



**CITY OF NEW BERLIN
COMMON COUNCIL MEETING**

Tuesday, June 28, 2022

6:00 PM

(Held after the Committee of the Whole Meeting)

Zoom Meeting

<https://us02web.zoom.us/j/85445491475>

This governing body has satisfied the requirements as directed by the Common Council on June 22, 2021 and Ordinance No. 2651 to hold this meeting via electronic means. The full text of this ordinance and the minutes from the above mentioned meeting can be viewed at www.newberlin.org

Any comments that the public wishes to make may be communicated to the city via email at citizencomments@newberlin.org and will be forwarded to the Mayor and City Council. Interested parties may also participate by:

- Downloading the ZOOM app located at <https://zoom.us/> and utilize this unique ID to join: 854 4549 1475
- Following this direct link to the meeting: <https://us02web.zoom.us/j/85445491475>
- Dial by phone: (312) 626-6799 and use Meeting ID: 854 4549 1475

AGENDA

CALL TO ORDER, PLEDGE OF ALLEGIANCE

ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE

APPROVAL OF MINUTES

1. June 14, 2022 Common Council Meeting Minutes

REPORTS

2. City Clerk
3. Council President
4. Mayor

COMMUNICATIONS

BOARD OF PUBLIC WORKS

5. ITEM 07-22 Recommend to the Common Council the transfer of funds from the Sunny Slope and Grange Intersection CIP Account to the 124th Street CIP Account.
6. ITEM 08-22 Recommend to the Common Council the transfer of funds from the Sunny Slope and Grange Intersection CIP Account to the Lighting & Improvements CIP Account.

7. ITEM 09-22 Recommend to the Common Council the approval of an Amendment to and existing WE Energies Easement on the New Berlin Fire station #3 property.
8. ITEM 10-22 Recommend to the Common Council the awarding of a construction contract for the 2022 Pedestrian Lighting Project.

UTILITY COMMITTEE

9. UT 12-22 Recommend to the Common Council to approve the Milwaukee Metro Sewerage District (MMSD) Funding Agreement for the Private Property Infiltration and Inflow (PPI/I) in an amount not to exceed \$1,586,000.00.
10. UT 13-22 Recommend to the Common Council to approve Resolution #22-08. Compliance Maintenance Annual Report (CMAR) for reporting year 2021.

ITEMS REMOVED FROM CONSENT AGENDA, if any

CONSENT AGENDA*****

MINUTES

11. June 14, 2022 Committee of the Whole Meeting Minutes

UTILITY & FINANCE

12. Approval of June 29th, 2022 Water Utility claims in the amount of \$532,945.40, Sewer Utility claims in the amount of \$651,684.08 and General City claims in the amount of \$702,507.26. WE Energies EFT of \$66,692.25.

MISCELLANEOUS

13. Update from Library Director Natalie Beacom
14. Recommend Council approval of contractual documents between City of New Berlin and Axon Enterprise, Inc. to purchase additional Axon ProLicenses

END CONSENT AGENDA*****

CLOSED SESSION

15. The basis for the items to be discussed in Closed Session are as enumerated in Section 19.85(1)(g) of the Wisconsin State Statutes. (g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved, more specifically:
16. Discussion regarding property maintenance violations at 14591 W Fieldpointe Ct.
17. Discussion regarding property maintenance violations at 1606 S Wildwood Dr.

RECONVENE TO OPEN SESSION - Discussion and Possible Action on items listed below

18. Discussion and possible action regarding property maintenance violations at 14591 W Fieldpointe Ct.
19. Discussion and possible action regarding property maintenance violations at 1606 S Wildwood Dr.

ADJOURN

PLEASE NOTE:

- ✓ 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. It is also possible that members of and possible 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 above in this notice.
- ✓ Also, upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information or to request this service, contact City Clerk Rubina R. Medina (262) 786-8610.

STAFF REPORT EXECUTIVE SUMMARY

APPLICANT: City of New Berlin

PROJECT: Resolution to Reallocate CIP Funds

LOCATION: 124th St. & Beloit Road Intersection Rehabilitation Project

REQUEST: Recommendation to the Common Council approval of a Resolution to Reallocate Funds from the Sunny Slope Road & Grange Avenue Intersection CIP Account to the 124th Street and Beloit Road Intersection CIP Account.

D.C.D. RECOMMENDATION: Recommendation to the Common Council approval of a Resolution to Reallocate Funds from the Sunny Slope Road & Grange Avenue Intersection CIP Account 04251100 63000 C2019 to the 124th Street CIP Account 04251100 63015 C2019.

1. The Sunny Slope Road and Grange Avenue Intersection Reconstruction project was completed in the fall of 2021. This request is to reallocate \$54,000.00 of the remaining balance.
2. Milwaukee County is rehabilitating CTH T (Beloit Road) from 124th Street to Wollmer Road in 2022. As part of the project, they will be making intersection improvements to the 124th Street and Beloit Road intersection.
3. As part of the 11/27/2007 Maintenance Agreement between the City of New Berlin, Waukesha County, Milwaukee County, and City of Greenfield, New Berlin is responsible for 25% of the cost of any improvements to this intersection.
4. To keep the 2022 CIP Budget in balance with other City needs, residual funds from the Sunny Slope Road and Grange Avenue Intersection project are available to cover the New Berlin portion of the cost share.
5. Enclosed is Resolution 22-10 for the transfer of funds.

ATTACHMENT:

Resolution 22-10

Local/County Agreement for Highway Improvement Project

Agreement for Traffic Signals at West Beloit Road (CTH T) and South 124th Street

RESOLUTION 22-10**RESOLUTION TO AMEND THE 2019 CAPITAL PROJECTS BUDGET TO
REALLOCATE FUNDS TO THE 124TH STREET CIP ACCOUNT**

WHEREAS, the Department of Community Development has completed the reconstruction of Sunny Slope Road and Grange Avenue Intersection Reconstruction project as part of the 2021 CIP Budget, and;

WHEREAS, the City of New Berlin is party to a Maintenance Agreement for the intersection of 124th Street and Beloit Road (CTH T) as of November 27, 2007, and;

WHEREAS, Milwaukee County will be rehabilitating Beloit Road (CTH T) from 124th Street to Wollmer Road in 2022 and making improvements to this intersection, and;

WHEREAS, DCD staff requests that \$54,000.00 be transferred from the 2019 Sunny Slope Road and Grange Avenue Intersection Construction Account to the 2019 124th Street Account, and;

WHEREAS, the Board of Public Works, at their June 20th, 2022 meeting reviewed and recommend approval of these transfers to the Common Council, and;

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of New Berlin that the 2019 CIP Budget be amended to transfer funds from the Sunny Slope Road and Grange Avenue Intersection CIP Account 04251100 63000 C2019 to the 124th Street CIP 04251100 63015 C2019.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to publish this resolution in the Waukesha County NOW within 10 days of adoption by the Common Council.

TRANSFER FROM

Sunny Slope Road & Grange Avenue 04251100 63000 C2019	\$54,000.00
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TRANSFER TO

124 th Street	04251100 63015 C2019	\$54,000.00
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Passed and adopted by the Common Council this 28th day of June 2022.

APPROVED:

David Ament, Mayor

Countersigned / Certified:

Rubina Medina, City Clerk

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AGREEMENT FOR TRAFFIC SIGNALS AT
WEST BELOIT ROAD (CTH "T") AND SOUTH 124th STREET

THIS AGREEMENT is made and entered into between Milwaukee County, a body corporate, hereinafter called "The County", the City of Greenfield, a municipal corporation, the City of New Berlin, a municipal corporation, and Waukesha County, a body corporate, relating to the operation and maintenance of the traffic control signals and related traffic control facilities at the intersection of West Beloit Road (CTH "T") and South 124th Street.

NOW, THEREFORE, in consideration of the mutual promises of each agency made to the other, the fulfillment of the terms and conditions, agreements, and understandings hereinafter set forth,

IT IS MUTUALLY AGREED by and between the parties that:

Traffic control signals be operated and maintained at the Intersection.

CONDITIONS OF THIS AGREEMENT ARE TO BE AS FOLLOWS:

I. The County hereby agrees:

- (a) That the County as subscriber for service with We Energies, will pay the total cost of energy for the traffic control signals at the Intersection and shall bill the City of Greenfield, the City of New Berlin and Waukesha County for their share as described in (f) below.
- (b) That it will assume routine maintenance responsibility (lamp renewal, cleaning, lens replacement, traffic control signal and control cabinet, controller service, detector service, etc.) for the entire traffic control signal installation and shall bill the City of Greenfield, the City of New Berlin and Waukesha County for their share of the cost of said maintenance as described in (f) below.
- (c) That it will make all necessary repairs and replacements to equipment that fails to function properly as a result of normal wear and deterioration and shall bill the City of Greenfield, the City of New Berlin and Waukesha County for their share of the cost of said repairs and replacements as described in (f) below.
- (d) That it will make all necessary repairs and replacements to equipment damaged by accident, vandalism, or acts of God, and will pay one-fourth (1/4) the cost of any such repairs and replacements that are deemed by the County Corporation Counsel to be otherwise non-compensable, and

Waukesha
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within sixty (60) days of completion of said work bill the City of Greenfield for one-fourth (1/4) the cost of repairing said damages; bill the City of New Berlin for one-fourth (1/4) the cost of repairing said damages; and bill Waukesha County for one-fourth (1/4) the cost of repairing said damages.

If damaged by accident or vandalism the County Corporation Counsel may pursue damages against the responsible person(s) and reimburse the City of Greenfield, the City of New Berlin and Waukesha County for the amount paid upon recovery.

- (e) That it will make any necessary equipment additions or revisions deemed necessary by changed laws, changed traffic conditions, or changed intersection geometry, and will pay one-fourth (1/4) the cost of any such equipment additions or revisions, and within sixty (60) days of completion of said work bill the City of Greenfield for one-fourth (1/4) the cost of said additions or revisions; bill the City of New Berlin for one-fourth (1/4) the cost of said additions or revisions; and bill Waukesha County for one-fourth (1/4) the cost of said additions or revisions .
- (f) The County shall pay one-fourth (1/4) of the cost of the energy as in I(a) and the work under I(b) and I(c) and shall bill the City of Greenfield annually for one-fourth (1/4) of the costs of I(a), I(b) and I(c); bill the City of New Berlin annually for one-fourth (1/4) of the costs of I(a), I(b) and I(c); and bill Waukesha County annually for one-fourth (1/4) of the costs of I(a), I(b) and I(c).
- (g) That it will obtain concurrence from the City of Greenfield, the City of New Berlin and Waukesha County prior to equipment additions or revisions for which cost participation by the City of Greenfield, the City of New Berlin and Waukesha County would be required.
- (h) That it will operate and adjust the traffic signal timing and equipment in such a manner as to best meet prevailing traffic conditions.

