		20	80	100	\$10,440
Total	205	598	252	1055	\$126,676

Professional Services - Crack Sealing					
	Project Manager	Main Representative			
Phase/Task by Hour/Personnel	\$165	\$102		Total Hours	Total Dollars
Precon Meeting	4	0		4	\$660
Pay Requests and Change Orders	4			4	\$660
Site Visits / Admin.	10			10	\$1,650
Crack Sealing Inspection		200		200	\$20,400
Total	18	200		\$218	\$23,370

2023 ROADWAY REHABILITATION LRIP PROJECT

CONTRACT RD-23-01

CITY OF NEW BERLIN

City of New Berlin
Engineering Services Division
3805 S. Casper Drive
New Berlin, WI 53151
(262) 797-2445

SPECIFICATIONS
AND
CONTRACT DOCUMENTS
FOR

RD-23-01

2023 ROADWAY REHABILITATION
LRIP PROJECT

CITY OF NEW BERLIN, WISCONSIN

TABLE OF CONTENTS FOR
2023 ROADWAY REHABILITATION
LRIP PROJECT

CONTRACT RD-23-01
CITY OF NEW BERLIN, WISCONSIN

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BIDDER'S QUALIFICATION STATEMENT	QS-1 → QS-11
SUBCONTRACTOR'S QUALIFICATION STATEMENT	SQS-1 → SQS-4
GENERAL CONDITIONS	GC-1 → GC-62
SPECIAL PROVISIONS	SP-1 → SP-14
PROPOSAL FORM	P-1 → P-4
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BID BOND	BB-1
PERFORMANCE BOND	PB-1 → PB-3
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PROJECT DRAWINGS	A

PROJECT NO. RD-23-01
2023 ROADWAY REHABILITATION
LOCAL ROAD IMPROVEMENT PROJECT
New Berlin, Wisconsin

ADVERTISEMENT FOR BIDS

BID OPENING: The City of New Berlin hereby gives notice that sealed bids will be received by the City Clerk, City Hall, 3805 S. Casper Drive, New Berlin, WI, until 10:00 a.m., local time, on Wednesday, April 5th, 2023. The base bid consists of the rehabilitation of approximately 7.2 miles of roadways throughout the City. This project is part of **Local Road Improvement Program**. Bids will be opened and publicly read aloud immediately after the specified closing time. Interested parties are invited to attend. Bids submitted after this time will not be accepted.

BIDDING DOCUMENTS: Complete digital project bidding documents are available at <http://tinyurl.com/NewBerlinBids> or www.questcdn.com. You may download the digital plan documents for \$22 by inputting Quest project #**8423802** on the website's Project Search page. Please contact QuestCDN.com at 952-233-1632 or info@questcdn.com for assistance in free membership registration, downloading, and working with this digital project information. No paper plan sets will be provided. Please contact Lucas Pichler at 262-797-2453 if you have any questions.

LEGAL PROVISIONS: The Contract letting shall be subject to the provisions of Sections 62.15, 66.29, 66.293, and 779.15 of the Wisconsin Statutes. Per Section 16.856 of the Wisconsin State Statutes the Prevailing Wage Rate does not apply to this project.

BIDDERS PROOF OF RESPONSIBILITY: Each Prime Contractor submitting a bid shall have on file a Bidders Proof of Responsibility Statement with the City Clerk on or before the date and time set for the Bid Opening.

BID SECURITY: Bid security in the amount of not less than 5% of the bidder's maximum bid price and in the form of a bid bond, certified check or cashiers check (payable to the City of New Berlin) is required with the bid.

RIGHT TO REJECT BIDS: The City reserves the right to reject any and all bids, the right to waive irregularities and informalities in bidding, the right to disregard all nonconforming, non-responsive, unbalanced or conditional bids, and the right to accept the bid which best serves the interests of the City.

CONTRACT SECURITY: The bidder to whom a Contract is awarded shall furnish Performance and Payment Bonds for the full amount of the Contract within 10 days of award or execution of the Contract. The Performance and Payment Bonds shall contain a provision to increase the Performance Bonds by the amount of any change orders that might increase the amount of the Contract price. If such bidder fails to execute and file such Contract, Performance and Payment Bonds, within the ten day period, the check, bond, or bank draft accompanying the bid shall be forfeited to the City of New

Berlin as liquidated damages.

BID WITHDRAWAL: The City reserves the right to postpone the award of the contract and no bids shall be withdrawn for a period not exceeding 60 days after the date and time set forth in the Bid Opening. The City further reserves the right to retain the bid security of the three (3) lowest bidders during that time.

DESCRIPTION OF WORK: The project consists of furnishing all labor, equipment, and materials necessary to perform the work as called out on the plans. The work consists of either; pavement removal by milling, base repair, curb and gutter repair, manhole adjustments, and placing asphalt, or pulverizing, removal of excess pulverized material, grading, base repair, manhole adjustments, and placing asphalt. Approximate quantities of work are estimated as follows:

Curb & Gutter Repairs	700	L.F.
Asphalt Pavement	24,000	TON
Milling Asphalt	64,000	S.Y.
Pulverizing Asphalt	40,000	S.Y.
Common Excavation	4,400	C.Y.

Published by authority of the City of New Berlin, Engineering Services, a division of the Department of Community Development, Tamara Simonson, City Engineer.

City of New Berlin
3805 S. Casper Drive
New Berlin, WI 53151
Waukesha County

Rubina Medina, City Clerk

David Ament, Mayor

PUBLISH: Wednesday, March 22, 2023
Wednesday, March 29, 2023

SUBCONTRACTOR LIST

The following Subcontractors will be utilized for portions of the Project Work (only list those > \$1,000). Changes shall not be made subsequent to the Bid unless the change(s) is approved by the City.

[illegible]

BIDDER'S QUALIFICATION STATEMENT - CONFIDENTIAL

Submitted to: **City of New Berlin**

Date:

RE: SUBMISSION OF PREQUALIFICATION FORMS FOR THE YEAR

Gentlemen & Ladies:

Submitted herewith please find our statement for your consideration in determining whether our firm is qualified and capable to bid, perform and furnish the necessary labor, materials and skill on the basis of our work record, experience, equipment and staff as required to enter upon and complete those. various types of projects indicated below as may be awarded by the municipality during the current year.

It is understood that the determination and decisions of the Municipality with regard to qualifications shall be final, and further, that the information herein **will** be considered confidential. A finding of "Qualified" for one project does not bind the Municipality on other projects, and that the Municipality expressly reserves the right to review and reserve its findings on later projects.

Sincerely,

Signature

Printed Name

CITY OF NEW BERLIN
PRE-QUALIFICATION STATEMENT
IDENTIFICATION SECTION

Please CHECK Type of Firm Organization:

- ☐ Corporation
☐ Partnership
☐ Individual
☐ Joint – Venture

List Principle Individual Names:

(IF Individual, Answer Below)

Sole Trader _____

(IF Partnership, Answer Below)

Partner _____

Partner _____

(IF Corporation, Answer Below)

President _____

Vice-President _____

Secretary _____

Treasurer _____

Licensed to do business in Wisconsin on _____

In what State Incorporated _____ When _____

EXPERIENCE

Tabulation of Major Contracts (over \$25,000) which the Firm has
completed during past 5 Years

Year	Class of Work	Amount	Location of Work	For Whom Performed & Contact Name/Phone

Tabulation of Construction Experience of Principle Individuals in Organization

Individual's Name	Title or Present Position	Years of Experience	Class of Work

List Below Major Pieces of Equipment Owned (or Leased) and
Available when needed for the Proposed Work

Item Description	Qty	Size/ Capacity/ Etc	Condition (Good or Fair)	Years of Service

CONTRACTUAL RESPONSIBILITY

List the trade and percentage of work normally performed with your own work force

Trade	Percentage of Work

Have you (or your Firm) ever failed to complete any work awarded to you?

☐ Yes

☐ No

If so, state: when, where, and why:

When	Where	Why

Has any officer or partner of your organization ever been an officer or partner of another organization that failed to complete on time a construction contract?

☐ Yes

☐ No

If so, state: firm name(s), when, where, and why:

Firm Name(s)	When	Where	Why

CITY OF NEW BERLIN
PRE-QUALIFICATION STATEMENT
CONTRACTUAL RESPONSIBILITY SECTION

Have you (or firm) asked to be relieved from a bid submitted by it to a public awarding authority during the past ten years?

☐ Yes

☐ No

If so, state: when, where, and why:

When	Where	Why

Have you (firm) been charged with or convicted of a violation of any wage schedule?

☐ Yes

☐ No

If so, state: when, where, and why:

When	Where	Why

List those projects that you (or firm) expect to have in progress at the time of the major performance period for this project:

Project	Location

BONDING RESPONSIBILITY

Name(s) and address of bonding company(ies) which generally execute Bid and Surety bonds:

Name	Address

Name(s) and addresses of all bonding companies other than those listed above, which have written Bid and Surety bonds for your firm during the last five (5) years:

Name	Address

Has any bonding company ever taken over a contract or make any payments, because of your firm's failure to carry out a contract?

☐ Yes

☐ No

If so, state: when, where, and why.

When	Where	Why

List current limits of bonding capacity: _____

List your current average bond premium cost: _____ %

CONTRACTOR'S FINANCIAL STATEMENT

Attach your Statement of Financial Conditions, including the latest regular dated financial statement or balance sheet, which must contain the following items:

1. Current Assets: Cash joint-venture accounts, accounts receivable, notes receivable, accrued interest on notes, deposits, materials, and prepaid expenses, net fixed assets, and other assets.

2. Current Liabilities: Accounts payable, notes payable, accrued interest on notes, provision for income taxes, advances received from owner, accrued salaries, accrued payroll taxes, other liabilities, and capital (stock, authorized and outstanding shares par values, and earned surplus).

Name of firm preparing statement: _____

Are any of the firm's assets assigned?

☐ Yes

☐ No

If so, state which are assigned and for what purpose they are assigned:

Assigned Asset	Purpose

GENERAL DATA

List below all previous work experience with the City of New Berlin:

Project	Trade	Year

Are you familiar with the provisions of the Agreement Form used by the City's?

☐ Yes

☐ No

Are you familiar with its terms and conditions?

☐ Yes

☐ No

Are you familiar with the City's specifications?

☐ Yes

☐ No

Are you familiar with the regulations of the City relating to bidding and awarding of contracts'?

☐ Yes

☐ No

AFFIDAVIT

STATE OF WISCONSIN

_____ } ss
_____ County

_____, being duly sworn, deposes and says
that he is the _____ (Official
capacity/title) of the 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 City of New Berlin with any information deemed necessary to verify this
statement.

Subscribed and sworn to before me

This ____ day of _____, 20__

_____ Notary Public

_____ County, Wisconsin

My Commission Expires: _____

ATTACH
STATEMENT OF FINANCIAL CONDITIONS

SUBCONTRACTOR'S QUALIFICATION STATEMENT

Submitted to
The City of New Berlin

Submit one copy of qualification for each Subcontractor.

The undersigned certifies, under oath, the truth and correctness of all statements and of all answers to questions made hereinafter.

NAME OF PERSON SUBMITTING STATEMENT:

NAME OF FIRM:

ADDRESS:

TELEPHONE NUMBER: _____

LOCATION OR PRINCIPAL OFFICE:

CHECK ONE:

Corporation ____ Partnership ____ Individual ____ Jt Venture ____

Limited Liability Company _____ Other _____

Signature

TYPE OF WORK SPECIALIZATION: _____ CONSTRUCTION

1. How many years, for the type of work specialization stated above, has your organization been in business as a Contractor?
2. How many years has your organization been in business under its present business name?

3. If a corporation, provide the following information:
 - a. Date of incorporation:
 - b. State of incorporation:
4. If individual or partnership, provide the following information:
 - a. Date of organization:
 - b. Name and address of all partners (state whether general or limited partnership):
5. If Joint Venture, Limited Liability Company or other organization than a corporation or partnership, describe the organization and name principals:
6. List the percentage of work normally performed with your own work force. List those trades below:
7. Have you ever failed to complete any work awarded to you? If so, state when, where, and why:
8. Has any officer or partner of your organization ever been an officer or partner of another organization that failed to complete a pool contract? If so, state the circumstances:

9a. List the names of the project, owner, architect, general contractor or construction manager, contract amount, current percent complete, and scheduled completion date of the major construction projects your organization has in progress at this time:

9b. Expects to have in progress at the time of the performance period for this project:

10. List your trade references:

11. List your banking references:

12. List your bonding references:

- a. Name and address of bonding company:
- b. Limits of bonding capacity:
- c. Average bond premium cost:

13. Attach your Statement of Financial Conditions, including the latest regular dated financial statement or balance sheet, which must contain the following items:

- a. Current Assets: Cash, joint venture accounts, accounts receivable, notes receivable, accrued interest on notes, deposits, materials, and prepaid expenses, net fixed assets, and other assets.

- b. Current Liabilities: Accounts payable, notes payable, accrued interest on notes, provision for income taxes, advances received from owner, accrued salaries, accrued payroll taxes, other liabilities, and capital (stock, authorized and outstanding shares par values, and earned surplus).
- c. Date of statement or balance sheet:
- d. Name of firm preparing statement:

14. List below all previous work experience with the City of New Berlin:

15. State your method for estimating your expenses for this type of work:

16. How do you pre-qualify your subcontractors and suppliers:

17. Describe your Quality Control Program:

18. How do you normally staff your projects (job-site management organization)? What is the total number of full-time employees of your firm:

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

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by



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NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. 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 which is evidence of the agreement between Owner and Contractor covering the Work.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
 7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
 9. *Change Order*—A document recommended by Engineer 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, issued on or after the Effective Date of the Agreement.
 10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements*—Sections of Division 1 of the Specifications.
22. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
23. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.
28. *Notice to Proceed*—A written notice given 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 under the Contract Documents.
29. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
30. *PCBs*—Polychlorinated biphenyls.
31. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
33. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
34. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
35. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
39. *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.

40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *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 for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *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 at the Site.
44. *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 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 thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, 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 Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *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, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an

addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. *Intent of Certain Terms or Adjectives:*

1. 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 Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. 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 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean 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, shall mean 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, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- F. 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 Bonds and Evidence of Insurance*

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement 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 Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), 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 Documents;
 - 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.

2.06 *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 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, 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 instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial 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 for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall 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 component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one 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. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

- A. Standards, Specifications, Codes, Laws, and Regulations
 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement 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, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, 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 Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, 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) any standard, specification, manual, or code, or (c) 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 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
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 Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); 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 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;
2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier 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 editions; or
2. 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.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor 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. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- 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 the Work is to be performed 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.

4.02 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "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; or
 - 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.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
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 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer’s Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner’s obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer’s findings and conclusions.

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition 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 meet any one or more of the categories described in Paragraph 4.03.A; and
 - 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 Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final 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
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and

contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

- c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
- 3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

- 1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
- 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

- 1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, 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 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the

consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *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.

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "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; or
 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 any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) 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 4.06.E.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. 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, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. 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. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. 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 or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- H. 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 a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds 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 shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also

meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to Owner, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 *Contractor's Insurance*

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed 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:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 - 2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
 - 4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

- a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
 5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 6. claims 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.
- B. The policies of insurance required by this Paragraph 5.04 shall:
1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
 2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
 3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
 4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
 5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
 6. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 - 1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
 - 2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.
 - 3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 - 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
 - 5. allow for partial utilization of the Work by Owner;
 - 6. include testing and startup; and
 - 7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors,

members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 *Waiver of Rights*

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their 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 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 Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (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. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.
- B. 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:

1. loss 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 perils whether or not insured by Owner; and
 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, 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. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's

interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 *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. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 *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 at all times maintain good discipline and order at the Site.
- B. 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 shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *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.

- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall 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 shall 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.

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 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 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description 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 or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
 - 1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) it 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; and
 - 3) it has a proven record of performance and availability of responsive service.
- b. Contractor certifies that, if approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the General Requirements, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,
 - b) be similar in substance to that specified, and
 - c) be suited to the same use as that specified;
 - 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,
 - b) 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

- c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
 - 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and
 - 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. 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.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be

required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner,

Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (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 any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *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 a particular 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 license fee or royalty to others, the existence of such rights shall be disclosed by Owner 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.

6.08 *Permits*

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. 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 opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *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. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear 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 such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *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.