II. The City of Greenfield hereby agrees:

- (a) That it will pay one-fourth (1/4) of the total cost of energy for the traffic control signals at the Intersection when billed by the County.
- (b) That the County is to perform routine maintenance for the entire traffic control signal installation as

indicated in I.(b), necessary repairs and replacements to all traffic control signal equipment which fails to function as indicated in I.(c), necessary repairs and replacements to all traffic control signal equipment which is damaged as indicated in I.(d) and any necessary additions or revisions as indicated in I.(e). The City of Greenfield agrees to pay for one-fourth (1/4) the cost of the work in I.(b), repairs as indicated in I.(c) and I.(d) and additions or revisions as described in I.(e), when billed by the County.

- (c) That the County is to perform all work related to the operation of the traffic control signals at the subject intersection, including engineering, except such immediate emergency measures as may need to be taken when County forces are not present and the public safety may be in jeopardy.
- (d) That the County shall operate and adjust the traffic signal controllers in such a manner as to best meet prevailing traffic conditions.
- (d) If discovered by City forces, the City of Greenfield agrees to promptly notify the County through its Department of Parks and Public Infrastructure, (at the phone number listed below, of any damage, lamp outage, lens breakage, or seeming malfunctions of traffic control equipment or related traffic control facilities.

Highway Maintenance Section 257-6566

III. The City of New Berlin hereby agrees:

- (a) That it will pay one-fourth (1/4) of the total cost of energy for the traffic control signals at the Intersection when billed by the County.
- (b) That the County is to perform routine maintenance for the entire traffic control signal installation as indicated in I.(b), necessary repairs and replacements to all traffic control signal equipment which fails to function as indicated in I.(c), necessary repairs and replacements to all traffic control signal equipment which is damaged as indicated in I.(d) and any necessary additions or revisions as indicated in I.(e). The City of New Berlin agrees to pay for one-fourth (1/4) the cost of the work in I.(b), repairs as indicated in I.(c) and I.(d) and additions or revisions as described in I.(e), when billed by the County.
- (c) That the County is to perform all work related to the operation of the traffic control signals at the subject intersection, including engineering, except such

immediate emergency measures as may need to be taken when County forces are not present and the public safety may be in jeopardy.

- (d) That the County shall operate and adjust the traffic signal controllers in such a manner as to best meet prevailing traffic conditions.
- (e) If discovered by City forces, the City of New Berlin agrees to promptly notify the County through its Department of Parks and Public Infrastructure, (at the phone number listed on page 3), of any damage, lamp outage, lens breakage, or seeming malfunctions of traffic control equipment or related traffic control facilities.

IV. Waukesha County hereby agrees:

- (a) That it will pay one-fourth (1/4) of the total cost of energy for the traffic control signals at the Intersection when billed by Milwaukee County.
- (b) That Milwaukee County is to perform routine maintenance for the entire traffic control signal installation as indicated in I.(b), necessary repairs and replacements to all traffic control signal equipment which fails to function as indicated in I.(c), necessary repairs and replacements to all traffic control signal equipment which is damaged as indicated in I.(d) and any necessary additions or revisions as indicated in I.(e). Waukesha County agrees to pay for one-fourth (1/4) the cost of the work in I.(b), repairs as indicated in I.(c) and I.(d) and additions or revisions as described in I.(e), when billed by Milwaukee County.
- (c) That Milwaukee County is to perform all work related to the operation of the traffic control signals at the subject intersection, including engineering, except such immediate emergency measures as may need to be taken when Milwaukee County forces are not present and the public safety may be in jeopardy.
- (d) That Milwaukee County shall operate and adjust the traffic signal controllers in such a manner as to best meet prevailing traffic conditions.
- (e) If discovered by Waukesha County forces, Waukesha County agrees to promptly notify Milwaukee County through its Department of Parks and Public Infrastructure, (at the phone number listed on page 3), of any damage, lamp outage, lens breakage, or seeming malfunctions of

traffic control equipment or related traffic control facilities.

V. Ownership and Responsibility

After the work outlined in this agreement is completed, all of the materials installed shall become the property of the County.

VI. Liability

Milwaukee County shall request layouts of City of Greenfield, City of New Berlin and Waukesha County underground structures and facilities before performing work of such nature that existing underground facilities must be avoided. The County shall be required to take precautionary measures to avoid damage to such underground facilities. The City of Greenfield, the City of new Berlin and Waukesha County shall supply Milwaukee County with a complete record of the exiting underground material structures at the intersection and any change or revision thereto as may take place in the future.

In the event that any person or persons make claim for injury or damages arising from alleged malfunctioning of the traffic control facilities at the Intersection, each agency shall defend itself against any claim made against it. In the event that liability and consequent damages are awarded any person or persons from alleged malfunctioning of traffic control facilities at the Intersection, each agency shall pay that portion of said claim as it may be found liable therefore. No agency shall be required to pay any damages assessed against any other agency.

VII. Payments

All payments due under this agreement shall be paid within thirty (30) days after receipt of an invoice of same.

VIII. Duration

This agreement shall continue to be in force indefinitely unless terminated on six (6) months written notice by one agency to the other.

This agreement supersedes, rescinds, and replaces any and all previous agreements which may have been entered into by the County and the City regarding the design, construction, operation, and maintenance of traffic control signals and related traffic control facilities at the Intersection.

IN WITNESS WHEREOF, the undersigned on behalf of Milwaukee County affix their hands and seals this

30th day of November, 2007.

Signed and Sealed in
the presence of

MILWAUKEE COUNTY,
A BODY CORPORATE

Renee Kottkowski

George A. Jones
Director of ~~Parks~~ Transportation and Public
~~Infrastructure Works~~

IN WITNESS WHEREOF, the undersigned on behalf of the City of Greenfield affix their hands and seals this

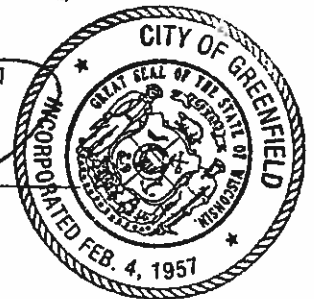
10th day of August, 2007.

Signed and Sealed in
the presence of

CITY OF GREENFIELD,
A MUNICIPAL CORPORATION

Gregory Stargis

Michael Gault
Mayor



IN WITNESS WHEREOF, the undersigned on behalf of the City of New Berlin affix their hands and seals this

27th day of November, 2007.

Signed and Sealed in
the presence of

CITY OF NEW BERLIN,
A MUNICIPAL CORPORATION

Marilyn Gugen
City Clerk

John L. O'Dell

IN WITNESS WHEREOF, the undersigned on behalf of Waukesha County affix their hands and seals this

6th day of November, 2007.

Signed and Sealed in
the presence of

WAUKESHA COUNTY,
A BODY CORPORATE

Rick A. Balle

CONTRACT APPROVAL	
<u>Tom C. Pugh</u>	<u>8-8-07</u>
City Attorney (as to form)	Date
<u>M. Vandermolen</u>	<u>8-9-07</u>
Controller	Date
<u>Gregory Stargis</u>	<u>8-9-07</u>
City Clerk	Date
<u>Michael Gault</u>	<u>8/10/07</u>
Mayor	Date
<u>7-17-07</u>	
Common Council	Date



LOCAL/COUNTY AGREEMENT FOR A HIGHWAY IMPROVEMENT PROJECT

DATE: February 28, 2022

PROJECT NO.: WH0110012

HIGHWAY: CTH T (West Beloit Road)

LIMITS: South 124th Street to South Wollmer Road

THIS AGREEMENT is made and entered into and between Milwaukee County, a body corporate, and the City of New Berlin, a municipal corporation.

The portion of West Beloit Road from South 124th Street to South Wollmer Road has been designated County Trunk Highway "T" pursuant to Section 83.025 of the Wisconsin Statutes.

The County has budgeted funds for the improvement of CTH "T" with construction anticipated to begin in May 2022.

The Milwaukee County Department of Transportation (MCDOT), hereinafter called the County, through its undersigned duly authorized officers or officials, hereby requests the City of New Berlin, hereinafter called the Municipality, to participate in the street improvements hereinafter described in the estimated cost summary.

The authority for the Municipality to enter into this agreement with the County is provided by Section 86.25(1), (2) and (3) of the Statutes.

NEEDS AND ESTIMATE SUMMARY:

Existing Facility – Describe and give reason for request:

West Beloit Road (CTH T) is a predominately rural type roadway. To increase the service life of the pavement structure and improve the safety and operation is the reason for this request.

Proposed Improvement – Nature of work:

The roadway is scheduled for reconditioning of West Beloit Road (CTH T) by the County, including installation of on-street bicycle accommodations, shared-use path/sidewalk on the south side of W. Beloit Road (CTH T) connecting the Oak Leaf Trail and existing Falcon Ridge Trail to the S. 108th Street (STH 100) intersection, and new traffic signals at the intersections of South 124th Street and West Howard Avenue.

As mutually agreed by the Municipality, a cost share of 25% of the construction costs of the intersection of S. 124th St. is designated in the project as Category 0040.

Project No. WH0110012
West Beloit Road (CTH T) from South 124th Street to South Wollmer Road
ESTIMATED COST SUMMARY*

CONSTRUCTION ESTIMATED COSTS-WH0110012 (SEE TABLE BELOW):

- CATEGORY 0040- COST SHARE OF CONSTRUCTION WORK AT THE INTERSECTION OF WEST BELOIT ROAD (CTH T) & SOUTH 124TH STREET (25% Milwaukee County, 25% Waukesha County, 25% City of New Berlin, and 25% City of Greenfield)**

ITEM NO.	ITEM DESCRIPTION	UNIT	ESTIMATED QUANTITY	ESTIMATED UNIT PRICE	TOTAL ESTIMATED COST
WH0110012 SHARED COSTS CONSTRUCTION-CATEGORY 0040 SOUTH 124TH STREET INTERSECTION (25% SHARE)					
204.0120	Removing Asphaltic Surface Milling	SY	2000	\$2.00	\$4,000.00
204.0195	Removing Concrete Bases	EACH	7	\$350.00	\$2,450.00
204.9105.S.01	Removing Traffic Signal Equipment S. 124th Inters	LS	1	\$3,000.00	\$3,000.00
455.0605	Tack Coat	GAL	160	\$4.50	\$720.00
460.6224	HMA Pavement 4 MT 58-28 S	TON	1200	\$65.00	\$78,000.00
637.2210	Signs Type II Reflective H	SF	22	\$22.00	\$484.00
637.2215	Signs Type II Reflective H Folding	SF	11	\$25.00	\$275.00
638.2602	Removing Signs Type II	EACH	3	\$25.00	\$75.00
646.1020	Marking Line Epoxy 4-Inch	LF	700	\$2.00	\$1,400.00
646.3020	Marking Line Epoxy 8-Inch	LF	250	\$3.00	\$750.00
646.5020	Marking Arrow Epoxy	EACH	4	\$300.00	\$1,200.00
646.6120	Marking Stop Line Epoxy 18-Inch	LF	170	\$18.00	\$3,060.00
646.7420	Marking Crosswalk Epoxy Transverse Line 6-Inch	LF	160	\$12.00	\$1,920.00
646.9000	Marking Removal Line 4-Inch	LF	570	\$1.10	\$627.00
646.9200	Marking Removal Line Wide	LF	50	\$4.50	\$225.00
650.8500.01	Construction Staking Electrical Installations	LS	1	\$3,000.00	\$3,000.00
652.0225	Conduit Rigid Nonmetallic Schedule 40 2-Inch	LF	195	\$8.00	\$1,560.00
652.0235	Conduit Rigid Nonmetallic Schedule 40 3-Inch	LF	355	\$11.00	\$3,905.00
652.0615	Conduit Special 3-Inch	LF	50	\$26.00	\$1,300.00
652.0800	Conduit Loop Detector	LF	60	\$6.00	\$360.00
653.0135	Pull Boxes Steel 24x36-Inch	EACH	1	\$850.00	\$850.00
653.0140	Pull Boxes Steel 24x42-Inch	EACH	1	\$1,000.00	\$1,000.00
653.0905	Removing Pull Boxes	EACH	1	\$65.00	\$65.00
654.0102	Concrete Bases Type 2	EACH	2	\$1,200.00	\$2,400.00
654.0110	Concrete Bases Type 10	EACH	4	\$5,000.00	\$20,000.00
654.0217	Concrete Control Cabinet Bases Type 9 Special	EACH	1	\$3,000.00	\$3,000.00
655.0240	Cable Traffic Signal 7-14 AWG	LF	600	\$2.00	\$1,200.00
655.0260	Cable Traffic Signal 12-14 AWG	LF	1800	\$2.75	\$4,950.00
655.0305	Cable Type UF 2-12 AWG Grounded	LF	570	\$1.30	\$741.00
655.0515	Electrical Wire Traffic Signals 10 AWG	LF	320	\$1.00	\$320.00

655.0610	Electrical Wire Lighting 12 AWG	LF	200	\$0.75	\$150.00
655.0700	Loop Detector Lead In Cable	LF	700	\$1.30	\$910.00
655.0800	Loop Detector Wire	LF	250	\$1.20	\$300.00
657.0255	Transformer Bases Breakaway 11 1/2-Inch Bolt Circle	EACH	2	\$550.00	\$1,100.00
657.0315	Poles Type 4	EACH	2	\$1,700.00	\$3,400.00
658.0173	Traffic Signal Face 3S 12-Inch	EACH	9	\$650.00	\$5,850.00
658.0174	Traffic Signal Face 4S 12-Inch	EACH	4	\$840.00	\$3,360.00
690.0150	Sawing Asphalt	LF	200	\$1.60	\$320.00
SPV.0060	Special Transport and Install Poles Type 9	EACH	2	\$1,300.00	\$2,600.00
SPV.0060	Special Transport and Install Poles Type 10	EACH	2	\$1,300.00	\$2,600.00
SPV.0060	Special Transport and Install Monotube Arms 30-FT	EACH	4	\$1,600.00	\$6,400.00
SPV.0060	Special Transport and Install Luminaire Arms 10-FT	EACH	2	\$400.00	\$800.00
SPV.0060	Special Transport and Install Radio	EACH	1	\$1,200.00	\$1,200.00
SPV.0060	Special Hydro Excavation	EACH	2	\$3,500.00	\$7,000.00
SPV.0060	Special Transport and Traffic Signal Cabinet	EACH	1	\$4,000.00	\$4,000.00
SPV.0060	Special Transport and Install Video Detection Sys	EACH	1	\$5,000.00	\$5,000.00
CATEGORY 0040 TOTAL:					\$187,827.00
CATEGORY 0040 TOTAL SHARE (25%):					\$46,956.75

Estimated Construction (WH0110012) City of New Berlin Category 0040 Costs: \$46,956.75

+15% Construction Engineering & Contingency: \$7,043.51

TOTAL Estimated Construction (WH0110012) City of New Berlin Category 0040 Costs: \$54,000.26

* The above costs reflect the County's best estimates to-date. The actual number of units installed may vary from this estimate depending on field conditions. The Municipality will be billed for each item at the actual construction cost.

This agreement is subject to the terms and conditions that follow and is executed by the undersigned under proper authority to execute such an agreement for the designated Municipality and upon acceptance by the County shall constitute an agreement between the Municipality and the County.

Signed for and on behalf of Milwaukee County:

_____ Signature	Director, Department of Transportation _____ Title	_____ Date
_____ Donna Brown-Martin Name (Written Clearly)		

Signed for and on behalf of the City of New Berlin:

_____ Signature	Mayor _____ Title	_____ Date
_____ Dave Ament Name (Written Clearly)		

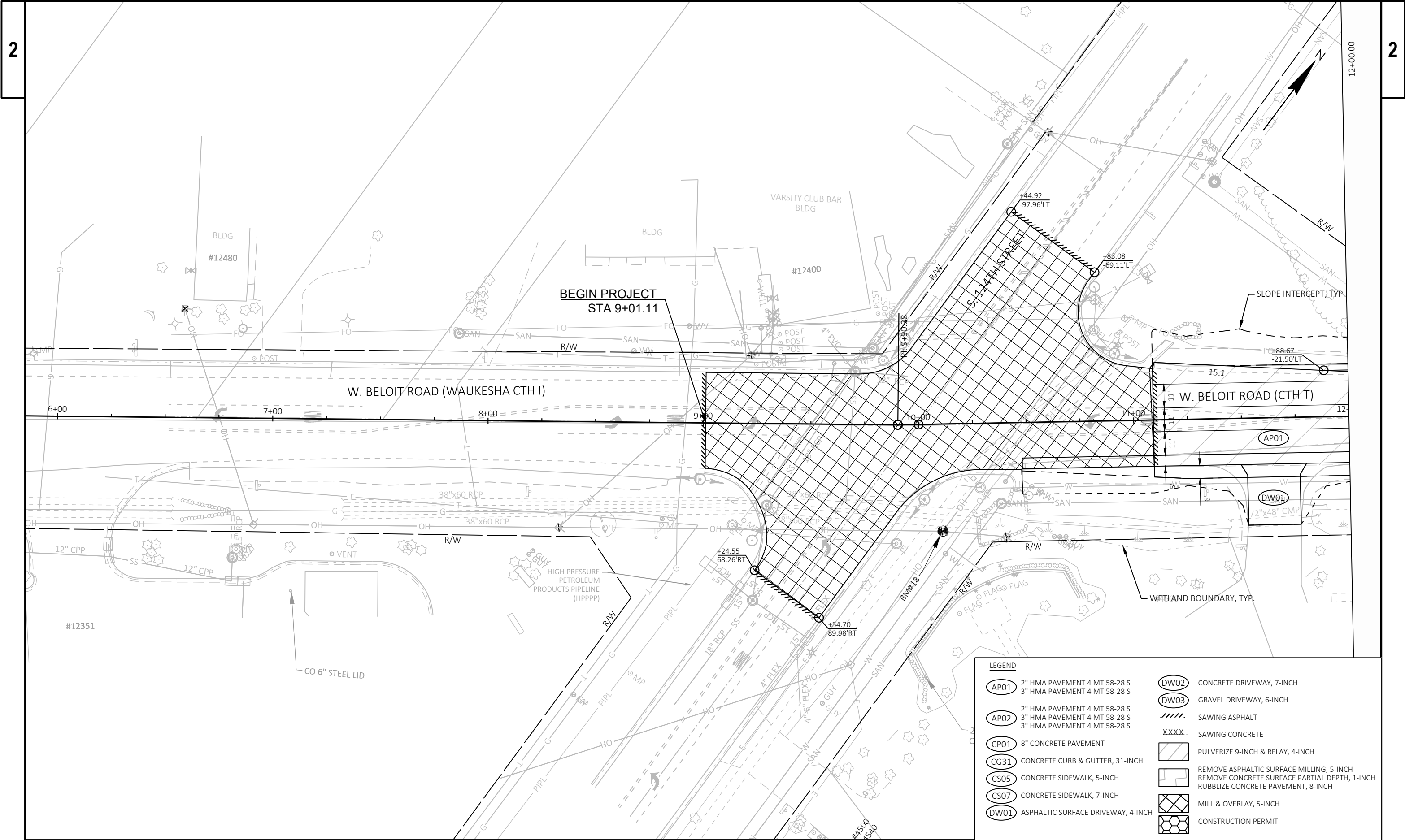
-Terms and Conditions Begin on the Next Page-

TERMS AND CONDITIONS

1. The initiation and accomplishment of the improvement will be subject to the applicable Federal, State and County regulations.
2. The Municipality will pay to the County such related costs for items as outlined below and listed in the Estimated Cost Summary.
3. Funding of each project phase (preliminary engineering, real estate, construction, other) is subject to inclusion in an approved program. County financing will be limited to participation in the costs of the following items as specified in the Estimated Cost Summary:
 - a. Preliminary Engineering and review services (100%), unless otherwise agreed as specified in the Estimated Cost Summary.
 - b. The grading, base, pavement, and curb and gutter (100%), unless otherwise agreed as specified in the Estimated Cost Summary.
 - c. Catch basins and inlets for surface water drainage of the improvement, with connections to the storm sewer main, if required (100%), unless otherwise agreed as specified in the Estimated Cost Summary.
 - d. Construction Engineering incidental to inspection and supervision of actual construction work (100%), unless otherwise agreed as specified in the Estimate Cost Summary.
 - e. Signing and pavement marking, including detour routes (100%), unless otherwise agreed as specified in the Estimated Cost Summary.
 - f. Surfacing of private driveways due to change in grade of the improvement (100%), unless otherwise agreed as specified in the Estimate Cost Summary.
 - g. New installations or alterations of traffic signals (100%), unless otherwise agreed as specified in the Estimated Cost Summary.
 - h. Real Estate for the improvement, if required (100%), unless otherwise agreed as specified in the Estimated Cost Summary.
 - i. Installation of new sidewalk required for the project to meet Federal funding requirements or replacement of any sidewalk removed as a result of a change in street grade (100%) or condition to meet ADA requirements, unless otherwise agreed as specified in the Estimated Cost Summary.
4. Work necessary to complete the improvement to be financed entirely by the Municipality or other utility or facility owner or other responsible party (not including the County) includes, but is not limited to, the following items:
 - a. New installations of or alterations of sanitary sewers or connections, water, gas, electric, telephone, telegraph, fiber optic, fire or police alarm facilities, parking meters, pipelines, and similar utilities.
 - b. Repair of damages to roads and streets caused by reason of their use in hauling materials incidental to the improvement.
 - c. New installations of or alterations of sidewalks that are not deemed necessary in 3i above, unless agreed as specified in the Estimated Cost Summary.
5. As the work progresses, the Municipality will be billed for work completed as outlined above and as listed in the Estimated Cost Summary. Upon completion of the project, a final audit will be made to determine the final division of costs.