6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

- 1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
- 2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
- 3. 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 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 by or based upon Contractor's performance of the Work.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall 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 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 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 property to stresses or pressures that will endanger it.

6.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 *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. 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, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. 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. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. 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.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.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 (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 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).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of 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.

6.16 *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 threatened 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 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 Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will 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 6.17.D.

2. *Samples:*

- a. Submit number of Samples specified in the Specifications.
- b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. 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. *Submittal Procedures:*

1. Before submitting each Shop Drawing or Sample, Contractor shall have:

- a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
- b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
- c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
- d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review:

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. 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, conform to the information given in 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 (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.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's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures:

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.

6.18 *Continuing the Work*

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 *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 and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, modification, or improper 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.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 - 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 or the issuance of a notice of acceptability by Engineer;
 - 6. any inspection, test, or approval by others; or
 - 7. any correction of defective Work by Owner.

6.20 *Indemnification*

- A. 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 performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury 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 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 6.20.A shall 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.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
1. written notice thereof will be given to Contractor prior to starting any such other work; and
 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. 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. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, 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.

7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 3. the extent of such authority and responsibilities will be provided.

- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 *Replacement of Engineer*

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

- A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *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.

8.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *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 Documents.

8.12 *Compliance with Safety Program*

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 pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *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 Documents.

9.02 *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.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. 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.

9.03 *Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which 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. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

- A. 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, subject to the provisions of Paragraph 10.05.

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents 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 shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any 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 Paragraph 14.07.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 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *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 by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *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 as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
 - 1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 - 2. changes in the 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; and
 - 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *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.

10.05 *Claims*

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data

shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
1. deny the Claim in whole or in part;
 2. approve the Claim; or
 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall 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. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall 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 shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall 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, who 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 shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including 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, and hand tools not owned by the workers, 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.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of

said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the 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 property insurance established in accordance with Paragraph 5.06.D), 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 shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall 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 telegrams, long distance telephone calls, telephone 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 Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, 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 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. 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.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.

- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 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:*
 1. Contractor agrees that:
 - a. 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
 - b. 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 on account of any of the foregoing will be valid.
- C. *Contingency Allowance:*
 1. Contractor agrees that a 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 on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 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. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- 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. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
 - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for 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, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall 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 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
 - 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 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or

neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, 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 the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 *Notice of Defects*

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will 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 therewith as applicable.

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 - 3. as otherwise specifically provided in the Contract Documents.
- 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 and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. 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.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, 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, furnishing all necessary labor, material, and equipment.

- C. If it is found that the uncovered Work is defective, Contractor shall pay 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 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 Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. 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, or both, 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, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *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, 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 shall 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.

13.06 *Correction or Removal of Defective Work*

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay 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 such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *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 terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
 2. correct such defective Work; or
 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If 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. 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 such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. 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.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, 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.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay 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) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *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 rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, 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, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, 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 (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) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. 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 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. *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. 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 shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, 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 9.07, 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 Documents; 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, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, 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 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment:

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. 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;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action 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, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 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 (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- 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.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before

final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. 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 tentative list.

14.05 *Partial Utilization*

- 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. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and 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 14.04.A through D for that part of the Work.
 - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and 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 14.04 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 5.10 regarding property insurance.

14.06 *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 is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *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, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment 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.

B. *Engineer's Review of Application and Acceptance:*

1. 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 Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. 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. Payment Becomes Due:

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

- A. The making and acceptance of final payment will constitute:
 1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
 2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *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 notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will 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 established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 - 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 - 3. Contractor's repeated disregard of the authority of Engineer; or
 - 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
 - 1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 - 2. 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
 - 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.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 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) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed 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 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.

- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. 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. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 *Owner May Terminate For Convenience*

- A. Upon seven 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;
 - 3. 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) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 - 4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days

to pay Contractor any sum finally determined to be due, then Contractor may, upon seven 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 15.03.

- 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, seven 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 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 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.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
 2. agrees with the other party to submit the Claim to another dispute resolution process; or
 3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents 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.

17.03 *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 Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

SPECIAL PROVISIONS
CONTRACT RD-23-01
2023 ROADWAY REHABILITATION
LRIP PROJECT

I. Specifications

All work is to conform to the City of New Berlin Infrastructure Standards, adopted July 18, 2016, except as amended below. The City of New Berlin Infrastructure Standards is available on the City website at: <http://www.newberlin.org/index.aspx?nid=773>

II. Time for Start of Work and Completion

The City of New Berlin is requesting that the work start no later than **May 30, 2023** and be completed by **October 20, 2023**. After October 20, 2023, a fee of \$250.00 per calendar day will be charged to the Contractor for inspection services. The anticipated Contract Award date and Notice to Proceed date for this Contract will be **April 25, 2023**. Once the Contractor begins work under this Contract, the work shall continue until complete.

The roadways shown in Sheet 3 of the Project Drawings, which consist of National Avenue Service Drive, Churchview Drive, 157th Street, 158th Street, and St. Francis Drive, are used for the 4th of July Parade staging. The 4th of July Parade is scheduled for July 4, 2023. Work on these roadways may begin prior to July 4, 2023, but if started, the work must be complete prior to the parade. Work on these roadways may also begin after July 4, 2023.

III. General

The City reserves the right to accept all or part of the work as funding allows. Due to funding limitations, the City reserves the right to delete any of the work to satisfy the budget limitations. The Contractor will not receive extra compensation due to the deletion of any of the work, even if the amount deleted exceeds 15% of the original Contract amount.

The majority of the work, as indicated per these specifications and as directed by the Engineer under this Contract shall consist of resurfacing 31 roadways (7.2 miles). Rehabilitation will involve milling asphaltic pavement to a specified depth, and placing a surface course, or pulverizing the existing pavement, removing surplus material, and resurfacing with hot mix asphalt. Resurfacing shall be in accordance with the City of New Berlin Infrastructure Standards and these special provisions.

The following table indicates the roadways to be rehabilitated. Beside each roadway the rehabilitation method is listed.

Street Name	Section From	Section To	Length	Treatment
Beechwood Tr	Poplar Rd	Spruce Rd	0.13	3" Mill & 3" Overlay
Poplar Rd	Redwood Dr	Beechwood Tr	0.14	3" Mill & 3" Overlay
Wilbur Dr	Cottonwood Rd	Sunny Slope Rd	0.35	3" Mill & 3" Overlay
Churchview Dr	159th St	Moorland Rd	0.31	Pulverize & 5" Overlay
National Ave Service Dr	159th St	National Ave	0.13	Pulverize & 5" Overlay
St Francis Dr	Coffee Rd	Moorland Rd	0.33	Pulverize & 5" Overlay
157Th St	St Francis Dr	Church View Dr	0.18	Pulverize & 5" Overlay
158Th St	St Francis Dr	Church View Dr	0.30	Pulverize & 5" Overlay
Wehr Rd	Wehr Rd	Rustic Ridge Dr	0.19	3" Mill & 3" Overlay
Rustic Ridge Ct	Termini	Rustic Ridge Dr	0.12	3" Mill & 3" Overlay
Rustic Ridge Dr	Cari Adam Dr	Coffee Rd	0.65	3" Mill & 3" Overlay
Johnson Rd	Coffee Rd	Rustic Ridge Dr	0.08	3" Mill & 3" Overlay
Cari Adam Dr	Cari Adam Dr	Rustic Ridge Dr	0.09	3" Mill & 3" Overlay
Ann Louise Dr	Racine Ave	Oak Park Dr	0.32	2.5" Mill & 2.5" Overlay
Ann Louise Ct	Termini	Ann Louise Dr	0.09	2.5" Mill & 2.5" Overlay
Oak Park Dr	Termini	Termini	0.21	2.5" Mill & 2.5" Overlay
Observatory Rd	Calhoun Rd	Racine Ave	1.75	Pulverize & 5" Overlay
La Salle Dr	Marquette Dr	Cherrytree Ln	0.04	3" Mill & 3" Overlay
Cortez Dr	Greentree Dr	La Salle Dr	0.16	3" Mill & 3" Overlay
Cortez Dr	S. of Marquette Dr	Greentree Dr	0.10	3" Mill & 3" Overlay
Cortez Dr	Marquette Dr	S. of Marquette Dr	0.05	3" Mill & 3" Overlay
Greentree Dr	Cortez Dr	Grange Ave	0.27	3" Mill & 3" Overlay
La Salle Dr	Cherrytree Ln	Marquette Dr	0.09	3" Mill & 3" Overlay
La Salle Dr	Grange Ave	Cherrytree Ln	0.44	3" Mill & 3" Overlay
Nicole Ct	Termini	Greentree Dr	0.03	3" Mill & 3" Overlay
Ash Ct	Termini	Aspen Ct	0.07	2.5" Mill & 2.5" Overlay
Aspen Ct	Termini	Ash Ct	0.06	2.5" Mill & 2.5" Overlay
Forest Ave	Termini	Beloit Rd	0.17	2.5" Mill & 2.5" Overlay
Lindenwood Dr	Lindenwood Ct	Forest Ave	0.04	2.5" Mill & 2.5" Overlay
North Oak Blvd	Sunny Slope Rd	Forest Ave	0.23	2.5" Mill & 2.5" Overlay
North Oak Ct	Termini	North Oak Blvd	0.08	2.5" Mill & 2.5" Overlay

Streets to be repaved are shown on the Project Drawings in Appendix A at the back of these Documents. Payment for increased or decreased quantities and extra work shall be governed by an agreed upon price and accompanying change order.

IV. Prequalification

Contractor and all subcontractors shall either submit an Annual Qualification Statement to the City or a project-specific Qualification Statement as part of the Bid Package. The City reserves the right to deny the services of any subcontractor.

V. Testing

The Contractor shall, at no cost to the City, provide for all materials to be pre-tested by a qualified private testing laboratory verifying that the materials are in conformance with the specifications. The City may have tests performed throughout the project to verify that the materials remain in conformance. If the materials are not in conformance, the testing costs and all subsequent testing costs until conformance is achieved shall be deducted from the Contractor. Contractor shall submit testing documentation for all tests performed prior to the start of Work.

Incidental to HMA Paving are nuclear density tests every 500 lineal feet at each outside wheel path and at the centerline. Roadways less than 1,000 feet in length shall have a minimum of two (2) nuclear density tests at each wheel path and at the centerline. Sampling requirements from Section 460.2.8.2.1.3.1 of the State Standard Specification shall be followed.

Incidental to curb and gutter repairs are daily start-up concrete tests, and 28-day cast cylinder breaks.

VI. Cleaning

Binder course and milled surface shall be swept clean by the Contractor prior to placing the surface course. Additional sweeping due to material under this Contract tracking or spilling on adjacent streets shall be removed immediately and at the end of each work day. The cost for sweeping will be considered incidental to this Contract.

VII. Traffic Control & Safety

All streets can be closed to through traffic, but shall remain open for local access at all times. Use of flag personnel for orderly movement of traffic may be needed.

The Contractor is responsible for providing all signs, cones, barrels, barricades, flag personnel, or any other items necessary to protect the public, workers, and the work. All signage shall conform to the Wisconsin Manual on Uniform Traffic Control Devices, Current Edition. All traffic control will be paid as LUMP SUM.

VIII. Saw Cutting Pavement

Execution:

A full depth saw cut shall be made where new pavement is matching existing pavement on roadways that are pulverized & re-laid, or reconstructed. Saw cuts shall be marked prior to the start of work by the Engineer.

Measurement & Payment:

Payment for Saw Cutting Pavement will be made at the Contract unit price per lineal foot, which payment shall be full compensation for all operations hereinbefore specified; and for all labor, tools, equipment and incidentals necessary to complete this item of work.

IX. Pulverize & Relay

Execution:

This work shall consist of pulverizing, distributing, shaping and compaction of the existing asphaltic roadway as directed by the Engineer and as hereinafter provided. Pulverize the full depth of the existing asphaltic pavement until 97% or more will pass the 2-inch sieve. The pulverized material shall be mixed with the existing granular base material. Subgrade material shall not be permitted in the base/surface mixture. Material larger than 3" shall be removed.

The pulverized material shall be redistributed, graded, and shaped to conform to the typical roadway cross-section as found in the Project Drawings. The intent of the Pulverize & Relay item is to approximately match the existing outer base course elevations. The crown of these roadways shall be graded to 3% in order to use as much pulverized material as possible in the base course. However, excess material shall be removed from the site to maintain the existing outer base course elevations. Removal of excess pulverized material will be paid for separately under the Common Excavation bid item. The pulverized material shall then be finish graded and compacted in accordance with Section 305 of the WisDOT State Standard Specifications.

Measurement & Payment:

Pulverized & Relay shall be measured and paid for at the Contract unit price per square yard. Payment shall be full compensation for all operations hereinbefore specified; and for all labor, tools, equipment and incidentals necessary to complete this item of work. Payment under this item also includes any necessary construction staking required to complete this item of work.

All surplus and unsuitable materials shall be disposed of in accordance with Subsection 205.3.11 of the WisDOT State Specifications.

X. Common Excavation

Execution:

Excess pulverized material is to be removed from the site. It is estimated that approximately 4-inches of pulverized material will be required to be removed to meet the typical section. This item shall include all roadway, site grading and drainage excavation necessary to complete this project, including removing existing pavement as specified herein and as shown on the plans. The contractor shall remove all topsoil from within the proposed roadway or as shown on the Project Drawings. Remove all topsoil within 1:1 slopes extending downward and out from the proposed edges of the base or subbase material. All excavation and grading work shall comply with the provisions of Sections 205, 207, 211, and 213 of the WisDOT State Standard Specifications.

Finished base course elevations shall be accepted by the Engineer and the Owner prior to paving.

Measurement & Payment:

Common Excavation will be measured and paid for at the Contract unit price per cubic yard. Payment shall be full compensation for all operations hereinbefore specified; and for all labor, tools, equipment and incidentals necessary to complete this item of work. This item specifically does not include excavation for Base Repair. Excavation for Base Repair will be paid separately as part of the Base Repair bid item.

XI. Removing Asphaltic Pavement by Milling

Execution:

Milling operations shall be from the outside edge to the center of the pavement in a minimum of two passes. The milling machine shall be set to mill the specified depth at the flange line or outside edge of pavement at a minimum 2% crown toward the centerline of the roadway. A 3% crown is desirable, however 2% is acceptable to provide for milling of the centerline where the existing crown is less than 2%. Roadways milled at 2% crown shall be consistent through the length of the roadway, and not have a varying crown. Coordination is required so that the milled areas are not left inactive for more than 3 days.

The Contractor shall install temporary driveway ramps out of 2"x4" wood or 3/8" crushed Traffic Bond at all driveways where 3" milling occurs. This will be considered incidental to the Contract.

An agreement exists between the City and Road & Construction Materials Valley Pit, which requires that excess asphalt millings generated from this project be disposed of at the Racine Avenue Facility located at 6401 S. Racine Avenue, New Berlin, WI 53146. Road & Construction Materials Valley Pit will not charge a dump fee for millings dumped at this location, and will have all equipment necessary to stockpile the material once dumped at the site. The facility has operating hours from 7:00 AM to 7:00 PM Monday through Friday, and 8:00 AM to 5:00 PM on Saturday. The Contractor is required to coordinate the asphalt millings disposal with Road & Construction Materials Valley Pit. (Shelly King-Lotz, 262-894-2387) This dump location does not apply to any other non-millings material generated under this Contract.

Measurement & Payment:

The milled roadway shall be measured and paid for at the Contract unit cost per square yard, as shown in the Project Drawings as part of Appendix A. Payment shall be full compensation for all operations hereinbefore specified; and for all labor, tools, equipment and incidentals necessary to complete this item of work.

XII. Butt Joints

Execution:

Where new pavement is matching existing pavement at roadway intersections, a butt joint shall be constructed. Driveways in rural cross sections shall include a butt joint on to the road side edge of the culvert pipe or a point identified by the inspector. The Contractor shall not track asphaltic material or tack coat onto existing concrete driveways. Damage identified by the Engineer shall be repaired by the Contractor to the satisfaction of the property owner at no cost to the City.

Measurement and Payment:

Payment for Butt Joints will be made at the Contract unit price per lineal foot, which price shall be full compensation for all operations specified, and for all materials, labor, tools, equipment, and incidentals necessary to complete this item of work. Payment will be made on driveway butt joints that require additional milling following the general milling operations. Driveway butt joints that are created during the general milling will not be paid separately.