6. If the Municipality should withdraw from the project, it will reimburse the County its proportionate local share of all construction and construction engineering costs incurred by the County to complete the construction phase of the project (construction), up to the date the notification of withdrawal is received by the County.
7. The work will be administered by the County or its designee and may include items not eligible for County participation. The County shall notify the Municipality of such items prior to inclusion of the work and get written authorization for their inclusion and cost participation by the Municipality.
8. The Municipality at its own cost and expense and using its own labor forces and equipment will:
 - a. Prohibit angle parking.
 - b. Regulate parking at locations where and when the pavement area usually occupied by parked vehicles will be needed to carry active traffic in the street.
 - c. Regulate parking at all times in the vicinity of the proposed improvements during their construction.
 - j. Remove, reinstall and/or relocate street lighting poles, bases, luminaries, and other appurtenances necessary to accommodate the proposed improvement, including coordinating work, unless otherwise agreed as specified in the Estimated Cost Summary.

(End of Document)



STAFF REPORT EXECUTIVE SUMMARY

APPLICANT: City of New Berlin

PROJECT: Resolution to Reallocate CIP Funds

LOCATION: National Avenue Pedestrian Lighting Project

REQUEST: Recommendation to the Common Council approval of a Resolution to Reallocate Funds from the Sunny Slope Road & Grange Avenue Intersection CIP Account to the National Avenue Pedestrian Lighting CIP Account.

D.C.D. RECOMMENDATION: Recommendation to the Common Council approval of a Resolution to Reallocate Funds from the Sunny Slope Road & Grange Avenue Intersection CIP Account 04251100 63000 C2019 to the National Avenue Pedestrian Lighting CIP Account 04251100 63600 C2019.

1. The Sunny Slope Road and Grange Avenue Intersection Reconstruction project was completed in the fall of 2021. This request is to reallocate \$185,000 of the remaining balance.
2. The 2022 CIP budget allocated \$150,000 to install 17 lights from Coffee Road to 147th Street along the north side of National Ave based on the actual 2021 budget cost for the light poles.
3. The cost per light pole increased from 2021 to 2022 by 49% which includes manufacturing and transportation.
4. Engineering was asked to prepare plans to extend the 2022 project scope to add an additional 14 lights to help expedite the completion of the overall Pedestrian Lighting Project which would add lights from 147th Street to Glen Park Road along the north side of National Avenue.
5. The additional funds would cover the increased pole costs and the addition of more poles.
6. To keep the 2022 CIP Budget in balance with other City needs, residual funds from the Sunny Slope Road and Grange Avenue Intersection project are available to cover the cost of the additional lights and installation.
7. Enclosed is Resolution 22-11 for the transfer of funds.

ATTACHMENT:

Resolution 22-11

5-Year Pedestrian Lighting Plan

RESOLUTION 22-11**RESOLUTION AMENDING THE 2019 CAPITAL PROJECTS BUDGET TO
REALLOCATE FUNDS TO THE LIGHTING & IMPROVEMENTS CIP ACCOUNT**

WHEREAS, the Department of Community Development has completed the reconstruction of Sunny Slope Road and Grange Avenue Intersection Reconstruction project as part of the 2021 CIP Budget, and;

WHEREAS, the Citywide Streets and Decorative Lighting Policy was developed and approved in 2004 for lighting in and around National Avenue, and;

WHEREAS, DCD staff requests that \$185,000 be transferred from the 2019 Sunny Slope Road and Grange Avenue Intersection CIP Account, and;

WHEREAS, the Board of Public Works, at their June 20th, 2022 meeting reviewed and recommend approval of these transfers to the Common Council, and;

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of New Berlin that the 2019 CIP Budget be amended to transfer funds from the Sunny Slope Road and Grange Avenue Intersection CIP Account 04251100 63000 C2019 to the Lighting & Improvements CIP 04251100 63600 C2019.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to publish this resolution in the Waukesha County NOW within 10 days of adoption by the Common Council.

TRANSFER FROM

Sunny Slope Road & Grange Avenue 04251100 63000 C2019	\$185,000
---	-----------

TRANSFER TO

Lighting & Improvements	04251100 63600 C2019	\$185,000
-------------------------	----------------------	-----------

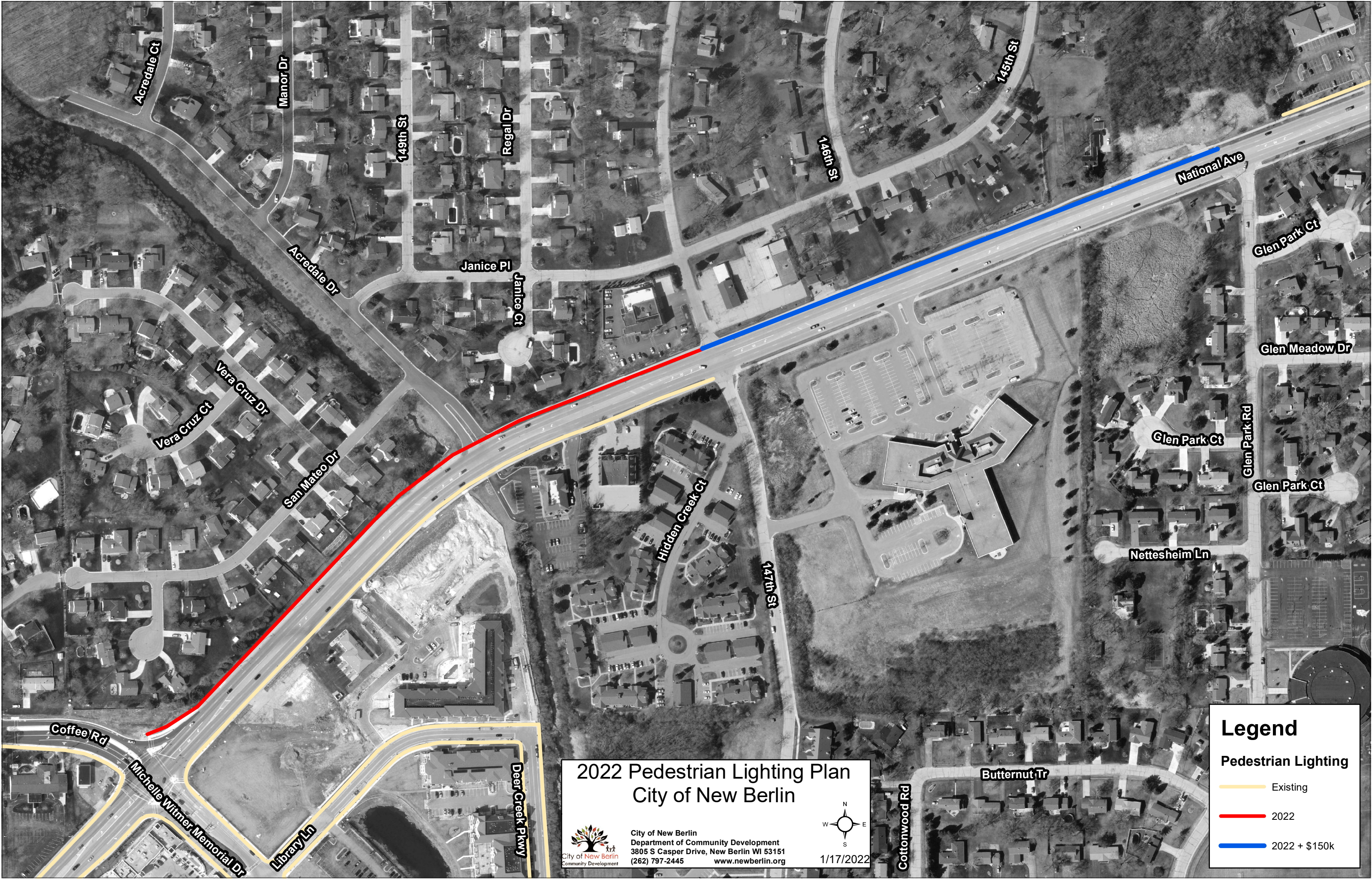
RESOLUTION ADOPTED by the Common Council this 28th day of June 2022.

APPROVED:

David Ament, Mayor

Countersigned / Certified:

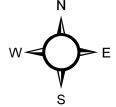
Rubina Medina, City Clerk



2022 Pedestrian Lighting Plan City of New Berlin



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



1/17/2022

Legend

Pedestrian Lighting

- Existing
- 2022
- 2022 + \$150k

STAFF REPORT EXECUTIVE SUMMARY

APPLICANT: City of New Berlin / WE Energies

PROJECT: Easement Amendment with WE Energies

LOCATION: Fire Station #3 – 5120 S. Racine Ave.

REQUEST: Approval of the Easement Amendment with WE Energies.

D.C.D. RECOMMENDATION: Recommend Common Council approval of the Easement Amendment with WE Energies for the property located at 5120 S. Racine Ave.

1. WE Energies has an existing easement on the Fire Station #3 property. The proposed easement would be a 10' wide, 220' long Utility easement along the south property line.
2. Per the attached First Amendment to Easement Agreement, WE Energies would be able to provide electric service to the two properties located at 5135 and 5161 Woodridge Ln.
3. Staff has received confirmation from the New Berlin Fire Chief, Mark Polzin, that he has no objection to the WE Energies easement on May 11, 2022.

Attachment:

First Amendment to Easement

**FIRST AMENDMENT TO
EASEMENT
("AMENDMENT")**

This instrument was drafted by and should be returned to:

We Energies
PROPERTY RIGHTS & INFORMATION GROUP
231 W. MICHIGAN STREET, ROOM A252
PO BOX 2046
MILWAUKEE, WI 53201-2046

Parcel I.D. No. NBC 1268-994-006

For good and valuable consideration, and subject to the Addendum attached, which the CITY OF NEW BERLIN, the owner of **Lot 1 of Certified Survey Map No. 10487** recorded in the Register of Deeds Office for Waukesha County in **Volume 100** of Certified Survey Maps, on **Pages 83-86 inclusive**, as **Document No 3533839**; being A part of the Northwest ¼ of the Southeast ¼ all in Section 29, Township 6 North, Range 20 East, City of New Berlin, Waukesha, County, Wisconsin, hereinafter collectively referred to as "Grantor," acknowledge receipt of, hereby agree with WISCONSIN ELECTRIC POWER COMPANY, a Wisconsin corporation doing business as "We Energies" hereinafter referred to as "Grantee" to amend the DISTRIBUTION EASEMENT UNDERGROUND JOINT recorded with the Waukesha County Register of Deeds office on **February 19th 2009** as **Document No. 3629225** ("Easement") .

CITY OF NEW BERLIN and WE ENERGIES desire to amend the Easement as follows.

Agreement

1. City of New Berlin grants to We Energies a ten (10) foot wide underground utility easement as depicted on the attached drawing, marked Exhibit "A" and made part of this Amendment. Except for the new easement area, this Exhibit A shall not supersede or replace the original Exhibit A to the Easement.

2. In consideration of the foregoing grant, it is understood that during the time the facilities permitted under the Easement and this Amendment are located on the premises of the Grantor pursuant to this grant, We Energies will indemnify, save, and hold harmless the Grantor, their successors and assigns, from any and all claims, liabilities, losses, costs, damages or expenses for injury or death of any person and any damages to property, arising out of We Energies' exercise of any of its rights under the Easement as amended hereby; excepting, however, any claims, liabilities, losses, costs, damages or expenses to the extent arising solely out of negligence or willful acts on the part of the Grantor, their successors and assigns.

3. Except as otherwise expressly amended herein, all terms and provisions of the Easement shall remain in full force and effect.

4. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, provided that all such counterparts, in the aggregate, shall contain the signatures of all parties hereto.

[Signature Pages to Follow]

Grantor:

CITY OF NEW BERLIN

By: _____
David Ament/ Mayor

By: _____
Rubina Medina/ City Clerk

Acknowledged before me in _____ County, State of _____, on ____, 2022, by

David Ament the Mayor, and Rubina Medina, the City Clerk of the **City of New Berlin**, for the municipal corporation, by its authority

.

Notary Public Signature, State of

Notary Public Name (Typed or Printed)

(NOTARY STAMP/SEAL)

My commission expires _____

Grantee:

**WISCONSIN ELECTRIC POWER COMPANY, a
Wisconsin corporation doing business as We Energies**

By: _____

Acknowledged before me in _____ County, State of Wisconsin, on _____, 2022, by
_____ the _____ of **WISCONSIN ELECTRIC POWER
COMPANY**, to me known to be the person who executed the foregoing instrument and acknowledged the
same.

Notary Public Signature, State of Wisconsin

Notary Public Name (Typed or Printed)

(NOTARY STAMP/SEAL)

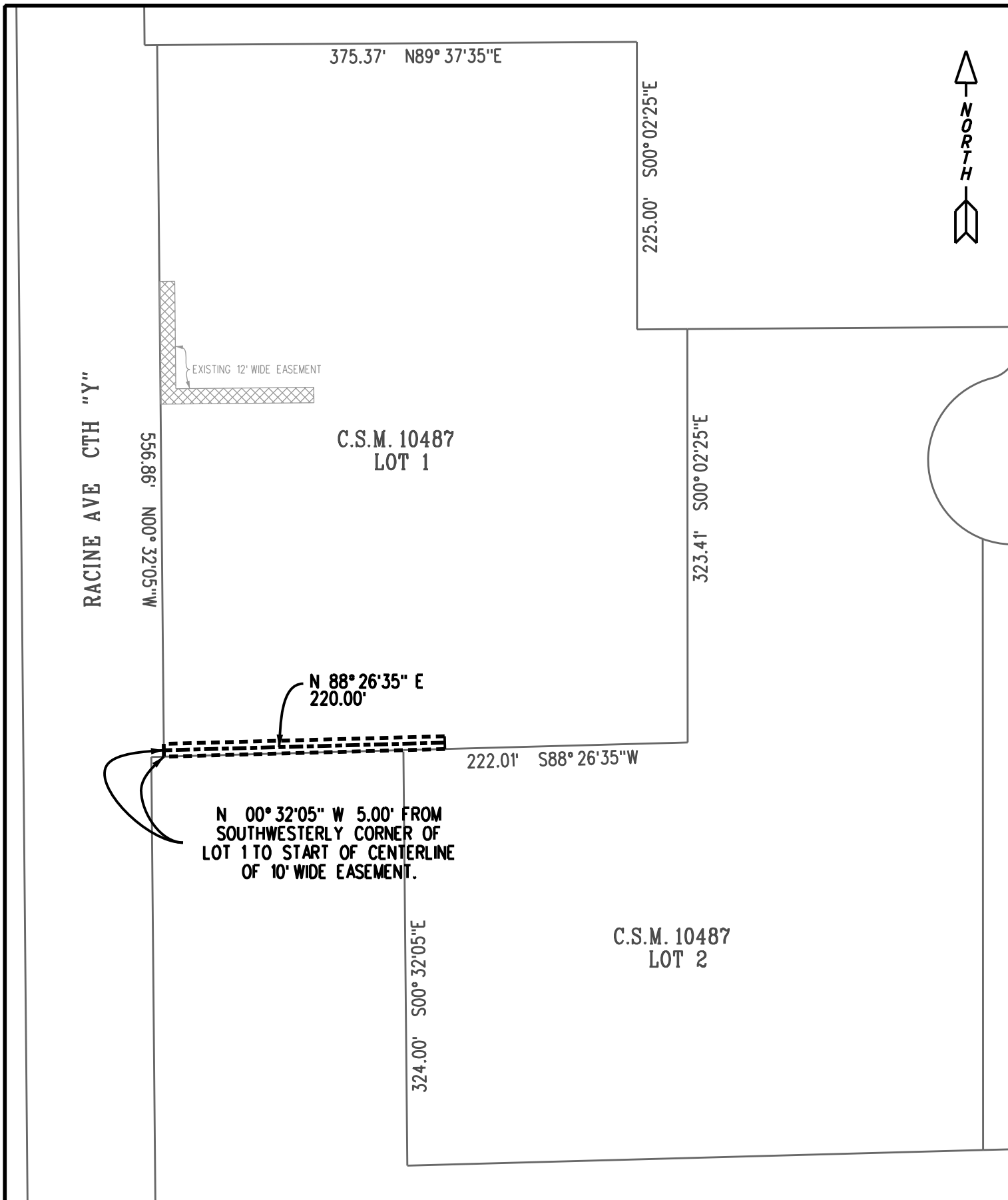
My commission expires _____

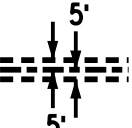
This instrument was drafted by Jeffrey Fowle on behalf of Wisconsin Electric Power Company, PO Box 2046,
Milwaukee, Wisconsin 53201-2046.

ADDENDUM

As a condition of granting this Easement, Grantee agrees to the following covenants, which are made a part of this Amendment:

1. Grantee agrees to keep the utility line(s) in good repair and further agrees to maintain Grantee's installations on the Premises at Grantee's sole cost.
2. Grantee will perform the construction, repair and maintenance of Grantee's installations ("Grantee's Work") in such a manner so as to not unduly disrupt the operation on the Premises.
3. Grantee agrees to restore the Premises, at Grantee's sole cost, to the same condition which existed prior to the commencement of Grantee's Work.



KEY	WE ENERGIES - EXHIBIT "A"	DRAWN BY: D.COOPER
 CENTERLINE 10' WIDE EASEMENT	10' WIDE EASEMENT IN PART OF THE SE 1/4 OF SECTION 29, T6N R20E CITY OF NEW BERLIN, WAUKESHA COUNTY, WISCONSIN	SCALE: 1" = 100'
		DATE: 05-19-2022
		ORDER #: 4750551

STAFF REPORT

EXECUTIVE SUMMARY

APPLICANT: City of New Berlin

PROJECT: 2022 Pedestrian Lighting Project

LOCATION: North side of National Avenue from Coffee Road to Glen Park Road

D.R.C. RECOMMENDATION: Recommend to the Common Council the awarding of a Construction Contract to the lowest responsive, responsible bidder, *WIL-Surge Electric, Inc.*, for the 2022 Pedestrian Lighting Project Contract in an amount of \$149,856.04 with purchasing the light poles, inspection and contingencies, the not to exceed Total Project Costs are \$366,000.00 from accounts 04251100 63600 C2019, 04251100 63600 C2020, 04251100 63600 C2021, 04251100 63600 C2022.

1. Funding Sources:

Lighting and Pedestrian Improvements:	04251100 63600 C2019	Amount:	\$ 200,000.00
Lighting and Pedestrian Improvements:	04251100 63600 C2020	Amount:	\$ 20,000.00
Lighting and Pedestrian Improvements:	04251100 63600 C2021	Amount:	\$ 10,000.00
Lighting and Pedestrian Improvements:	04251100 63600 C2022	Amount:	\$ 150,000.00
2. The 2022 Pedestrian Lighting contract will include thirty-one (31) decorative pedestrian lights and poles along National Ave. and all necessary conduit and wiring for the system.
3. On June 8, 2022, the City of New Berlin received four (4) bids from contractors for the 2022 Pedestrian Lighting Contract. The apparent low bidder is WIL-Surge Electric, Inc., of Butler, Wisconsin.
 - a. Summary of Contracted Amounts:

Base Bid:	\$ 149,856.04
Light Pole Purchase:	\$ 205,452.98
<u>Contingencies (~7%):</u>	<u>\$ 10,690.98</u>
Total Project Costs:	\$366,000.00
 - b. Inspection services will be conducted by City Staff.

DETAILS IN ATTACHED STAFF REPORT

CITY OF NEW BERLIN
DEPARTMENT OF COMMUNITY DEVELOPMENT
COMMON COUNCIL STAFF REPORT
Meeting of June 20, 2022

2022 Pedestrian Lighting Project

DATE STAFF REPORT CREATED: June 8, 2022

APPLICANT: City of New Berlin

REQUEST / DESCRIPTION OF PROJECT: The 2022 Pedestrian Lighting Project will consist of:

1. Installing light bases and poles, pull boxes, conduit and wiring necessary for the function of the pedestrian lighting system, and all incidental items necessary to complete the work as shown on the plans and included in the proposal and contract.
2. The project lights will be installed on the north side of National Avenue from Coffee Road to Glen Park Road.
3. The poles will match the existing National Avenue pedestrian lights and include banner arms and festoon outlets for holiday decorations.
4. A permit with Waukesha County is necessary for this project.
5. The plan showing the location and pole type is attached.

BIDS RECEIVED: Four (4) Bids - A summary of the bids received is attached.

SELECTED CONTRACTOR: WIL-Surge Electric, Inc.