XIII. Base Repair

Materials:

The backfill material used shall conform to Section 305.2.2.1 of the State Standard Specifications for 1 1/4" Crushed Limestone. Recycled concrete is not acceptable as a backfill material.

Execution:

The milled or pulverized surface shall be proof rolled with a fully loaded quad-axle truck prior to the placement of any asphaltic pavement. Proof rolling shall be scheduled with the City's Engineer. If the proof roll indicates the presence of poor subgrade, the area of poor subgrade shall be marked by the inspector, and excavated 1-foot deep as measured from the milled surface. Excavations in excess of 1-foot shall be approved by the inspector.

The backfill material shall then be placed, graded, and compacted using a pneumatic roller in lifts no greater than 6-inches. The finished grade of the aggregate shall be 3-inches below the milled surface.

Where base repair areas exist in front of driveways, the Contractor shall notify the property owner prior to starting the work. At the end of each work day, all base repair areas in front of driveways shall be accessible by the property owner.

Measurement & Payment:

Areas of Base Repair shall be measured by the cubic yard of roadway base removed. This item includes the excavation and removal of pavement and unsuitable subgrade, backfill materials, placement, grading and compaction. This item does not include the asphalt binder used to patch the removed area, which shall be paid separately. The repaired base shall be paid for at the Contract unit cost per cubic yard, which payment shall be full compensation for all operations hereinbefore specified; and for all labor, tools, equipment and incidentals necessary to complete this item of work. Increased compensation will not be provided if measured base repair quantities are less than the estimated quantity.

XIV. Asphalt Binder, Base Patch

Materials:

The asphalt pavement used in the base repair patch areas shall be 3 LT 58-28 S hot mix asphalt in conformance with Sections 450, 455, and 460 of the latest edition of the WisDOT Standard Specifications. Inclusive is the regression of air voids from 4.0% to 3.0% with asphalt cement.

Omitted from the specifications will be Ride Quality requirements and testing (Section 440), nuclear density testing (Section 460.3.3), safety edge (Section 450.3.2.11), and disincentive and incentive for HMA pavement density (Section 460.5.2.2 and 460.5.2.3).

Execution:

This item is only intended to be used in mill and overlay resurfacing areas. Following the excavation and placement of base repair aggregate, the repaired areas shall be patched with 3-inch average thickness hot mix asphalt meeting the material specifications above.

Measurement & Payment:

Base repair binder is divided into two pay items.

Pay item "Asphalt Binder, Base Patch (<8-feet width), 3 LT 58-28 S" is to be used in patches that are less than 8-feet in width. This item is intended to provide a pay item for decreased productivity in narrow patches.

Pay Item "Asphalt Binder, Base Patch (≥8-feet width), 3 LT 58-28 S" is to be used in patches that are equal to or greater than 8-feet in width. This item is intended to provide a pay item for increased productivity in wide patches that would enable the use of a paving machine.

Areas base repair binder will be measured by the square yard of asphalt binder acceptably placed, as measured by the Engineer. The base repair binder shall be paid for at the Contract unit cost per square yard, which payment shall be full compensation for all operations hereinbefore specified; and for all labor, tools, equipment and incidentals necessary to complete this item of work. It is estimated that approximately one-half of the patch areas are less than 8-feet in width, however, increased compensation will not be provided if this distribution is not witnessed in the field.

XV. Asphalt Surface, Asphalt Binder, and Tack Coat

Materials:

The asphalt surface and binder courses shall be in conformance with Sections 450, 455, and 460 of the latest edition of the WisDOT Standard Specifications. Inclusive is the regression of air voids from 4.0% to 3.0% with asphalt cement.

1-Inch Asphalt Leveling Course shall be 5 LT 58-28 S hot mix asphalt.

2-Inch Asphalt Surface Course shall be 4 LT 58-28 S hot mix asphalt.

3-Inch Asphalt Binder Course shall be 3 LT 58-28 S hot mix asphalt.

Omitted from the specifications will be Ride Quality requirements and testing (Section 440), safety edge (Section 450.3.2.11), and disincentive and incentive for HMA pavement

density (Section 460.5.2.2 and 460.5.2.3).

Execution:

Following the milling and base repair, or binder paving operations, the milled surface or binder course shall be tacked at the rate of 0.05 gallons per square yard with an allowable variation of +/- 0.02 gallons per square yard prior to surfacing, unless otherwise directed by the Engineer. Similarly, if applicable, the asphalt binder course shall be tacked at the rate of 0.05 gallons per square yard with an allowable variation of +/- 0.02 gallons per square yard prior to surfacing, unless otherwise directed by the Engineer.

Daily application of the tack coat shall be limited to approximately that area of surface that can reasonably be expected to be paved during the same day. The Contractor shall provide proper traffic control signage to alert motorists of where the tack coat is present.

The existing approaches to mailboxes shall be paved. Preparation work shall be incidental as directed by the Engineer.

The bituminous concrete pavement to be placed on the roadways shall conform to the City of New Berlin Infrastructure Standards 5.2.6.

Where feasible the asphalt shall be placed to achieve a minimum final centerline crown of 2% on all roadways being rehabilitated. 3% crown is desired where the centerline surface course compacted thickness does not exceed 2.5-inches on average.

Compaction shall be in accordance with Section 450.3.2.6 of the WisDOT State Standard Specifications.

The thickness shown is not minimum, but an average thickness to obtain the required crown. This takes into account the unevenness of the existing surface. The minimum thickness to be applied in any area shall not be less than those specified in Section 460.3.2 of the State Standard Specifications.

The Contractor shall submit, for the Engineer's verification, an asphaltic mix design meeting all necessary criteria. The asphaltic mix design shall consist of aggregate gradation, aggregate blend percentages, Job Mix Formula (JMF), recommended asphalt content, recommended plant mix temperature range and shall be signed by a professional engineer.

Reclaimed asphalt pavement requirements shall conform to Section 460.2.5 of the Wisconsin State Standard Specifications.

Measurement & Payment:

The Engineer shall be provided with daily tack tickets. These tickets for each day's work shall be provided to the Engineer no later than the following day. Payment for Tack Coat will be made at the Contract unit price per gallon acceptably applied per these specifications. Payment shall be full compensation for all operations specified, and for all materials, labor, tools, equipment and incidentals necessary to complete this item of work.

The Engineer shall be provided with proper trip tickets for each load of asphalt material delivered and placed, noting time, truck number, origin, destination, gross, net and tare weights, and type of material. These tickets for each day's work shall be provided to the Engineer no later than the following day. The City will measure hot mix asphalt surface and binder at the Contract unit price per ton of material acceptably placed per these specifications. Payment shall be full compensation for all operations specified, and for all materials, labor, tools, equipment, and incidentals necessary to complete this item of work.

XVI. Shouldering, Reclaimed Asphalt Pavement, ¾" Dense

Materials:

This work shall consist of constructing or restoring crushed aggregate shoulders adjacent to pavement. The shoulder material shall consist of reclaimed asphalt pavement having the properties in accordance with Section 305.2.2.1 of the WisDOT State Standard Specifications for ¾" Crushed Aggregate.

Execution:

The shoulder material shall be placed, graded, and compacted within the void created during the milling process, and slope to the existing shoulder limits where the existing shoulder is granular. A pneumatic or vibratory roller shall be used to compact the material, including the foreslope. A walk-behind or other approved compaction device may be used to achieve sufficient compaction on the foreslope as determined by the Engineer. Excess material beyond existing shoulder limits shall be removed and restored.

This project contains variable width shoulders throughout. The width of shoulder will typically be 6-inches to 1-foot.

Gravel driveways adjacent the project limits shall be blended using this material to achieve a smooth transition to the new pavement.

The shouldering method shall be discussed with the Engineer and City Staff prior to the start of shouldering work.

Measurement and Payment:

Material haul tickets shall be provided to the Engineer by the end of each working day. Payment for shouldering will be made at the Contract unit price per ton, which price shall be full compensation for all operations specified, and for all materials, labor, tools, equipment, and incidentals necessary to complete this item of work.

XVII. Shoulder Restoration, Topsoil, Fertilizer, Seed, Matting, Watering

Materials:

Topsoil used for shoulder restoration shall be imported, humus-bearing, and loam type. Topsoil shall be mechanically screened of roots, sticks, branches, and stones larger than ½" diameter. Seed shall be WisDOT seed mixture No. 40. Fertilizer shall be granular or liquid marked with content analysis, shall have a nitrogen-phosphorous-potassium ratio of

1-2-1, and shall have at least 50 percent of nitrogen content in organic, slow-release form. Erosion mat shall be Non-channel erosion mat Class I, Urban Type B, or approved alternate.

Execution:

This bid item is intended to only be used when the existing shoulder abutting the roadway is below finished grade and is composed of sod, and as directed by the Engineer. Recycled asphalt will be placed directly adjacent to the new asphalt pavement for a width of approximately 6-inches. Following aggregate shoulder placement, topsoil shall be spread and graded at an average width of 2-feet along the aggregate shoulder to blend into existing sod on the ditch foreslope. Seed shall be spread at 4-5 pounds per 1000 square feet, and fertilized. Mulching with erosion mats cut into 2-3 foot widths and stapled onto the restored area. The restored area shall be watered initially with 1 ½ inches of water using a 1000 gallon capacity water truck with hoses, nozzles, or arms capable of watering the restored areas while driving in the center of the road, as to not damage the new pavement edge.

Continued watering is to be included in this bid item. On days 2-14 (or until complete germination, whichever comes last), following the seeding, the restored areas shall be watered ½ inch every other day. Natural rain events may substitute for watering, but perform additional watering on rain event days to achieve specified water amounts.

Measurement and Payment:

Payment for Shoulder Restoration will be made at the Contract unit price per lineal foot of shoulder acceptably restored, which shall be full compensation for all operations specified, and for all materials, labor, tools, equipment and incidentals necessary to complete this item of work. This item is not to include aggregate shoulder placement, which will be paid separately under the Shouldering, Asphalt Millings bid item.

XVIII. Manhole Adjustment, Cast Iron Paving Rings

Materials:

Manhole frames shall be adjusted by a single, one piece, cast iron adjusting ring if the total adjustment is less than 3-inches. Adjustable diameter type manhole adjustment rings shall not be used to raise manholes to finish grade.

Manholes with internal rubber seals shall have the seal extended or replaced to conform to the newly adjusted manhole grade. This is considered incidental to the work performed under the Manhole Adjustment.

Execution:

Prior to this project, all sanitary manholes have been inspected by the City Utility Department and repaired to their satisfaction. The Contractor shall inspect manholes within the project limits to determine the extent of any deficiencies in the manhole structure and any work associated with repairing these deficiencies. The Contractor shall notify the Engineer who shall determine if any repairs are beyond the scope of the

Contract.

Manholes shall be set below the finished grade of the pavement. In no case shall the grade of the manhole be more than one half (1/2) inch lower than the grade of the finished surface or higher than one quarter (1/4) inch below the finished surface grade.

The Contractor shall clean all adjusted manholes of foreign debris as a result of the adjustment or paving operation. The Engineer shall verify the cleanliness of the adjusted manholes. If, prior to adjusting the manholes, they are found to have foreign debris such as soil or aggregates not caused by work in this Contract, the Engineer shall be notified by the Contractor who will notify the Utility Department.

All sanitary sewers shall be left in completely cleaned condition after manhole adjustments have been completed. All mortar, construction debris and asphalt shall be removed from lid slots, between the manhole lid and frame, as well as on the manhole walls and bench to the sewer flow line. All flow lines must be cleaned, allowing flow without obstructions. If Utilities Department personnel have to remove any debris that is left in structures and/or sewer lines after the manhole adjustments have been completed, time and equipment costs will be billed to the Prime Contractor.

All sanitary facilities will be inspected by the Utility following the work to ensure proper construction. Deficiencies will be provided in a list to the Engineer for the Contractor to address. After addressing these issues the Utility will perform a follow up inspection. Further deficiencies not addressed will be provided in a list, and subsequent inspections by the Utility will be billed at a rate of \$125.00 per hour to the Contractor until the adjustments are satisfactorily completed.

New pavement removed as a result of unacceptable utility adjustments shall be replaced and crack sealed at no additional cost to the City.

Measurement & Payment:

The City will measure Manhole Adjustments as each individual manhole acceptably completed. Payment for Manhole Adjustments is full compensation for providing all required materials, exclusive of frames, grates or lids available and designated for adjusting; and for removing, reinstalling and adjusting the covers. The Contractor shall replace all covers to be adjusted and that are unusable due to the Contractor's operations, at no expense to the City.

XIX. Valve Box Adjustments

Materials:

Valve box adjustments shall be made with screw-in type risers conforming to Section 2.1.5 of the City of New Berlin Infrastructure Standards. Slip-in type risers will be accepted where pre-approved by the Engineer.

Execution:

Prior to this project, all valves have been inspected by the City Utility Department and

repaired to their satisfaction. The Contractor shall inspect valves within the project limits to determine the extent of any deficiencies in the valve box structure and any work associated with repairing these deficiencies. The Contractor shall notify the Engineer who shall determine if any repairs are beyond the scope of the Contract.

Valve boxes shall be set below the finished grade of the pavement. In no case shall the grade of the valve box be more than one half (1/2) inch lower than the grade of the finished surface or higher than one quarter (1/4) inch below the finished surface grade.

The Contractor shall clean all adjusted valve boxes of foreign debris as a result of the adjustment or paving operation. The Engineer shall verify the cleanliness of the adjusted valve boxes. If, prior to adjusting the valve boxes, they are found to have foreign debris such as soil or aggregates not caused by work in this Contract, the Engineer shall be notified by the Contractor who will notify the Utility Department.

All water facilities will be inspected by the Utility following the work to ensure proper construction. Deficiencies will be provided in a list to the Engineer for the Contractor to address. After addressing these issues the Utility will perform a follow up inspection. Further deficiencies not addressed will be provided in a list, and subsequent inspections by the Utility will be billed at a rate of \$125.00 per hour to the Contractor until the adjustments are satisfactorily completed.

New pavement removed as a result of unacceptable utility adjustments shall be replaced and crack sealed at no additional cost to the City.

Measurement and Payment:

The City will measure Valve Box Adjustments as each individual valve box acceptably adjusted. Payment for Valve Box Adjustments is full compensation for providing all required materials designated for adjusting; and for removing, reinstalling and adjusting the valve boxes. The Contractor shall replace all valve boxes that are unusable due to the Contractor's operations, at no expense to the City.

XX. Storm Inlet Repair, Tuck Point and Casting Adjustment

Materials:

Grout used in tuck pointing shall be pre-mixed, non-metallic, high-strength, non-shrink, Pennagrout® by IPA Systems, or approved equal, which meets requirements of ASTM C-1-91 and C-827 as well as CRD C-588 and C-621.

Measurement & Payment:

The City will measure Storm Inlet Repair, Tuck Point and Casting Adjustment as each individual inlet repair acceptably completed, which price shall be full compensation for all operations specified, and for all materials, labor, tools, equipment, and incidentals necessary to complete this item of work.

XXI. Storm Inlet Repair, Top Rebuild

Materials:

All adjustment materials shall conform to the City of New Berlin Infrastructure Standards Section 4.1.13.1. Cretex rings are acceptable within the top 2-feet of the inlet structure as measured from the top of the structure.

Execution:

The scope of this item is intended to provide a pay item for curb inlets that require rebuilding of the inlet structure within the top one foot. Curb inlets identified in the project drawings to receive Top Rebuild shall be inspected by the Contractor to determine the extent of the repair. Any deficiencies in the structure beyond the scope of this item shall be brought to the attention of the inspector, and considered for payment under the Full Rebuild bid item.

The curb and gutter adjacent to the inlet shall be removed to a point as marked in the field, but no less than 4-feet from the inlet. The casting shall be removed from the structure, and deteriorated sections of the structure shall be removed, replace the existing casting on the repaired structure, and restore the disturbed area around the inlet with topsoil, mulch, seed and fertilizer. Restoration is considered incidental to this bid item.

Measurement & Payment:

Curb and gutter repairs due to this item will be paid separately under the Remove and Replace Concrete Curb & Gutter bid item.

The City will measure Storm Inlet Repair, Top Rebuild as each individual inlet repair acceptably completed, which price shall be full compensation for all operations specified, and for all materials, labor, tools, equipment, and incidentals necessary to complete this item of work.