FISCAL IMPACT:

Base Bid:	\$ 149,856.04
Light Pole Purchase:	\$ 205,452.98
<u>Contingencies (~7%):</u>	<u>\$ 10,690.98</u>
Total Project Costs:	\$366,000.00

SOURCE OF FUNDS

Lighting and Pedestrian Improvements:	04251100 63600 C2019
Lighting and Pedestrian Improvements:	04251100 63600 C2020
Lighting and Pedestrian Improvements:	04251100 63600 C2021
Lighting and Pedestrian Improvements:	04251100 63600 C2022

CONFORMANCE:

COMPREHENSIVE PLAN:

1. Design roadways for the safety of pedestrians and bicycles at all points of interaction with motorized vehicles.
2. Expand upon the system of bicycle and pedestrian facilities along arterial and collector streets and adjacent developments with new street construction or reconstruction projects.
3. Interconnect adjacent developments and street reconstruction projects with bicycle and pedestrian facilities.

TRAFFIC IMPACT: Roadways will be kept open for local access during construction. The Contractor will be required to provide traffic control in accordance with the Manual on Uniform Traffic Control Devices, Current Edition.

BACKGROUND INFORMATION:

1. The National Avenue Pedestrian Lighting Plan was originally developed in 2003 in an effort to compliment the National Avenue Sidepaths that were installed in 2001. The plan was to install Pedestrian lights from Calhoun Road to 124th St. Due to budget constraints, the lights were never installed as a City contract, but as land was developed or redeveloped, the lights were installed with the developments. Power and function of the lights is directly controlled by the development as control cabinets were never installed.
2. The Lighting Plan was expanded to include the City Center PUD area and the lights were installed as part of the roadway construction of Michelle Whitmer Memorial Drive, Library Lane, Wilbur Drive and Wall Street.
3. With the reconstruction of Coffee Road from Moorland Road to National Ave in 2015, the south side of Coffee Road included a sidepath and lights.
4. In 2016, fourteen lights were installed along the north side of National Avenue from the Sendik's Plaza to Coffee Road. A control cabinet was installed near the Sendik's plaza for future connections for lighting to the West and to the South.
5. In 2018, thirty lights were installed. This included the area along the north side of National Avenue from the Sendik's Plaza to Starbucks and along the South side of National Avenue from Moorland Road to Wall Street. A lighting control cabinet was installed near the intersection of the National Avenue Frontage Road and National Avenue, which power the lights that extend from the Qdoba Plaza to the western edge of the Holy Apostles Church property.
6. In 2019, 16 additional lights were installed along the south side of National Avenue from the western edge of Holy Apostles Church property to Moorland Road, and on the west side of Moorland Road to Howard Avenue. As part of this project, existing light poles were disconnected from private electrical circuits and connected to the public circuit installed in 2018.
7. In 2020, 44 lights were installed along the north side of National Ave. from 16010 W. National Ave. to Casper Dr, the south side of National Ave. from 16010 W. National Ave. to Al Stigler Pkwy., and the west side of Casper Drive from National Ave. to the north parking lot of City Hall. A lighting distribution center was added on Casper Drive.
8. In 2021, 12 lights were installed along the south side of National Ave. from 147th St. to Coffee Rd. A lighting control cabinet was installed at the southwest corner of 147th St. and National Ave.
9. Construction work is planned to be completed by the end of October, 2022.
10. In 2022, the City will again purchase the light poles directly as opposed to the contractor supplying the poles. The intent is to avoid a markup on the poles, and to reduce the material lead time.

D.C.D. RECOMMENDATION:

Recommend to the Common Council the awarding of a Construction Contract to the lowest responsive, responsible bidder, WIL-Surge Electric, Inc., for the 2022 Pedestrian Lighting Project Contract in an amount of \$149,856.04 with purchasing the light poles, inspection and contingencies, the not to exceed Total Project Costs are \$366,000.00 from accounts 04251100 63600 C2019, 04251100 63600 C2020, 04251100 63600 C2021, 04251100 63600 C2022.

Attachments:

Contract for Project No. RD-22-03

Project Drawings

Summary of Bids Received

2022 PEDESTRIAN LIGHTING PROJECT

CONTRACT RD-22-03

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-22-03

2022 PEDESTRIAN LIGHTING PROJECT

CITY OF NEW BERLIN, WISCONSIN

TABLE OF CONTENTS FOR
2022 PEDESTRIAN LIGHTING PROJECT
CONTRACT RD-22-03
CITY OF NEW BERLIN, WISCONSIN

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PROJECT NO. RD-22-03
2022 Pedestrian Lighting 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 June 8, 2022 for the 2022 Pedestrian Lighting Project. 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 \$20 by inputting Quest project #8213457 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 QUALIFICATIONS: Each prime Contractor submitting a bid shall have on file a Bidders Qualifications 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 a Performance Bond for the full amount of the Contract within 10 days of award or execution of the Contract. The Performance Bond shall contain a provision to increase the Performance Bond 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 and Performance Bond, within the 10-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 base bid consists of furnishing all labor, equipment, and materials necessary to install conduit, wiring, and bases for 31 City-provided pedestrian lights connected to existing electrical circuits. Approximate quantities of work are estimated as follows:

Base Bid

Install Decorative Pole, Arm, Luminaire LED	31 EA
Conduit Rigid Non Metallic, Schedule 40, 1.5-Inch	2,700 LF
Electrical Wiring, Lighting	19,200 LF

Published by authority of the City of New Berlin, Engineering Services Division,
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, May 25, 2022
Wednesday, June 1, 2022

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

PRE-QUALIFICATION STATEMENT- CONFIDENTIAL DATA

TO: CITY OF NEW BERLIN, WAUKESHA COUNTY, WISCONSIN

There is submitted herewith for your consideration, pursuant to Section 66.29, Wisconsin Statutes, a Statement of Qualifications of the undersigned to furnish the necessary labor, materials, equipment and skills required to enter upon the complete public works contract to be let by the Municipality through its several departments.

IDENTIFICATION

Official Firm Name _____

Mailing Address: _____

Telephone No. (____) _____

Fax No. (____) _____

Number of Years in Business under Present Firm Name: _____

Classification of Work for Which Your Firm is seeking Qualification:

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

CITY OF NEW BERLIN
PRE-QUALIFICATION STATEMENT
CONTRACTUAL RESPONSIBILITY SECTION

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

CITY OF NEW BERLIN
PRE-QUALIFICATION STATEMENT
BONDING RESPONSIBILITY SECTION

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



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
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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-22-03
2022 PEDESTRIAN LIGHTING PROJECT**

I. Specifications

All work is to conform to the City of New Berlin Standard Specifications for Roadway Construction, 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>. Unless specifically called out to reference the State of Wisconsin Standard Specifications for Highway and Structure Construction, current edition.

II. Time of Completion

The City of New Berlin is requesting that the work start no later than **July 25, 2022** and be completed by **October 28, 2022**. After October 28, 2022, a fee of \$250.00 per 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 **July 18, 2022**.

III. General

The majority of the work, as indicated per these specifications and as directed by the Engineer, under this Contract shall consist of:

Installing light bases and poles, pull boxes, conduit and wiring necessary for the function of the pedestrian lighting system, and all incidental items necessary to complete the work as shown on the plans and included in the proposal and contract. All materials used in this project shall be Made in America.

A permit with Waukesha County is necessary for this project. The City shall acquire this permit prior to the start of construction. The contractor shall not begin construction prior to the issue of this permit.

All work performed and all materials supplied under this Contract shall conform to these special provisions, attached and made a part of the Contract Documents by reference herein and to all specifications, codes, and ordinances either referred to in these specifications or established by law.

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.

IV. Prequalification

Contractor and all subcontractors shall submit Qualification Statements to the City prior to the bid opening, or 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.

Charges incurred from improper equipment ordered without approval of shop drawings shall be paid fully by the Contractor. All shop drawings shall conform to the specifications set forth in the Contract and in the Project Drawings.

VI. Utilities

There are underground utility facilities located within the project limits. The Contractor shall coordinate their construction activities with a call to Digger's Hotline or a direct call to the utilities that have facilities in the area as required per state statutes. The Waukesha Water Utility recently constructed a water supply main in the vicinity of this project. Extreme caution shall be taken to ensure this supply main is not damaged during construction. The Waukesha Water Utility shall be contacted at (262) 521-5272 prior to the start of any work. The contractor shall use caution to insure the integrity of underground facilities and shall maintain code clearances from overhead and underground facilities at all times.

VII. Public Convenience and Safety

Motorized construction equipment shall not be operated from 7:00 PM until the following 7:00 AM, unless prior written approval is obtained from the Engineer. Pedestrian walkways shall remain open and free of materials and equipment unless signed as a closed facility. Any active work areas shall be properly barricaded from pedestrians, and all sidewalks shall be open for pedestrian use.

VIII. Warranty

The contractor shall provide a three (3) year warranty on all electrical wiring, connections, breakers, and lighting control center components. All wiring connections shall be weather resistant. Warranty shall not be required for poles, arms, fixtures or luminaires which are provided by the City and their function is outside of the Contractor's control. Upon notice of any defect covered under warranty, the Contractor shall respond within 3 business days.

IX. Concrete Bases Type 5 Special

Description

This special provision describes Type 5 concrete bases similar to the standard Type 5 concrete bases modified for a 12 ½ - inch bolt circle for Type I fixtures.

Materials

Conform to materials requirements for standard Type 5 concrete base items according to Standard Spec 654. Concrete shall be Grade A. All materials shall be Made in America.

Construction

Conform to construction requirements for standard Type 5 concrete bases according to Standard Spec 654 with the exception that the bolt circle shall be 12 ½ - inch for Type I fixtures. Due to the location of existing private and public utilities, hydro excavation may be required to construct the bases. Any erosion control needed is incidental to this item of work. Bases shall be constructed a minimum of 2-feet from the back of curb.

Measurement

The City will measure "Concrete Bases, Type 5, Special" as each individual unit, acceptably completed.

Payment

The City will pay for measured quantities at the contract unit price per each base acceptably completed. Payment shall be full compensation for all labor, equipment, materials, and incidentals necessary to complete this item of work.

X. Assemble & Install Type I Decorative Pole, Arm, Luminaire

Description

The City shall provide the necessary Type I Pole, Arm, Luminaire and all necessary hardware to the contractor for assembly. The poles will be located in a locked storage container at the New Berlin Recycling Center located at 3711 S. Casper Drive, New Berlin, WI 53151. The contractor shall be given access to the storage area between the normal working hours of 7:00 AM to 7:00 PM. The City shall provide the contractor sufficient room to assemble the poles and fixtures. The Contractor shall be responsible for all transportation of the poles from the storage area to the work site. The Contractor shall be responsible for erecting, and wiring the poles and fixtures in accordance to the applicable provisions of Standard Spec 659. The concrete pole bases are provided under a separate bid item, and are to be paid for separately.

Materials

Pole

The pole provided by the City shall be:

Manufacturer: Lumec

Model Number: SAM8V-15-BABS18(2)-GFII-BKTX

Pole shall be 15'-0", 6061-T6 aluminum with a 0.25-inch wall thickness welded to the base. Base shaft shall be 8.625-inch round extruded 6061-T6 extruded aluminum having a 0.148-inch wall thickness, welded to both the top and bottom of the anchor plate. Base cover shall consist of a two piece round base cover cast from 356 aluminum and secured with stainless steel screws. Unit shall have single position upper and lower banner arms made of 1 1/16" outside diameter steel tubing, breakaway-type lower arm mechanically assembled to the pole, complete with a cast aluminum decorative ball. Units shall also have 120V duplex GFI receptacles with pad lockable in-use aluminum weatherproof painted aluminum covers. Receptacles shall be NEMA 5-15R. Wiring from the base to luminaire and receptacle is provided as a separate bid item.

Arm

The arm shall be:

Manufacturer: Lumec

Type: CC

Model Number: IF-1A-R5@6-90deg-BKTX

Arm shall be 6061-T6 aluminum with an outside diameter of 2-3/8 inches with an overall 2'-0" curve of 180 degrees.

LED Luminaire

The luminaire shall be:

Manufacturer: Lumec

Type: LED

Model Number: DMS50-55W48LED5.7K-R-LE3F-UNIV-BKTX

LEDs shall be type Phillips Lumileds LUXEON R with 48 high-performance white LEDs, 55 watts per unit, color temperature of 5700 Kelvin, 70 CRI, L70 of a minimum of 50,000 hours. Light distribution shall be Type III. Unit shall be IP66 rated. Housing shall be a round shape of cast 356 aluminum with a watertight grommet. Hood shall be die cast A360.1 aluminum and shall allow passive cooling. LED driver shall be a Class 1, high power factor (95%) auto adjusting universal voltage input from 120 to 277 VAC rated for both application line to line or line to neutral. Total harmonic distortion (THD) of 20% maximum. Driver shall be capable of operating between -40 Degree F to 130 Degree F. Driver shall reduce current to the LED array if the temperature exceeds 176 Degree F. Driver shall also protect against short circuits, voltage and current overloads and shall auto recover upon correction. Surge protector shall be 3 pole rated 10KV and protect against L-Gnd, L-N, N-Gnd surges and accordance with IEEE/ANSI c62.41.2 guidelines.

Construction

Install unit where shown. Install in accordance to manufacturer's instructions and in accordance to standard spec 657.

Measurement

The Engineer will measure "Assemble & Install Type I Decorative Pole, Arm, Luminaire" as each individual light pole, arm and luminaire acceptably completed.

Payment

The City will pay for measured quantities at the contract unit price per each pole acceptably installed. Payment shall be full compensation for erecting the City furnished poles and fixtures, and all incidentals required to complete this item of work.

XI. Furnish and Install Dead-Front GFCI

Description

This special provision describes the dead-front GFCI to be installed within each pole.

Materials

Dead-front GFCI shall be Eaton SGFDA20GY, or approved equal. Mounting box shall be weather resistant with cover, and capable of mounting to the provided bracket. All materials shall be Made in America.

Construction

The dead-front GFCI shall be installed within the pole base, fastened to a City-provided bracket. The Contractor shall cast the bracket into the concrete base, and the bracket will extend upward into the pole to the access panel. The dead-front GFCI shall be wired to provide ground fault protection for the outlet near the top of the pole. The dead-front GFCI shall be installed per manufacturers specifications.

Measurement

The City will measure Furnish and Install Dead-Front GFCI as each unit acceptably completed.

Payment

The City will pay for measured quantities at the contract unit price per each dead-front GFCI acceptably installed. Payment shall be full compensation for all labor, equipment, materials, and incidentals necessary to complete this item of work.

XII. Pull Box, Steel, 24 X 36-Inch

Description

This special provision describes 24 X 36-Inch Pull Box.

Materials

Conform to materials requirements for standard Pull Box, Steel, 24 X 36-Inch according to standard spec 653. All materials shall be Made in America.

Construction

Conform to construction requirements for standard Pull Box, Steel, 24 X 36-Inch according to standard spec 653, and according to S.D.D. 9B4: Pull Box.

Measurement

The City will measure Pull Box, Steel, 24 X 36-Inch as each individual unit acceptably completed.

Payment

The City will pay for measured quantities at the contract unit price per each pull box acceptably installed. Payment shall be full compensation for all labor, equipment, materials, and incidentals necessary to complete this item of work.

XIII. Electrical Wire, Lighting, 12 AWG

Description

This special provision describes Electrical Wire, Lighting, 12 AWG.

Materials

Conform to materials requirements for standard 12 AWG Electrical Wire from the underground feeder system to the luminaire and outlets according to standard spec 655. All materials shall be Made in America.

Construction

Conform to construction requirements for standard Electrical Wire, Lighting, 12 AWG according to standard spec 655, and according to the plan set in Attachment A.

Measurement

The City will measure "Electrical Wire, Lighting, 12 AWG" by the linear foot acceptably completed.

Payment

The City will pay for measured quantities at the contract unit price per linear foot acceptably installed. Payment shall be full compensation for all labor, equipment, materials, and incidentals necessary to complete this item of work.

XIV. Electrical Wire, Lighting, 6 AWG

Description

This special provision describes Electrical Wire, Lighting, 6 AWG.

Materials

Conform to materials requirements for standard 6 AWG Electrical Wire in the underground feeder system according to standard spec 655. All materials shall be Made in America.

Construction

Conform to construction requirements for standard Electrical Wire, Lighting, 6 AWG according to standard spec 655, and according to the plan set in Attachment A.

Measurement

The City will measure Electrical Wire, Lighting, 6 AWG as each linear foot, acceptably completed.

Payment

The City will pay for measured quantities at the contract unit price under the bid item number 9, "Electrical Wire, Lighting, 6 AWG". Payment shall be full compensation for all labor, equipment, materials, and incidentals necessary to complete this item of work.

XV. Conduit Rigid Non Metallic Schedule 40, 1 ½ -Inch & 3-Inch

Description

This special provision describes Conduit Rigid Non Metallic Schedule 40, 1 ½ -Inch & 3-Inch.

Materials

Conform to materials requirements for standard Conduit Rigid Non Metallic Schedule 40, 1 ½ -Inch & 3-Inch in the underground feeder system between pole bases according to standard spec 652. All materials shall be Made in America.

Construction

Conform to construction requirements for standard Conduit Rigid Non Metallic Schedule 40, 1 ½ -Inch & 3-Inch according to standard spec 652, and according to the attached plan set in Attachment A. The contractor shall determine the appropriate method of installation, whether bored, trenched, or hydro excavated to provide the least disturbance to existing surface materials and to avoid conflicts with existing utilities. Utilities shall be located prior to the start of any work. The location request shall be the responsibility of the Contractor.

Measurement

The City will measure "Conduit Rigid Non Metallic Schedule 40, 1 ½ -Inch" and "Conduit Rigid Non Metallic Schedule 40, 3-Inch" by the linear foot acceptably completed.

Payment

The City will pay for measured quantities at the Contract unit price per linear foot acceptably installed. Payment shall be full compensation for providing the conduit, conduit bodies, and fittings; for providing all conduit hangers, clips, attachments, and fittings used to support conduit on structures; for pull wires or ropes; for expansion fittings and caps; for excavating, bedding, and backfilling, including any sand, concrete, or other required materials; for disposing of surplus materials; and for making inspections.

XVI. Traffic Control & Safety

Description

All streets shall remain open for through traffic 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 Manual on Uniform Traffic Control Devices, Current Edition.

Payment

The City will measure and pay for Traffic Control at the lump sum unit price. Payment shall be full compensation for providing all necessary materials, equipment, labor, and incidentals necessary to complete this item of work.

XVII. Restoration

Description

This special provision describes Restoration.

Materials

All disturbed areas as part of this work shall be restored with the appropriate material. In grass areas, the surface shall be restored with 4" topsoil, seed mix Number 40 conforming to state specification 630, mulch and fertilizer. Concrete that is damaged due to the work shall be replaced in kind, and according to New Berlin Standard Specifications. All materials shall be Made in America.

Construction

Restore surface materials to their original state. In grass areas, the surface shall be restored

with 4" topsoil, seed mix Number 40 conforming to state specification 630, fertilizer and matting. Concrete that is damaged due to the work shall be replaced in kind, and according to New Berlin Standard Specifications. Restoration shall be completed around each pole base and cabinet base within 14 days of pouring concrete.

Measurement

The City will measure Restoration as Lump Sum acceptably completed.

Payment

The City will pay Restoration at the lump sum Contract unit price. Payment shall be full compensation for providing all necessary materials, equipment, labor, disposal of unsuitable materials, and incidentals necessary to complete this item of work.

**CITY OF NEW BERLIN
RD-22-03
2022 Pedestrian Lighting Project**

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:

RD-22-03 Total Project Quantities					
Item No.	Description	Unit Cost	Unit	Quantity	Total Cost
1	Concrete Bases, Type 2, Special		EACH	31	
2	Assemble & Install Type I Decorative Pole, Arm, Luminaire		EACH	31	
3	Furnish and Install Dead-Front GFCI		EACH	31	
4	Pull Box, Steel, 24X36 Inch		EACH	2	
5	Electrical Wire, Lighting, 12 AWG		LF	2945	
6	Electrical Wire, Lighting, 6 AWG		LF	19218	
7	Conduit, Rigid, Non-Metallic, Schedule 40, 1.5-Inch		LF	2726	
8	Conduit, Rigid, Non-Metallic, Schedule 40, 3-Inch		LF	79	
9	Traffic Control		LS	1	
10	Restoration		LS	1	
				Total:	

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 28, 2022. 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 substantial completion unless a written extension is approved by the Board of Public Works.

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-22-03**

This Contract made this _____ day of _____, 2022, 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 July 18, 2022. The City of New Berlin is requesting that the work start no later than **July 25, 2022** and be completed by **October 28, 2022**.

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 approximate 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 has taken place. 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% 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% 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
- Qualification Statement
- Subcontractor's Qualification Statement
- Special Provisions
- Bid Proposal Form
- 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
2022 Pedestrian Lighting Project, Contract RD-22-03, 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.

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.

ATTACHMENT A
ADDENDUM TO CITY CONTRACTS

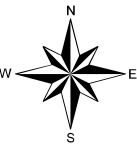
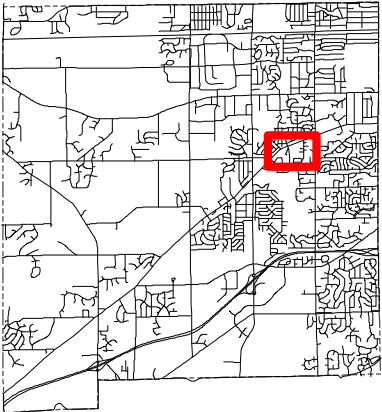
ADDENDUM TO CITY OF NEW BERLIN CONTRACTS

This Addendum is made and entered into and shall be considered an attachment to all contracts entered into by the City of New Berlin for so long as the City of New Berlin is subject to the U.S. Department of Treasury Restrictions, as well as other federal restrictions related to the City's receipt of Coronavirus Local Fiscal Recovery Funds. The following Terms and Conditions shall be included in each such agreement and are incorporated as though fully set forth in the original contract.