XXII. Remove & Replace Concrete Curb & Gutter

Materials:

Curb & gutter repairs shall be made in accordance with the City of New Berlin Infrastructure Standards. Concrete shall be air entrained, Grade A, conforming to WisDOT Standard Specification Section 501. Where connection is made to existing curb, two (2) #4 epoxy coated dowel bars are required.

The concrete surface shall be sealed, directly after finishing operations, by spraying a uniform coating of white curing material meeting the requirements of WisDOT Standard Specification Section 415.2.4.

Execution:

Sections of curb and gutter to be removed and replaced shall be identified and field marked by the City prior to construction. Lengths of curb and gutter shall be no shorter than 4-feet. Where curb and gutter repairs exist in front of driveway openings, the property owner shall be made aware of the work at least one day in advance.

Curb and gutter shall be saw cut and removed as to not damage any existing City infrastructure. Damage to City infrastructure, including curb inlets, that had been identified prior to construction in good condition shall be repaired or replaced at the sole expense of the Contractor.

Driveways damaged adjacent to curb and gutter repairs shall be repaired at the sole expense of the Contractor. The Contractor shall notify the Engineer, prior to the work, of any adjacent driveways that will not withstand the curb and gutter repair operations.

Curb and gutter repair locations shall cure a minimum of four days prior to backfilling. During the cure time, appropriate traffic control shall be in place. After the cure time, curbs shall be backfilled with topsoil, seed mixture number 40, and mulch. The asphalt pavement shall be patched with full depth hot mix asphalt. This restoration is considered incidental to this bid item.

Measurement and Payment:

Payment for Remove & Replace Concrete Curb & Gutter will be made at the Contract unit price per lineal foot of curb & gutter removed and replaced, which price shall be full compensation for all operations specified, and for all materials, labor, tools, equipment, and incidentals necessary to complete this item of work.

XXIII. Pavement Marking

Materials:

Use materials conforming to Section 646.2.4 of the WisDOT State Standard Specifications for epoxy pavement marking with glass beads conforming to Section 646.2.3 of the WisDOT State Standard Specifications.

Execution:

Apply pavement marking at the location, color, and size as shown in the Project Drawings in conformance with Section 646.3 of the WisDOT State Standard Specifications.

Measurement & Payment:

Payment for pavement marking items will be paid at their respective Contract unit price. Payment shall be full compensation for all operations specified, and for all materials, labor, tools, equipment, and incidentals necessary to complete this item of work.

**CITY OF NEW BERLIN
RD-23-01**

2023 LRIP ROADWAY REHABILITATION

PROPOSAL

To the City of New Berlin
New Berlin, WI 53151

Having become familiar with the local conditions affecting the cost of the work and with the Contract Documents, including Advertisement for Bids, Form of Bonds, etc., Plans, Specifications, any Addenda and Exhibits issued and attached to the Contract Documents on file in the Office of the City Engineer of New Berlin, Wisconsin, the undersigned hereby proposes to perform everything required to be performed and to provide and furnish all the labor, materials, necessary tools, expendable equipment and all utility and transportation services necessary to perform and complete in a workmanlike manner all of the work required for and the work described in the following Bidding Schedule, all in accordance with the Plans and Specifications for the sum set forth in the following Bidding Schedule:

Base Bid					
Bid Item	Description	Unit Cost	Unit	Quantity	Cost
1	Tack Coat		GAL	5,176	
2	Butt Joints		LF	2,224	
3	Saw Cutting Pavement		LF	3,201	
4	Common Excavation		CY	4,371	
5	Pulverize & Relay		SY	39,733	
6	Remove Asphaltic Pavement by Milling, 2.5-Inch		SY	20,257	
7	Remove Asphaltic Pavement by Milling, 3-Inch		SY	43,509	
8	Base Repair		CY	4,141	
9	Manhole Adjustment, Cast Iron Paving Rings		EACH	62	
10	Water Valve or Water Box Adjustment		EACH	40	
11	Remove & Replace Concrete Curb & Gutter		LF	709	
12	Asphalt Leveling, 5 LT 58-28 S, 1-Inch		TON	2,752	
13	Asphalt Surface, 4 LT 58-28 S, 2-Inch		TON	10,052	
14	Asphalt Surface, 4 LT 58-28 S, 2.5-Inch		TON	3,203	
15	Asphalt Binder, 3 LT 58-28 S, 3-Inch		TON	7,539	
16	Asphalt Binder, Base Patch (<8-Feet Width), 3 LT 58-28 S, 3-Inch		SY	3,826	
17	Asphalt Binder, Base Patch (>=8-Feet Width), 3 LT 58-28 S, 3-Inch		SY	3,826	
18	Shouldering, Reclaimed Asphalt Pavement, 3/4" Dense		TON	602	
19	Shoulder Restoration, Topsoil, Fertilizer, Seed, Matting, Watering		LF	9,846	
20	Storm Inlet Repair, Tuck Point and Casting Adjustment		EACH	2	
21	Storm Inlet Repair, Top Rebuild		EACH	1	
22	Pavement Marking, Epoxy, 4-Inch Solid, White		LF	17,885	
23	Pavement Marking, Epoxy, 4-Inch Solid, Yellow		LF	12,329	
24	Pavement Marking, Epoxy, 4-Inch, Skip Dash, Yellow		LF	4,401	
25	Pavement Marking, Epoxy, 18-Inch, Stop Bar, White		LF	175	
26	Traffic Control		LUMP SUM	1	
				Total Cost	

Write Out Total:

Accompanying this Proposal is a (Certified Check) (Bid Bond) (Bank Draft) in the amount of Five Percent (5%) of amount bid payable to the City of New Berlin, Wisconsin, which (protects) it is agreed will be forfeited to said City of New Berlin if the Undersigned failed to execute the Contract in conformity with the Form of Contract incorporated in the Contract Document, and furnish bond as specified within ten days from the notifications of the award of the Contract to the undersigned.

In submitting this Proposal, it is understood and agreed by the undersigned that the right is reserved by the Owner to reject any or all proposals. It is further understood and agreed that this Proposal may not be withdrawn for a period of (60) sixty days from the opening thereof.

If awarded a Contract under this Proposal the undersigned agrees to start work within ten (10) calendar days after the receipt from the Owner of a formal Notice to Proceed. The undersigned further agrees to commence work at the site on a date to be specified in a written order from the Owner, which date will not be prior to that established by the calendar days stated above, except by mutual agreement between the undersigned and the Owner, and agrees to fully complete all work covered by October 20, 2023. The undersigned understands and agrees that the Owner reserves the right to defer issuance of a written order to commence work for a period not to exceed thirty (30) days after the date herein established by the undersigned as a proposed starting date.

The Contractor hereby declares that he has read each and every stipulation within the "Specifications" including all Codes referred to, and that he fully understands them and that he hereby agrees to faithfully comply therewith.

It is agreed that if the Contractor is permitted to finish the work after the time stated in this Proposal, the City of New Berlin may deduct from any money due the Contractor a sum of 250.00 dollars for every calendar day beyond the above specified time which shall elapse before the work is satisfactorily completed unless a written extension is approved by the City Engineer.

DATE

FIRM NAME

BY: _____

TITLE

BY: _____

TITLE

OFFICIAL ADDRESS

NOTE: Bidders should not add any conditions or qualifying statements to this bid as otherwise the bid may be declared irregular as being not responsive to the Advertisement for Bids.

**CONTRACT
RD-23-01**

This Contract made this _____ day of _____, 2023, by and between _____, herein called the "Contractor", and the City of New Berlin, a municipal corporation, located in Waukesha County, Wisconsin, herein called the "Owner".

WITNESSETH: That the Contractor and the Owner for the consideration stated herein, agree as follows:

ARTICLE I. SCOPE OF WORK

The Contractor shall perform everything required to be performed and shall provide and furnish all the labor, materials, equipment, necessary tools, expendable equipment, insurance provided by the specifications, contributions to social security and all utility and transportation service required to perform and complete in a workmanlike manner the projects as defined in these Contract documents, all in strict accordance with the specifications and in strict compliance with the Contractor's proposal and other Contract documents, herein mentioned as component parts of this Contract. The Contractor shall do everything required by this Contract and other documents constituting a part thereof and in the manner specified therein.

The anticipated Contract Award date and Notice to Proceed date for this Contract will be **April 25, 2023**. The City of New Berlin is requesting that the work start no later than **May 30, 2023** and be completed by **October 20, 2023**.

ARTICLE II. CONTRACT PRICE

Owner shall pay to the Contractor for the performance of this Contract, subject to any additions or deductions provided therein, in current funds, the approved not to exceed Contract price of:

_____.

The above total shall be the basis for establishing the amount of the performance bond and is not to be construed to be a lump sum contract price. The foregoing quantities of the unit price items are approximately only and it is understood and agreed that payment will be made only on the actual quantities of work completed in place, measured on the basis defined in the Contract documents and at the unit prices stated above.

PAYMENT

The Contractor shall review pay quantities with the Engineer on a minimum bi-weekly basis. No more than two weeks shall pass between when the work has taken place and the quantity verification between the Engineer and Contractor. If more than two weeks pass, the quantities as measured by the inspector and confirmed by the Engineer shall be conclusive.

The Owner will retain 5% of the estimate of the value of the Work or Contract until 50% of the

Work is completed. 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, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of Work subsequently completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100 percent of the Work completed less the aggregate of payments previously made and the retainage calculated. If the Work is certified as unsatisfactory by the Engineer, Owner will continue to retain part of the payments up to 10% of the value of the Work completed.

Owner, in case the work under this Contract is not completed within the time required, or within an extended time approved in writing by the Owner, is authorized to take charge of the work and finish it at the expense of the Contractor and his sureties and to apply the amounts retained from estimates to the completion of the work.

The final payment shall be made within 60 days after completion and acceptance of the work included in this Contract and all payments shall be due when certificates are issued for them. However, the owner may withhold payments prior to final acceptance of the work for reasons set forth in the general or special specifications.

ARTICLE III. COMPONENT PARTS OF THIS CONTRACT

This Contract consists of the following component parts, all of which are as fully a part of it as if set out verbatim herein, or, if not attached, as if the same were hereto attached.

- Advertisement for Bids
- Subcontractor List
- Bidder's Qualification Statement
- Subcontractor's Qualification Statement
- Special Provisions
- Bid Proposal
- Contract
- Bid Bond
- Project Drawings
- City of New Berlin Infrastructure Standards

The Contract Documents form a complete unit and requirements called for by one as binding as if called for by all. In case of conflict between plans and specifications, the specifications shall govern. Special provisions shall control over general conditions.

ARTICLE IV. PAYMENT FOR LABOR AND MATERIAL

Per Section 16.856 of the Wisconsin State Statutes the Prevailing Wage Rate does not apply to this project.

ARTICLE V. LIQUIDATED DAMAGES

In the event that the services to be provided by Contractor under this Contract are not completed by the date of final completion set forth herein, then, in that event Contractor shall be responsible to pay to City as liquidated damages the sum of \$250.00 per day for each day

or portion of a day that the work remains uncompleted thereafter. The parties acknowledge that the City shall have the right to offset said liquidated damages as against any sums which might otherwise be due Contractor under this Contract. The liquidated damages provided for herein shall not be in lieu of any other claims or damages which the City may otherwise be entitled to. The City shall make the final determination of whether Contractor has completed its Contract responsibilities.

ARTICLE VI. OBSTRUCTION OF STREETS

If the Contractor shall in any manner obstruct a street or sidewalk, he shall put up and maintain barriers and lights to prevent accidents, and shall be liable for all damages caused by failure to do so; and such Contractor shall further be liable for all damages caused by the negligent digging up of the streets, alleys, or public grounds or which may result from his carelessness in the execution of such work (Section 62.15 (11), Wisconsin Statutes). The Contractor shall also be bound by any further requirements of the specifications on this point.

ARTICLE VII. HOLD HARMLESS CLAUSE

And the Contractor covenants and agrees that he will indemnify and save harmless the owner and defend the same against any and all liability, claims, loss, damages, interest, actions, suits, judgements, costs, expenses, attorney's fees, and the like, to whomsoever owned or by whomsoever brought or obtained which may in any manner result from, or arise out of the performance of the work herein mentioned, expressly including the negligence of the Contractor and/or the owner (or the negligence of the agents, servants, employees, workmen or independent Contractors of either of them) in carrying out and supervising the said work in any respect whatever.

ARTICLE VIII. CONTRACT BOND

At the time that the Contract is executed, the Contractor shall furnish to the Owner a performance/labor and material payment bond in the amount of 100% of the Contract price issued by a surety company licensed to do business in this state conditioned for the faithful performance of the Contract and the payment to every person entitled thereto of all claims for labor performed and materials furnished under the Contract to be used or consumed in making the public improvement or performing the public work as provided in the Contract and as specified in the Contract all as required by Section 289.14 (1), Wisconsin Statutes.

ARTICLE IX. INSURANCE & ENDORSEMENT

Personal income tax payments, social security contributions, insurance and all other governmental reporting and contributions required as a consequence of the Contractor receiving payment under this Contract shall be the sole responsibility of the Contractor. The Contractor shall be required to carry insurance coverage of the type and with the minimum limits set forth below. The Contractor shall be solely responsible to meet Contractor insurance needs as specified below during the terms of this Contract or any extension thereof.

General Liability:

General Aggregate	\$2,000,000
Products Comp/Ops Aggregate	\$2,000,000
Personal/Advertising Injury	\$1,000,000
Each occurrence	\$1,000,000
Fire Damage (Any One Fire)	\$ 50,000
Medical Expense (Any One Person)	\$ 5,000

Automobile Liability:

CSL	\$1,000,000
Bodily Injury (Per Accident)	\$1,000,000
Property Damage (Per Accident)	\$1,000,000

Umbrella Liability:

Umbrella Form - Each Occurrence	\$2,000,000
Umbrella Form - Aggregate	\$2,000,000
Self-Insured Retention	\$ 10,000

Workers' Compensation and Employers' Liability

Each Accident	\$ 500,000
Disease Policy Limit	\$1,000,000
Disease Each Employee	\$ 500,000

The Contractor shall not commence work until he has obtained all insurance required by the City of New Berlin. A Policy Endorsement shall be signed by an authorized Principal of the Insurer and provided to the City Engineer as evidence thereof naming the City as an additional insured and showing the Contractor is covered by the above required types and amount of insurance, providing for a thirty (30) day written notice to the City prior to change, termination or cancellation. Such notice provisions shall be stated in the unconditional affirmative. Phrases such as "shall endeavor to notify" are unacceptable and shall be rejected. The additional insurance must be on a primary and noncontributory basis.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in three original counterparts the day and year first above written.

Contractor

Address

(SEAL)
ATTEST:

By: _____

By: _____

Title

By: _____

Mayor

(SEAL)
ATTEST:

By: _____

Clerk

Provision has been made to pay the liability that will accrue under this Contract.

Approved as to form:

By: _____

Treasurer

Attorney

Date: _____

Date: _____

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____

_____ as principal, and

_____ as Surety, are hereby

held and firmly bound unto City of New Berlin as Owner in the penal sum of

_____ for the payment of which, well and truly to be made, we hereby jointly and

severally bind ourselves, successors and assigns. Signed, this _____ day of _____, 20____.

The condition of the above obligation is such that whereas the Principal has submitted to City of New Berlin a

certain bid, attached hereto and hereby made a part hereof to enter into a contract in writing, for the

2023 LRIP Roadway Rehabilitation, Contract RD-23-01, City of New Berlin.

NOW, THEREFORE,

(a) If said Bid shall be rejected, or in the alternate,

(b) If said Bid shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto (properly completed in accordance with said Bid) and shall furnish bonds for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said Bid, then this obligation shall be void otherwise, the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such Bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

_____ (L.S.)

Principal

Surety

By:

IMPORTANT - Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 amended) and be authorized to transact business in the state where the project is located.

PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):
of Business):

SURETY (Name and Address of Principal Place

OWNER (Name and Address):

CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Bond Number:

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Company:

Signature: _____ (Seal)

Name and Title:

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL

Company:

Signature: _____ (Seal)

Name and Title:

SURETY

(Seal)

Surety's Name and Corporate Seal

By:

Signature and Title

(Attach Power of Attorney)

Attest:

Signature and Title

SURETY

(Seal)

Surety's Name and Corporate Seal

By:

Signature and Title

(Attach Power of Attorney)

Attest:

Signature and Title:

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner for the performance of the Contract, which is incorporated herein by reference.
2. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 3.1.
3. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
 - 3.1. Owner has notified Contractor and Surety, at the addresses described in Paragraph 10 below, of the Default. If Owner, Contractor and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Contractor Default; and
 - 3.2. Owner has declared a Contractor Default and formally terminated Contractor's right to complete the Contract.; and
 - 3.3. Owner has agreed to pay the Balance of the Contract Price to:
 1. Surety in accordance with the terms of the Contract; or
 2. Another contractor selected pursuant to Paragraph 4.3 to perform the Contract.
4. When Owner has satisfied the conditions of Paragraph 3, Surety shall promptly and at Surety's expense take one of the following actions:
 - 4.1. Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or
 - 4.2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
 - 4.3. Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Owner and Contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or
 - 4.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
 1. After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment therefor to Owner; or

2 Deny liability in whole or in part and notify Owner citing reasons therefor.

5. If Surety does not proceed as provided in Paragraph 4 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in Paragraph 4.4, and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.
6. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Contractor under the Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Contract. To a limit of the amount of this Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:
 - 6.1. The responsibilities of Contractor for correction of defective Work and completion of the Contract;
 - 6.2. Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions or failure to act of Surety under Paragraph 4; and
 - 6.3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Contractor.
7. Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the 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 Owner or its heirs, executors, administrators, or successors.
8. Surety hereby waives notice of any change, including changes of time, to Contract or to related subcontracts, purchase orders, and other obligations.
9. 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 Contractor Default or within two years after Contractor ceased working or within two years after 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 period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Definitions.

12.1 Claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Contract.

12.2. Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3. Contractor Default: Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.

12.4. Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or comply with the other terms thereof.

PAYMENT BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):
of Business):

SURETY (Name and Address of Principal Place

OWNER (Name and Address):

CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Bond Number:

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Company:

Signature: _____ (Seal)

Name and Title:

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL

Company:

Signature: _____ (Seal)

Name and Title:

SURETY

(Seal)

Surety's Name and Corporate Seal

By: _____

Signature and Title

(Attach Power of Attorney)

Attest: _____

Signature and Title

SURETY

(Seal)

Surety's Name and Corporate Seal

By: _____

Signature and Title

(Attach Power of Attorney)

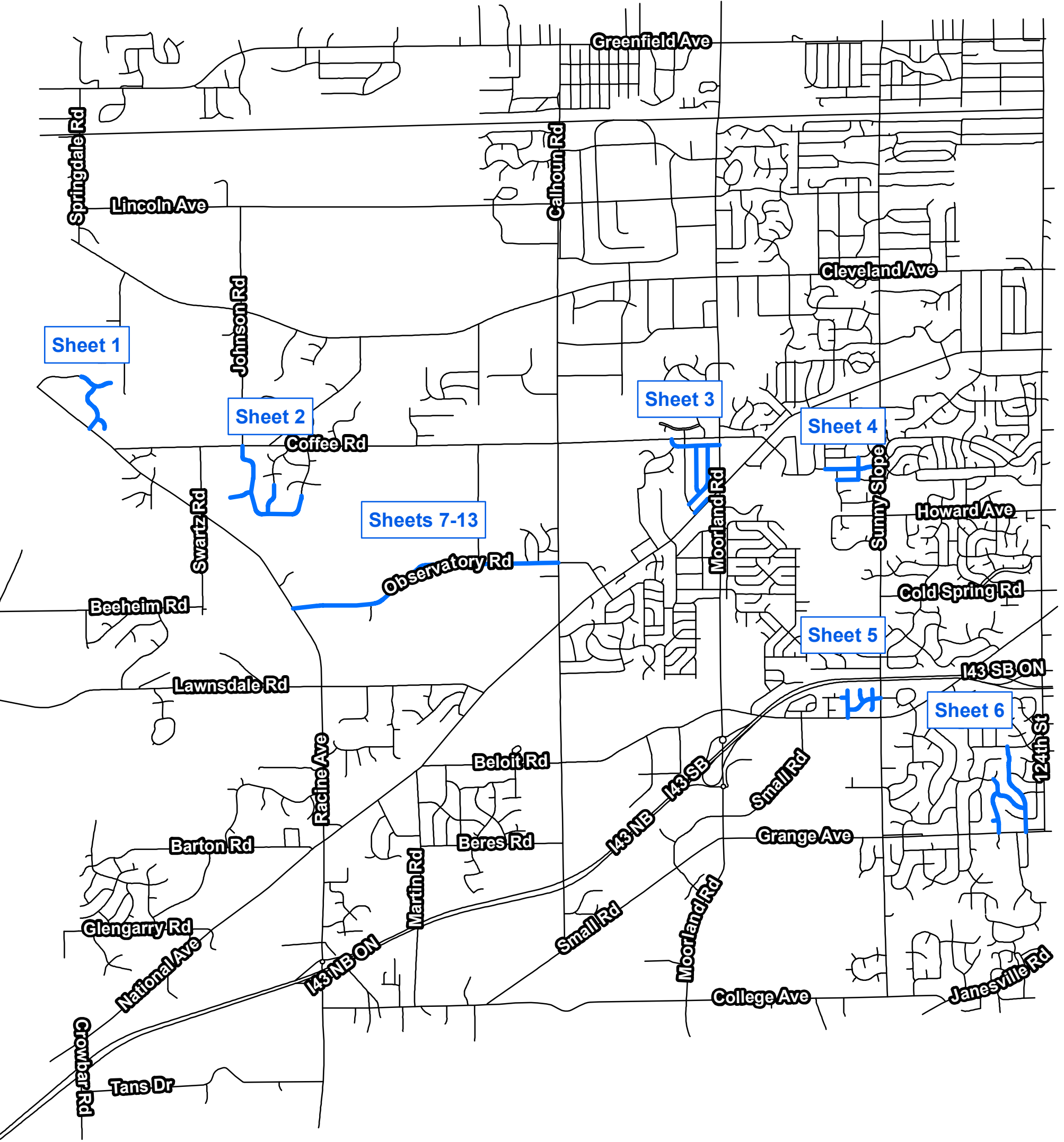
Attest: _____

Signature and Title:

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner to pay for labor, materials, and equipment furnished by Claimants for use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to Owner, this obligation shall be null and void if Contractor:
 - 2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2. Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Owner has promptly notified Contractor and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
 - 4.1. Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the addresses described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - 4.2. Claimants who do not have a direct contract with Contractor:
 1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials or equipment were furnished or supplied, or for whom the labor was done or performed; and
 2. Have either received a rejection in whole or in part from Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which Contractor had indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to Surety and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.
5. If a notice by a Claimant required by Paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.
6. When a Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at Surety's expense take the following actions:
 - 6.1. Send an answer to that Claimant, with a copy to Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2. Pay or arrange for payment of any undisputed amounts.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.
8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.
9. Surety shall not be liable to Owner, Claimants, or others for obligations of Contractor that are unrelated to the Contract. Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. Surety hereby waives notice of any change, including changes of time, to the Contract or to related Subcontracts, purchase orders and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or Paragraph 4.2.3, 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.
12. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Owner, or Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.
14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. DEFINITIONS

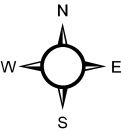
- 15.1. Claimant: An individual or entity having a direct contract with Contractor, or with a first-tier subcontractor of Contractor, to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of Contractor and 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.
- 15.2. Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
- 15.3. Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or comply with the other terms thereof.



2023 LRIP Roadway Rehabilitation Project
City of New Berlin



Department of Community Development
3805 S Casper Drive, New Berlin WI 53151
(262) 797-2445
www.newberlin.org



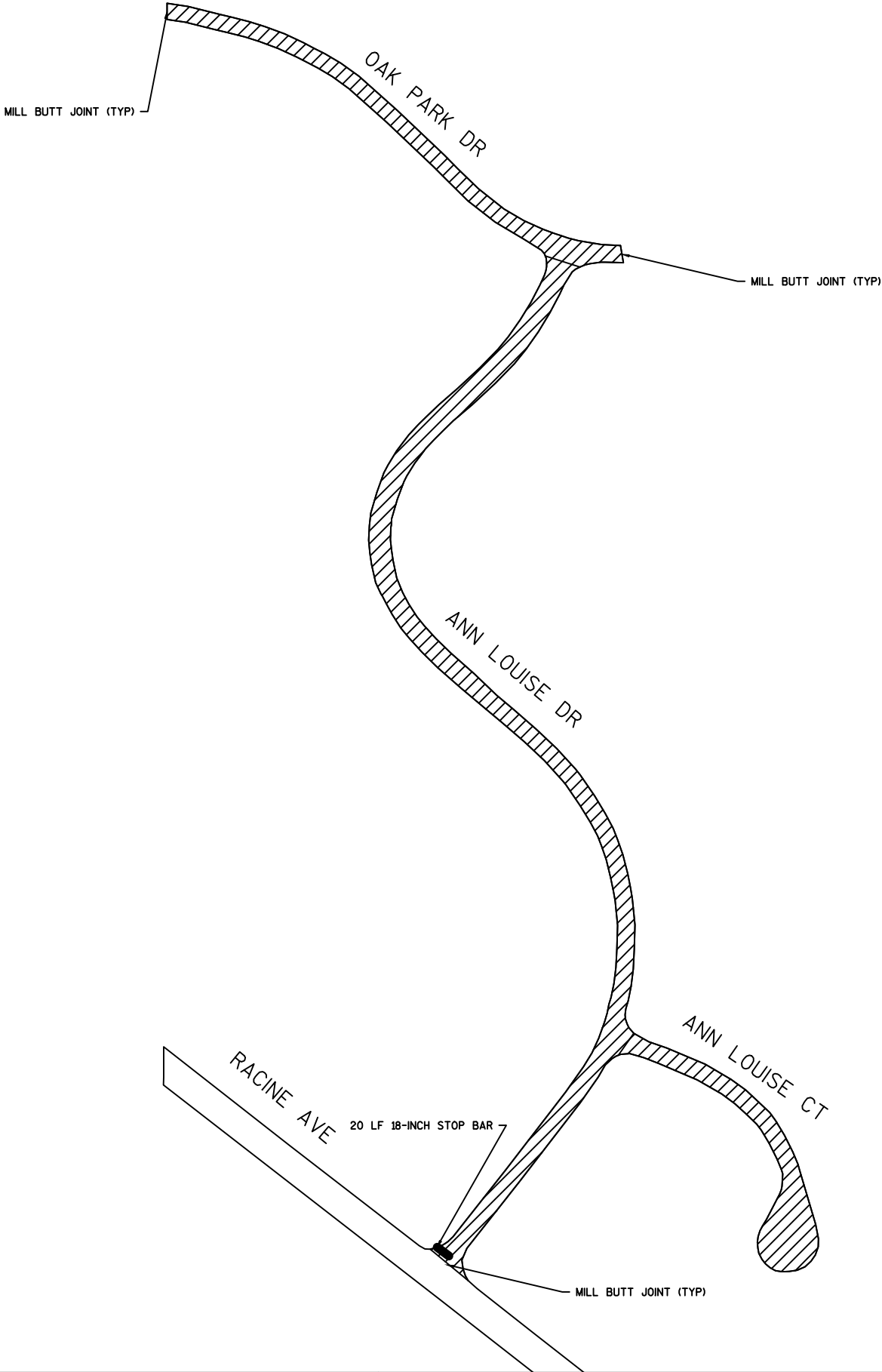
1/31/2023

Legend

Rehabilitation

2023

STREET LIST		
NAME	TREATMENT	ESTIMATED AREA (SY)
ANN LOUISE DR	2.5" MILL & 2.5" OVERLAY 4 LT 58-28 S	5,058
ANN LOUISE CT	2.5" MILL & 2.5" OVERLAY 4 LT 58-28 S	1,687
OAK PARK DR	2.5" MILL & 2.5" OVERLAY 4 LT 58-28 S	1,895



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STREET LIST		
NAME	TREATMENT	ESTIMATED AREA (SY)
WEHR RD	3" MILL & 3" OVERLAY, 1" 5 LT 58-28 S, 2" 4 LT 58-28 S	2,994
RUSTIC RIDGE CT	3" MILL & 3" OVERLAY, 1" 5 LT 58-28 S, 2" 4 LT 58-28 S	2,302
RUSTIC RIDGE DR	3" MILL & 3" OVERLAY, 1" 5 LT 58-28 S, 2" 4 LT 58-28 S	9,275
JOHNSON RD	3" MILL & 3" OVERLAY, 1" 5 LT 58-28 S, 2" 4 LT 58-28 S	1,147
CARI ADAM DR	3" MILL & 3" OVERLAY, 1" 5 LT 58-28 S, 2" 4 LT 58-28 S	1,976

SWARTZ RD

RACINE AVE

MILL BUTT JOINT (TYP)

19 LF 18-INCH STOP BAR

JOHNSON RD

RUSTIC RIDGE DR

RUSTIC RIDGE CT

COFFEE RD

MULBERRY CIR

CHESTNUT DR

WEHR RD

MILL BUTT JOINT (TYP)

BITTERSWEET LN

PHEASANT RUN DR

MILL BUTT JOINT (TYP)

CARI ADAM DR

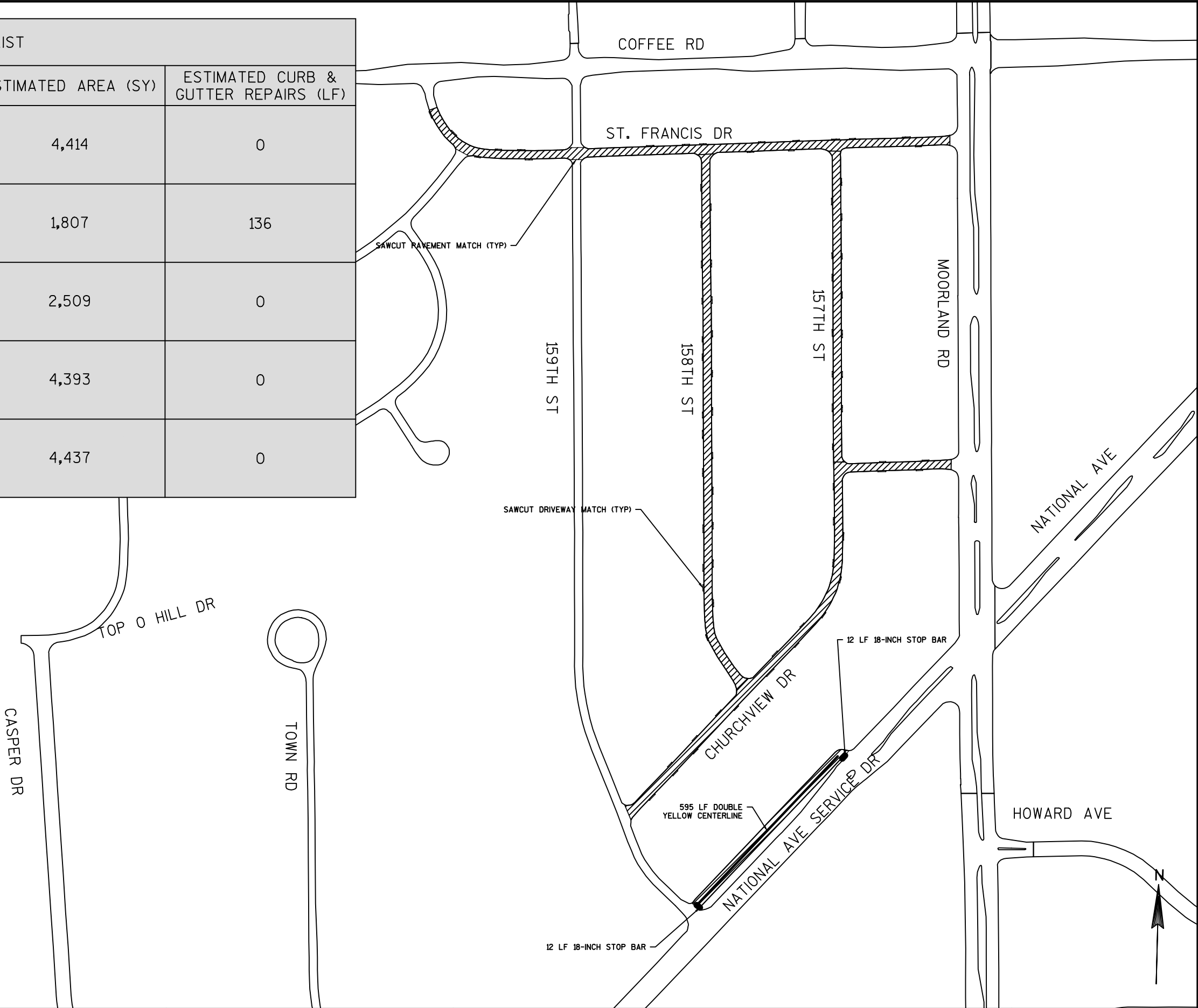
RUSTIC RIDGE RD



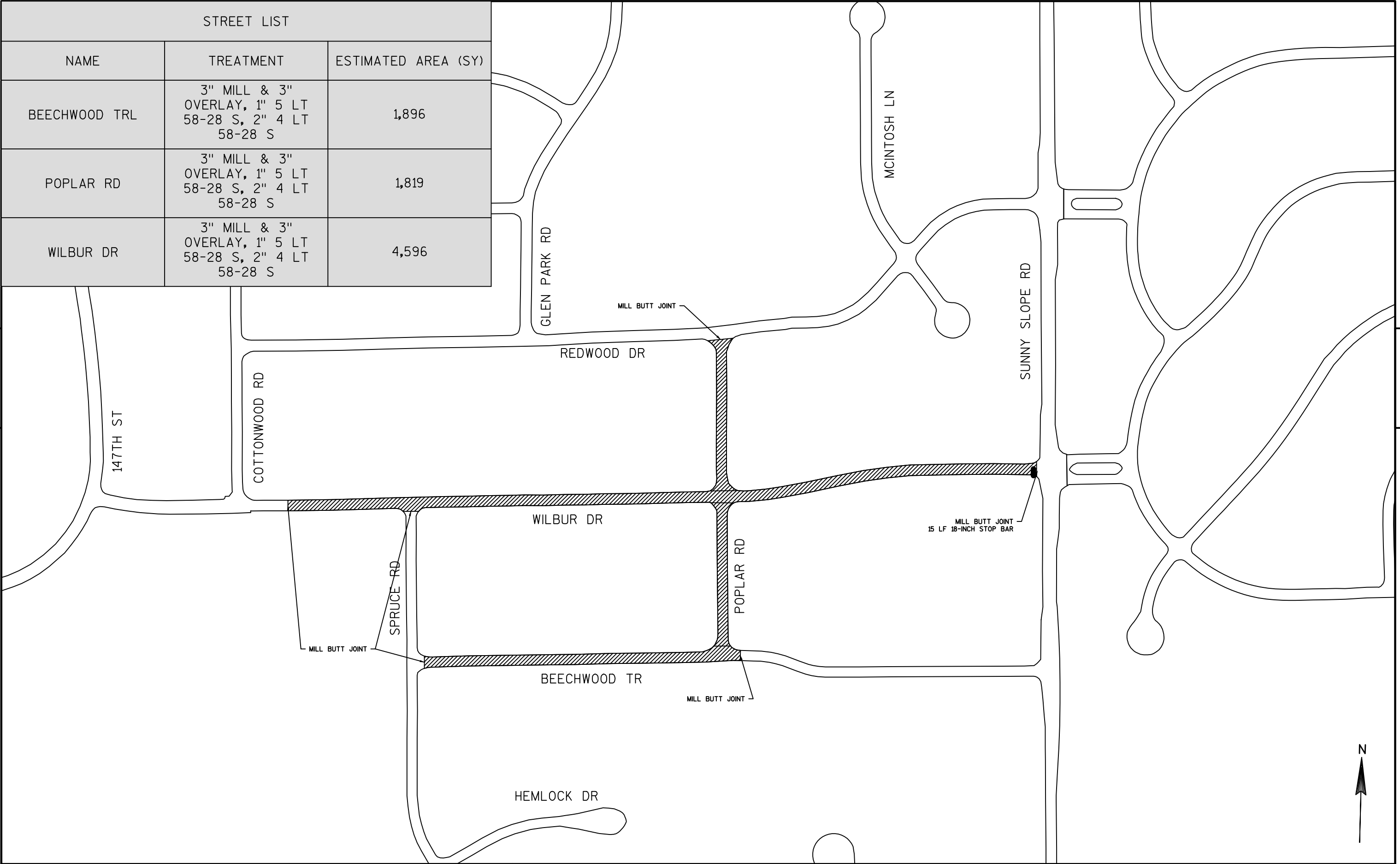
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STREET LIST			
NAME	TREATMENT	ESTIMATED AREA (SY)	ESTIMATED CURB & GUTTER REPAIRS (LF)
CHURCHVIEW DR	PULVERIZE, GRADE, & SHAPE, 5" RELAY 3" 3 LT 58-28 S, 2" 4 LT 58-28 S	4,414	0
NATIONAL AVE SERVICE DR	PULVERIZE, GRADE, & SHAPE, 5" RELAY 3" 3 LT 58-28 S, 2" 4 LT 58-28 S	1,807	136
157TH ST	PULVERIZE, GRADE, & SHAPE, 5" RELAY 3" 3 LT 58-28 S, 2" 4 LT 58-28 S	2,509	0
158TH ST	PULVERIZE, GRADE, & SHAPE, 5" RELAY 3" 3 LT 58-28 S, 2" 4 LT 58-28 S	4,393	0
ST FRANCIS DR	PULVERIZE, GRADE, & SHAPE, 5" RELAY 3" 3 LT 58-28 S, 2" 4 LT 58-28 S	4,437	0



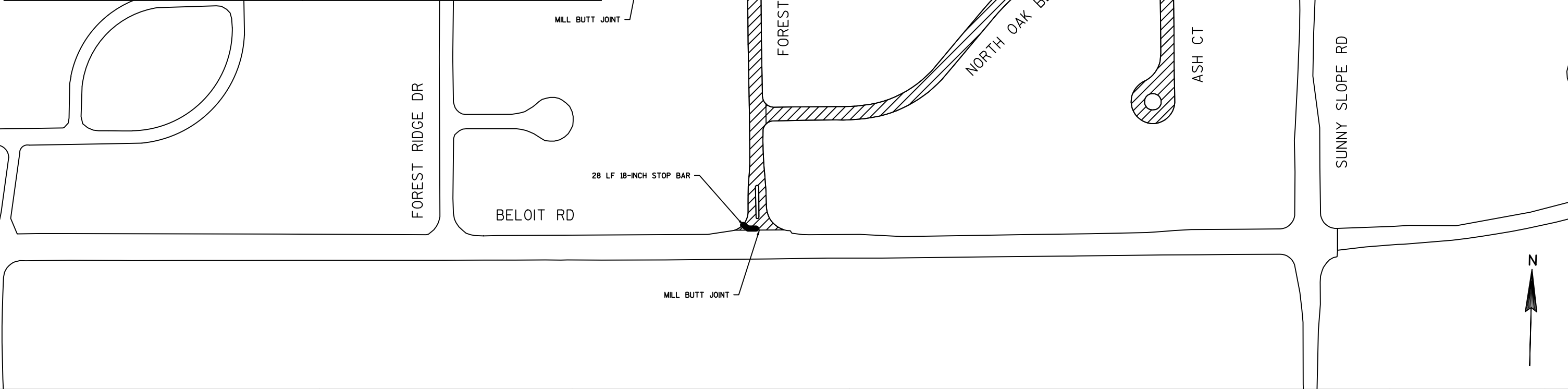
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STREET LIST		
NAME	TREATMENT	ESTIMATED AREA (SY)
BEECHWOOD TRL	3" MILL & 3" OVERLAY, 1" 5 LT 58-28 S, 2" 4 LT 58-28 S	1,896
POPLAR RD	3" MILL & 3" OVERLAY, 1" 5 LT 58-28 S, 2" 4 LT 58-28 S	1,819
WILBUR DR	3" MILL & 3" OVERLAY, 1" 5 LT 58-28 S, 2" 4 LT 58-28 S	4,596

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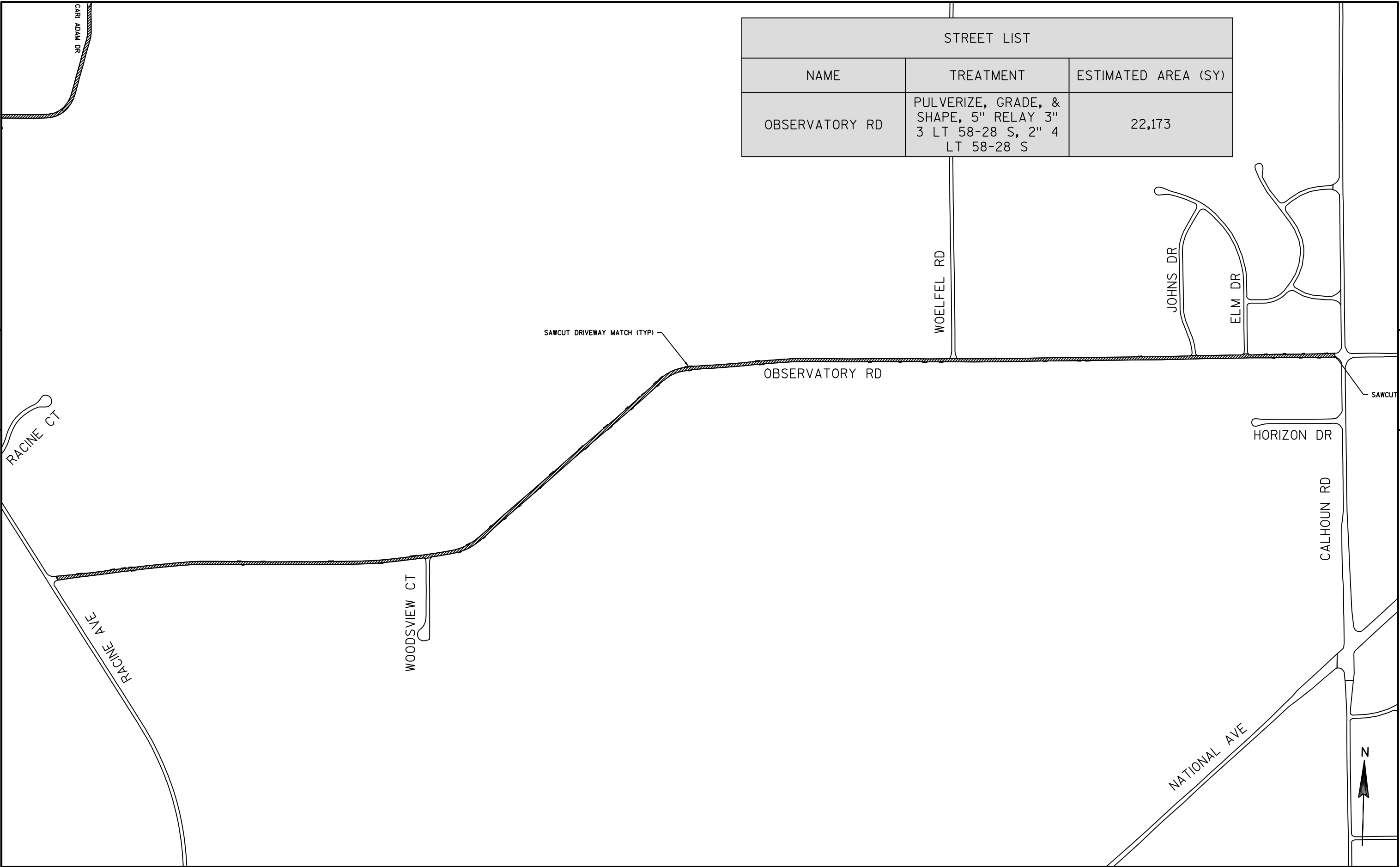
STREET LIST			
NAME	TREATMENT	ESTIMATED AREA (SY)	ESTIMATED CURB & GUTTER REPAIRS (LF)
ASH CT	2.5" MILL & 2.5" OVERLAY 4 LT 58-28 S	1,493	56
ASPEN CT	2.5" MILL & 2.5" OVERLAY 4 LT 58-28 S	1,208	45
FOREST AVE	2.5" MILL & 2.5" OVERLAY 4 LT 58-28 S	3,156	118
LINDENWOOD DR	2.5" MILL & 2.5" OVERLAY 4 LT 58-28 S	542	20
NORTH OAK BLVD	2.5" MILL & 2.5" OVERLAY 4 LT 58-28 S	3,676	138
NORTH OAK CT	2.5" MILL & 2.5" OVERLAY 4 LT 58-28 S	1,542	58

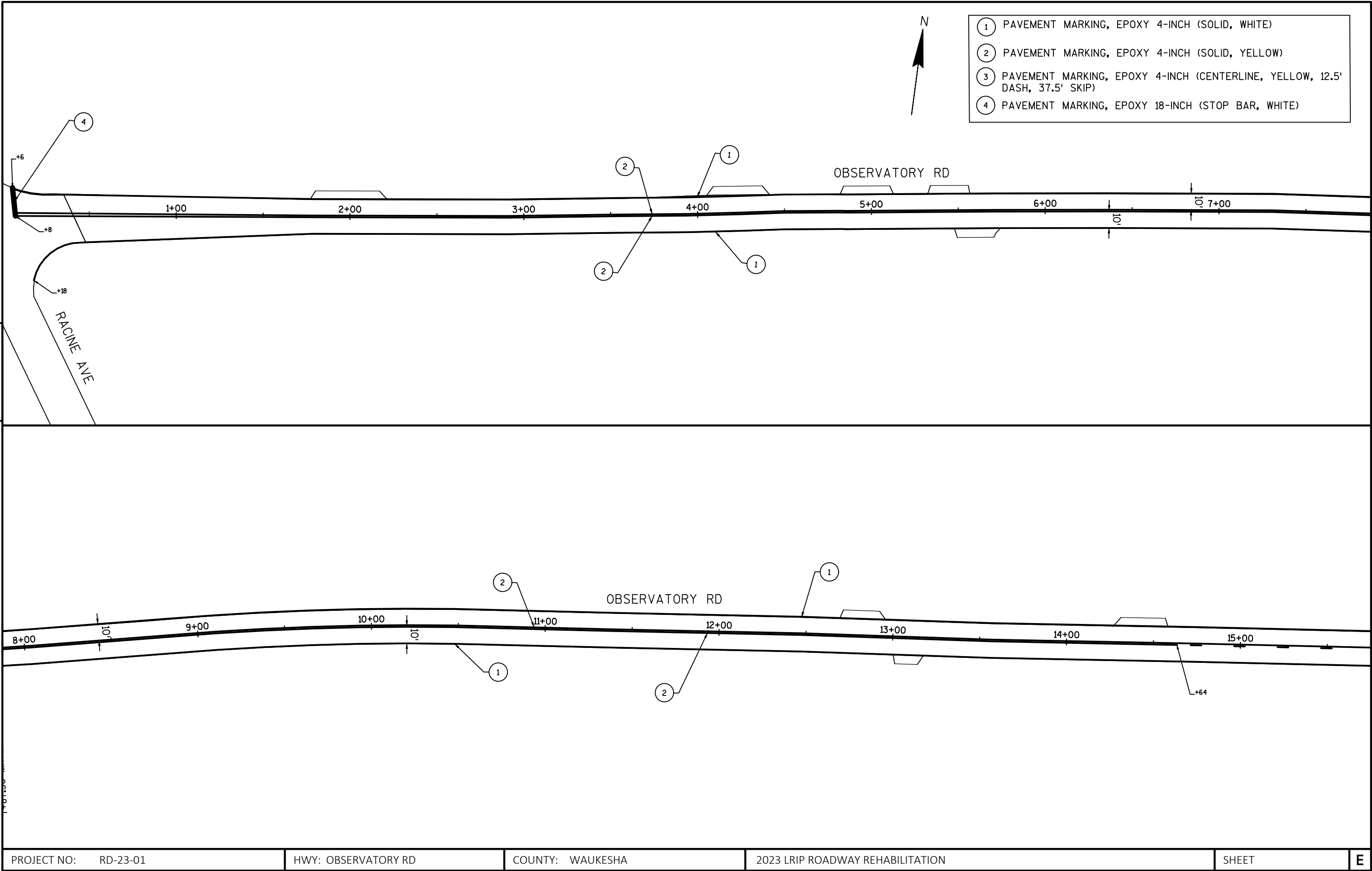


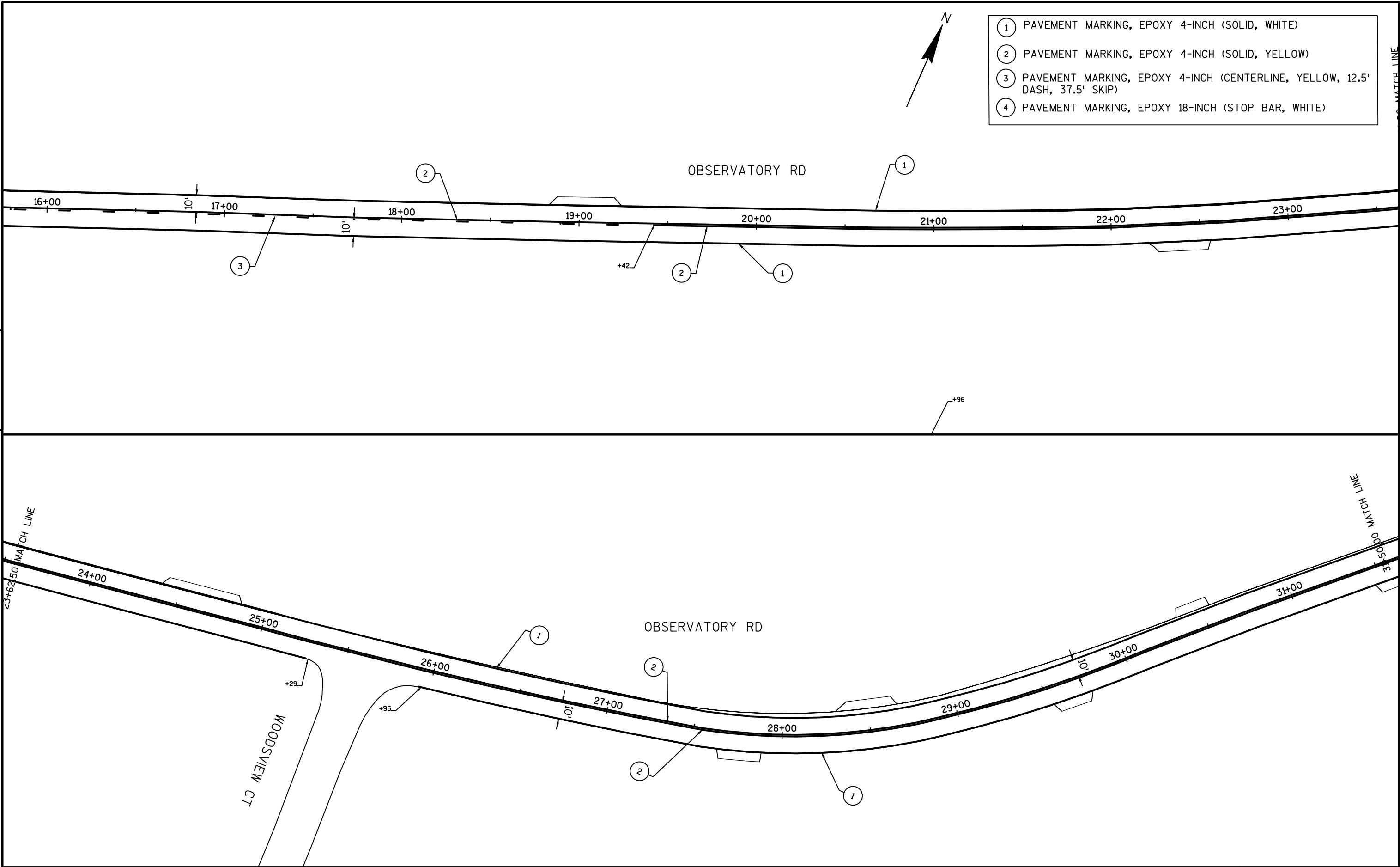
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STREET LIST			
NAME	TREATMENT	ESTIMATED AREA (SY)	ESTIMATED CURB & GUTTER REPAIRS (LF)
LA SALLE DR	3" MILL & 3" OVERLAY, 1" 5 LT 58-28 S, 2" 4 LT 58-28 S	8,678	138
CORTEZ DR	3" MILL & 3" OVERLAY, 1" 5 LT 58-28 S, 2" 4 LT 58-28 S	4,199	0
GREENTREE DR	3" MILL & 3" OVERLAY, 1" 5 LT 58-28 S, 2" 4 LT 58-28 S	3,838	0
NICOLE CT	3" MILL & 3" OVERLAY, 1" 5 LT 58-28 S, 2" 4 LT 58-28 S	789	0

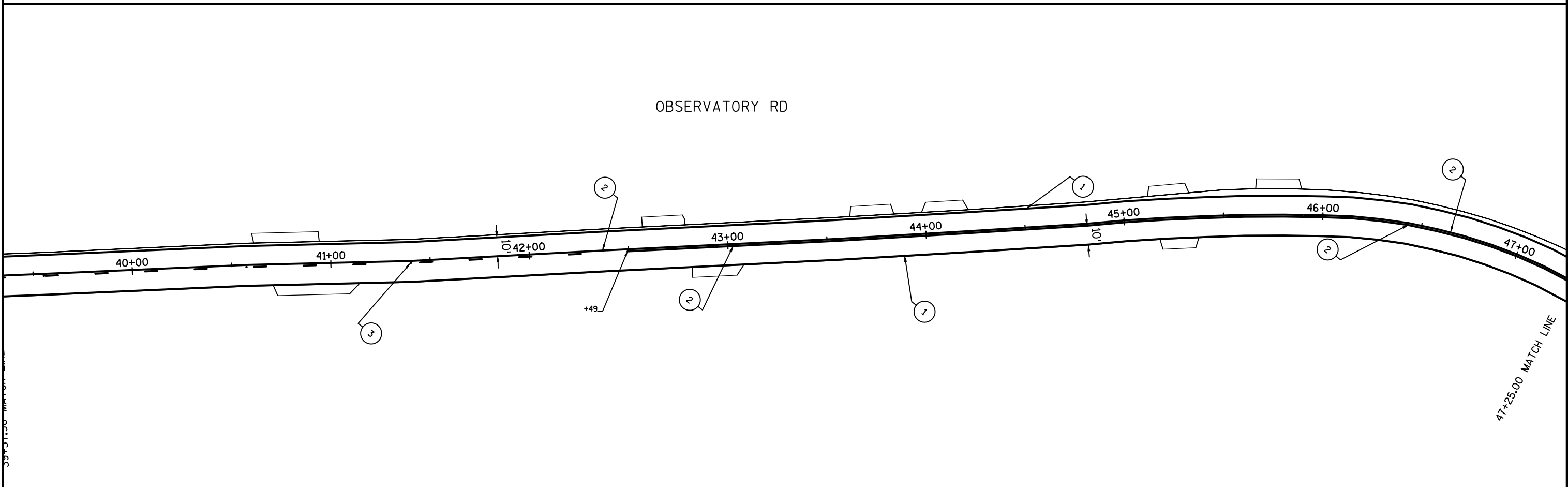
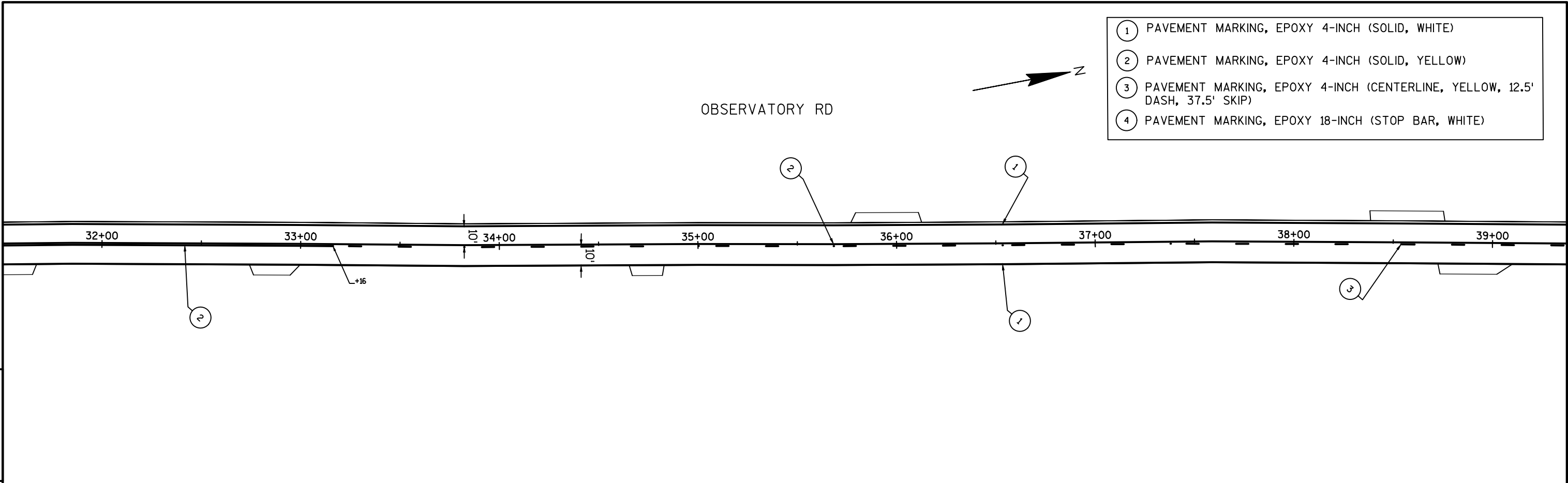




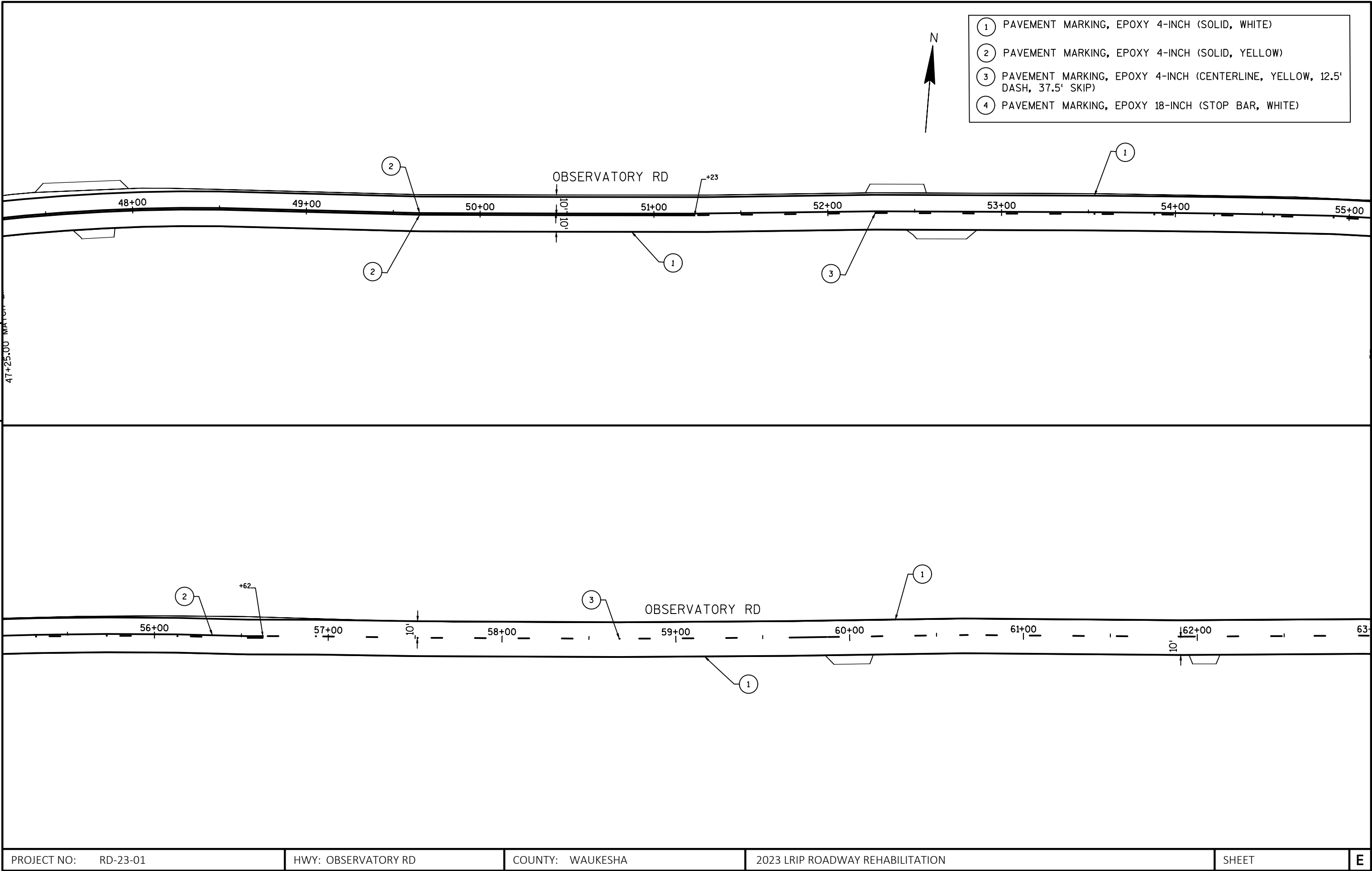




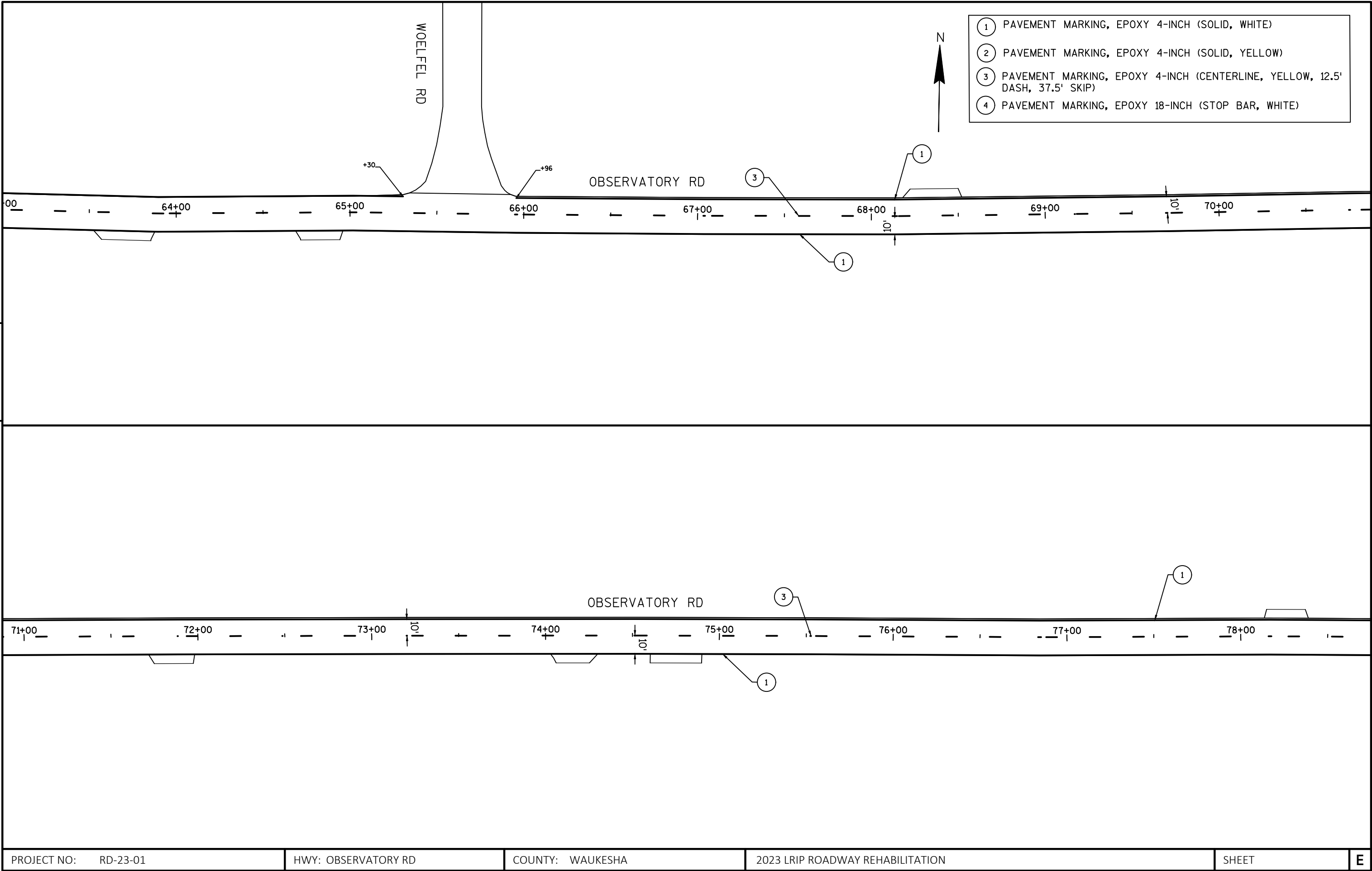
PROJECT NO: RD-23-01	HWY: OBSERVATORY RD	COUNTY: WAUKESHA	2023 LRIP ROADWAY REHABILITATION	SHEET	E
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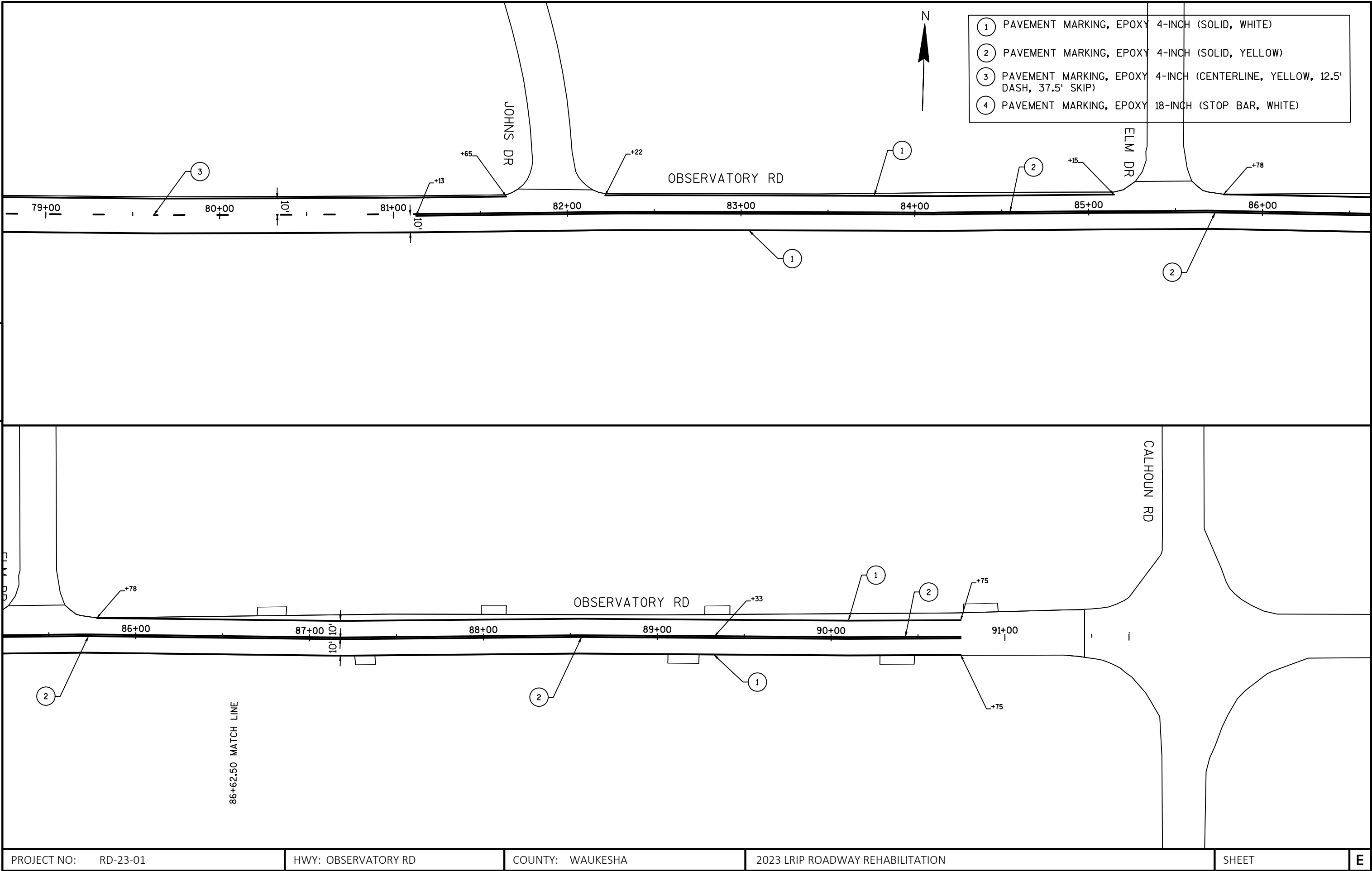
PROJECT NO: RD-23-01	HWY: OBSERVATORY RD	COUNTY: WAUKESHA	2023 LRIP ROADWAY REHABILITATION	SHEET	E
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PROJECT NO: RD-23-01	HWY: OBSERVATORY RD	COUNTY: WAUKESHA	2023 LRIP ROADWAY REHABILITATION	SHEET	E
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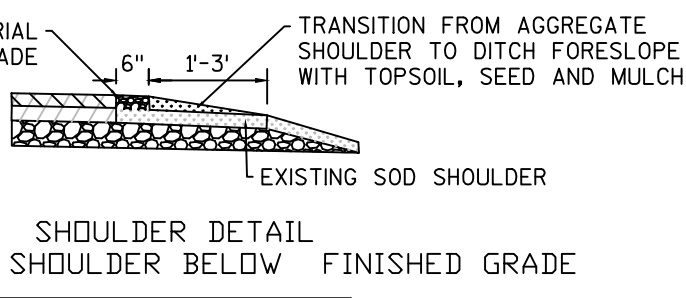
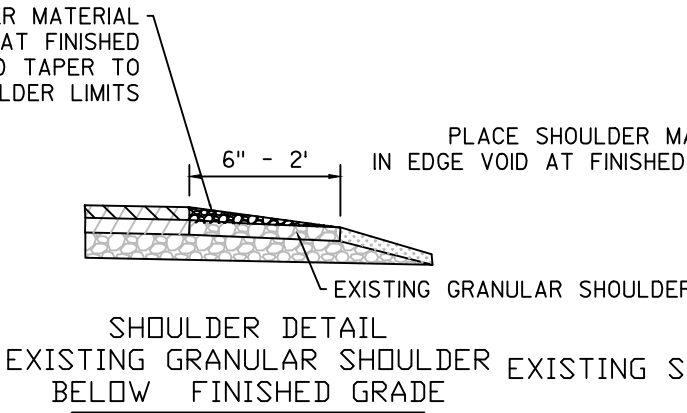
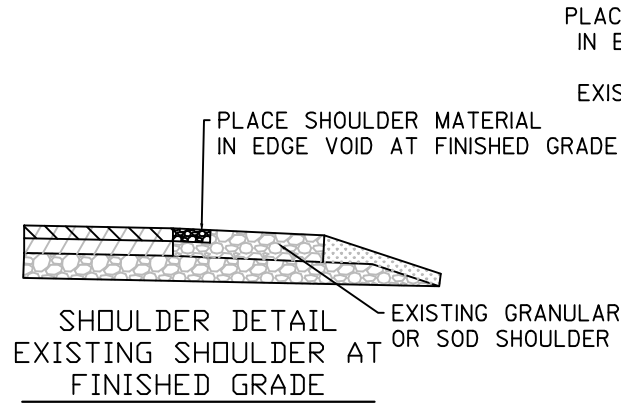
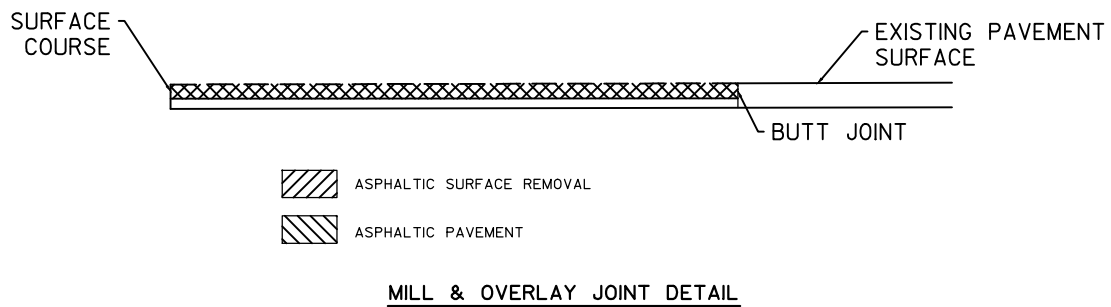
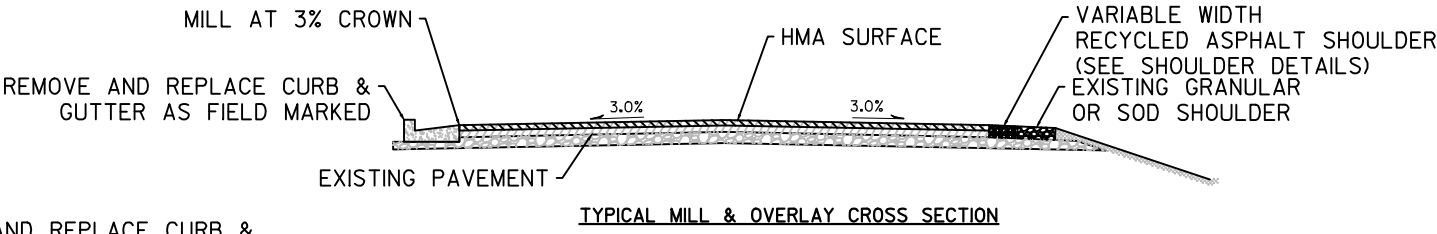
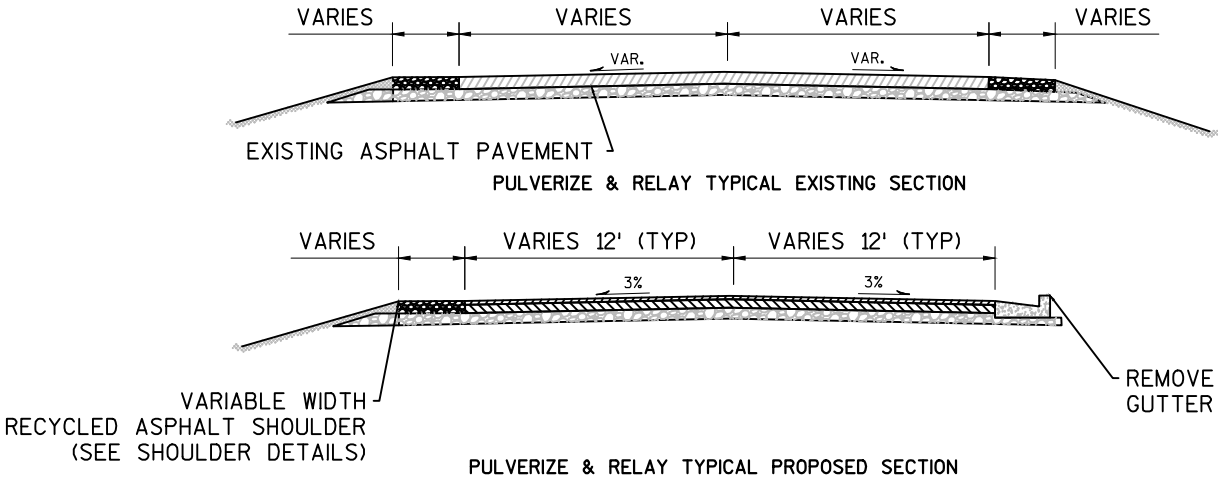


PROJECT NO: RD-23-01	HWY: OBSERVATORY RD	COUNTY: WAUKESHA	2023 LRIP ROADWAY REHABILITATION	SHEET	E
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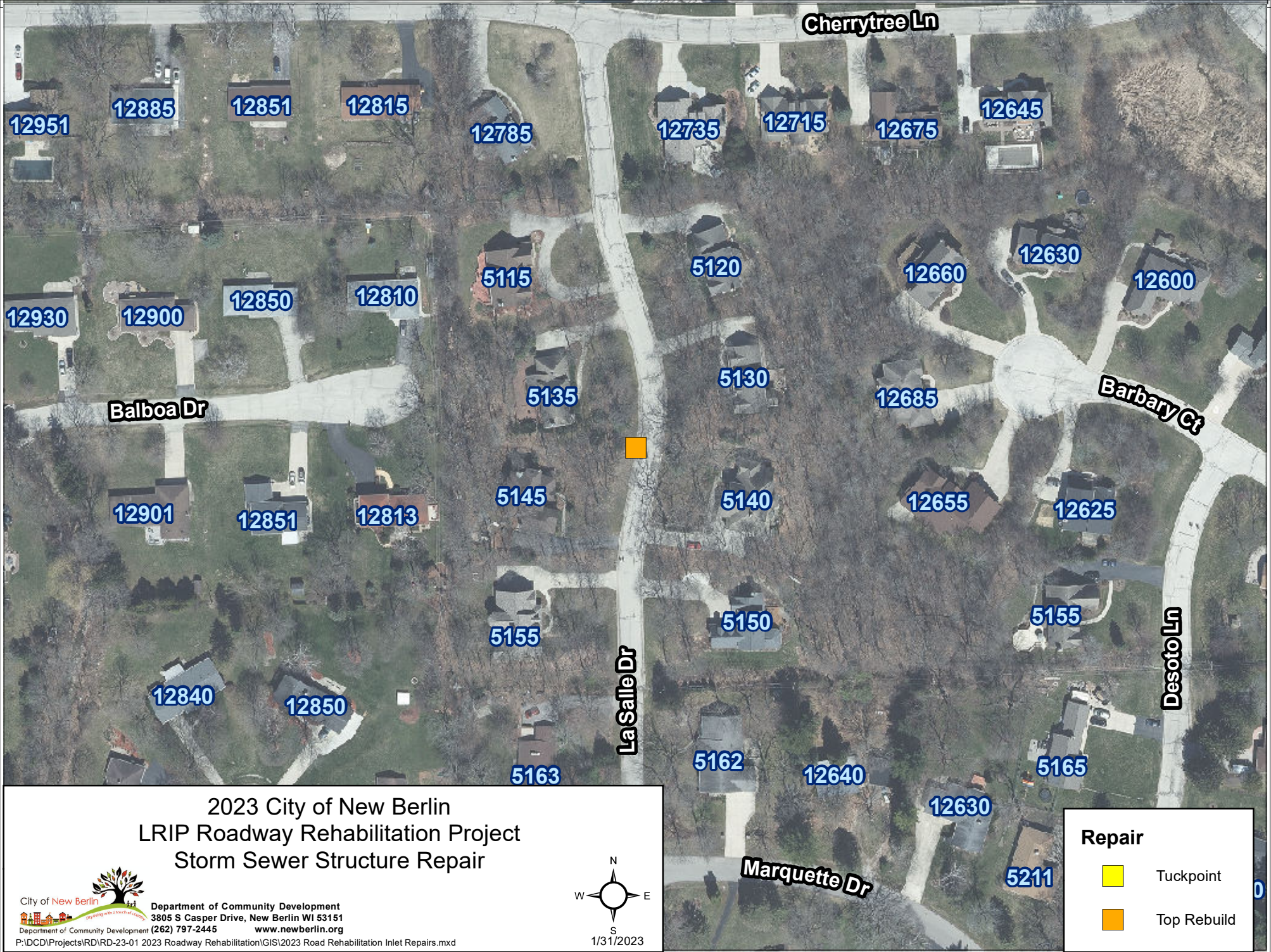


PROJECT NO: RD-23-01	HWY: OBSERVATORY RD	COUNTY: WAUKESHA	2023 LRIP ROADWAY REHABILITATION	SHEET	E
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2023 City of New Berlin
LRIP Roadway Rehabilitation Project
Storm Sewer Structure Repair



Department of Community Development
3805 S Casper Drive, New Berlin WI 53151
(262) 797-2445
www.newberlin.org



Repair	
	Tuckpoint
	Top Rebuild