1. No City contractor or employee shall operate any machinery or vehicle while utilizing a smart phone, including, but not limited to, the use of any cellular phone or texting.
2. All City employees and contractors, while engaged in the performance of City business or acting consistent with the performance of services under a contract with the City shall utilize seatbelts and any other safety devices related to the operation of a motor vehicle.
3. City employees or contractors whose duties and responsibilities are funded through the Coronavirus State and Local Fiscal Recovery Funds agree that they will not engage in any lobbying activities while in the course of providing services on behalf of the City of New Berlin, as restricted under the Hatch Act, 5 USC Sec. 1501-1508. No funds appropriated under the Coronavirus State and Local Fiscal Recovery Act shall be utilized for lobbying, and no political payments shall be made through the use of said funds.
4. All City employees and contractors, while in the performance of duties on behalf of the City shall abide by all local, state and federal regulations concerning the ingestion of controlled substances and shall not violate such Statutes or Ordinances. The City shall enforce drug free workplace standards and provide awareness programs for Staff. The City shall further agree to take action regarding individuals using drugs in the workplace according to law.
5. All City employees and contractors, in the course of performing of their duties on behalf of the City, shall, to the extent applicable, comply with the provisions in Wisconsin Statute Sec. 19.59 regarding conflicts of interest, as well as City of New Berlin Municipal Code Chapter 28 regarding ethics. Specifically, no City employee or contractor shall accept or solicit money or tangible personal property or otherwise receive consideration in exchange for the agreement to enter into a contract with a third party.
6. City employees shall avoid the acquisition of unnecessary items or property on behalf of the City.
7. City employees shall, to the extent applicable, engage in value engineering as part of any construction work performed on behalf of the City.
8. Contracts shall only be awarded to responsible contractors with experience in performing the services being contracted for.

9. City contracts shall avoid compensating for contractor work performed on a time and material basis and, to the extent practicable, shall have fixed-price contracts.
10. The selection of a contractor by the City should be done in an atmosphere of open and honest competition.
11. In the course of public bidding involving the purchase of equipment, the City shall not specify only a brand name for the purpose of limiting potential contracting parties.
12. The City shall verify that any entity with which it is contracting has not been excluded for contracting pursuant to 2 CFR 180.

ATTACHMENT B
PROJECT DRAWINGS



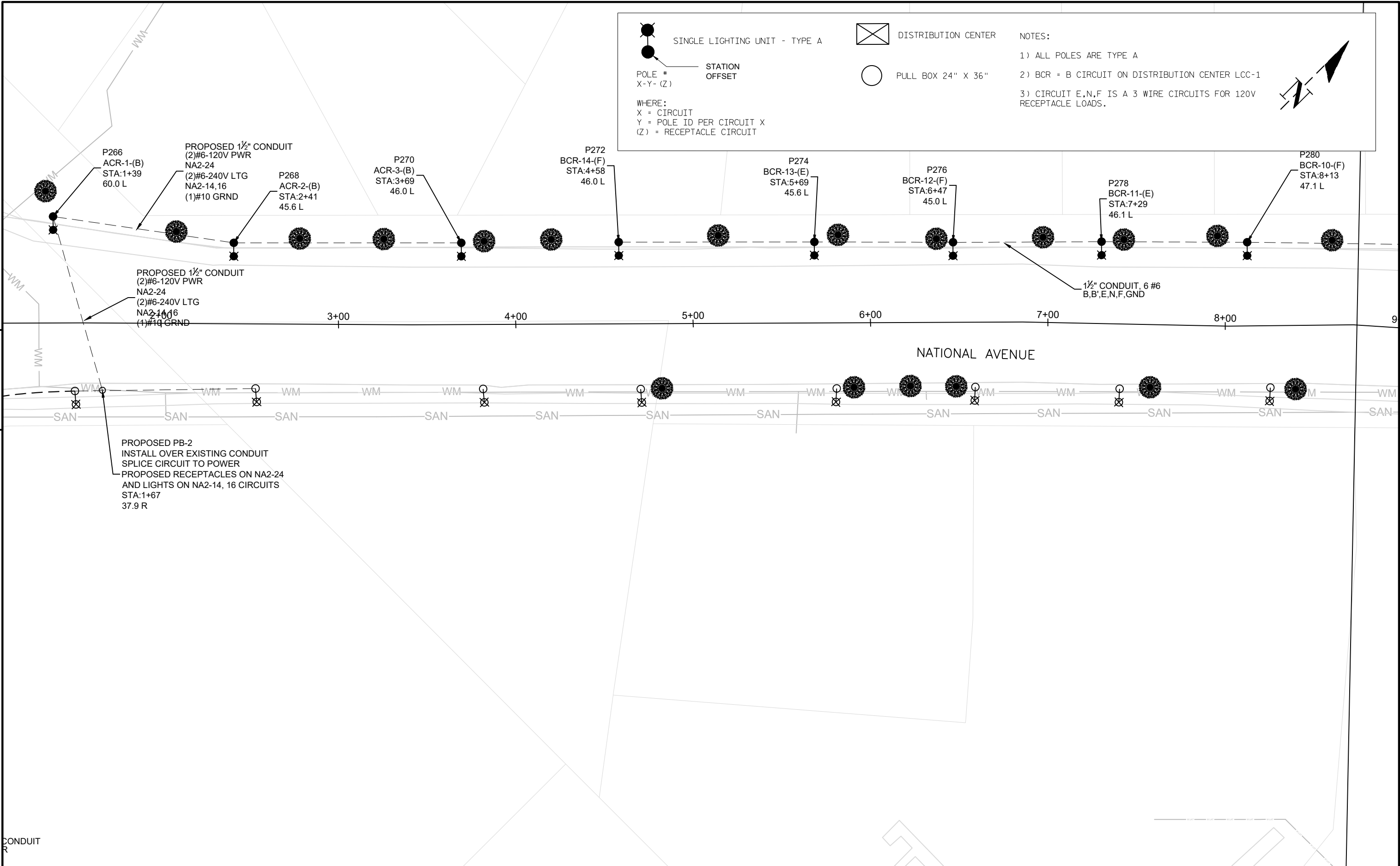
City of New Berlin
RD-22-03
2022 Pedestrian
Lighting Project

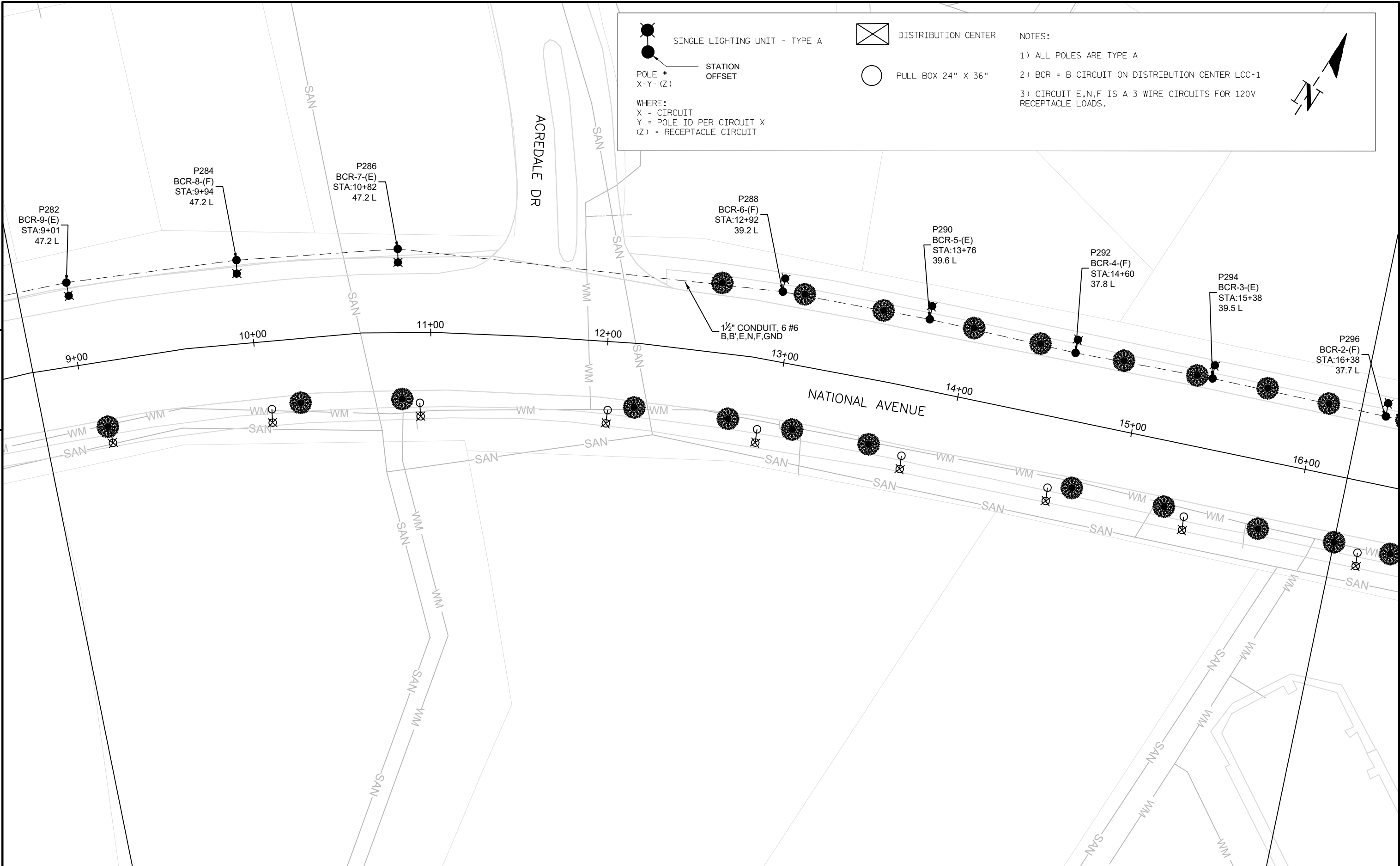
Table of Contents:

- Sheet 1: Title Sheet
- Sheets 2-7: Plan Sheets
- Sheets 8-9: LCC-1 Quantities
- Sheet 10: LCC-1 Wiring Diagram
- Sheet 11: Concrete Base Detail



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





SINGLE LIGHTING UNIT - TYPE A

DISTRIBUTION CENTER

POLE #
X-Y-(Z)

STATION
OFFSET

WHERE:
X = CIRCUIT
Y = POLE ID PER CIRCUIT X
(Z) = RECEPTACLE CIRCUIT

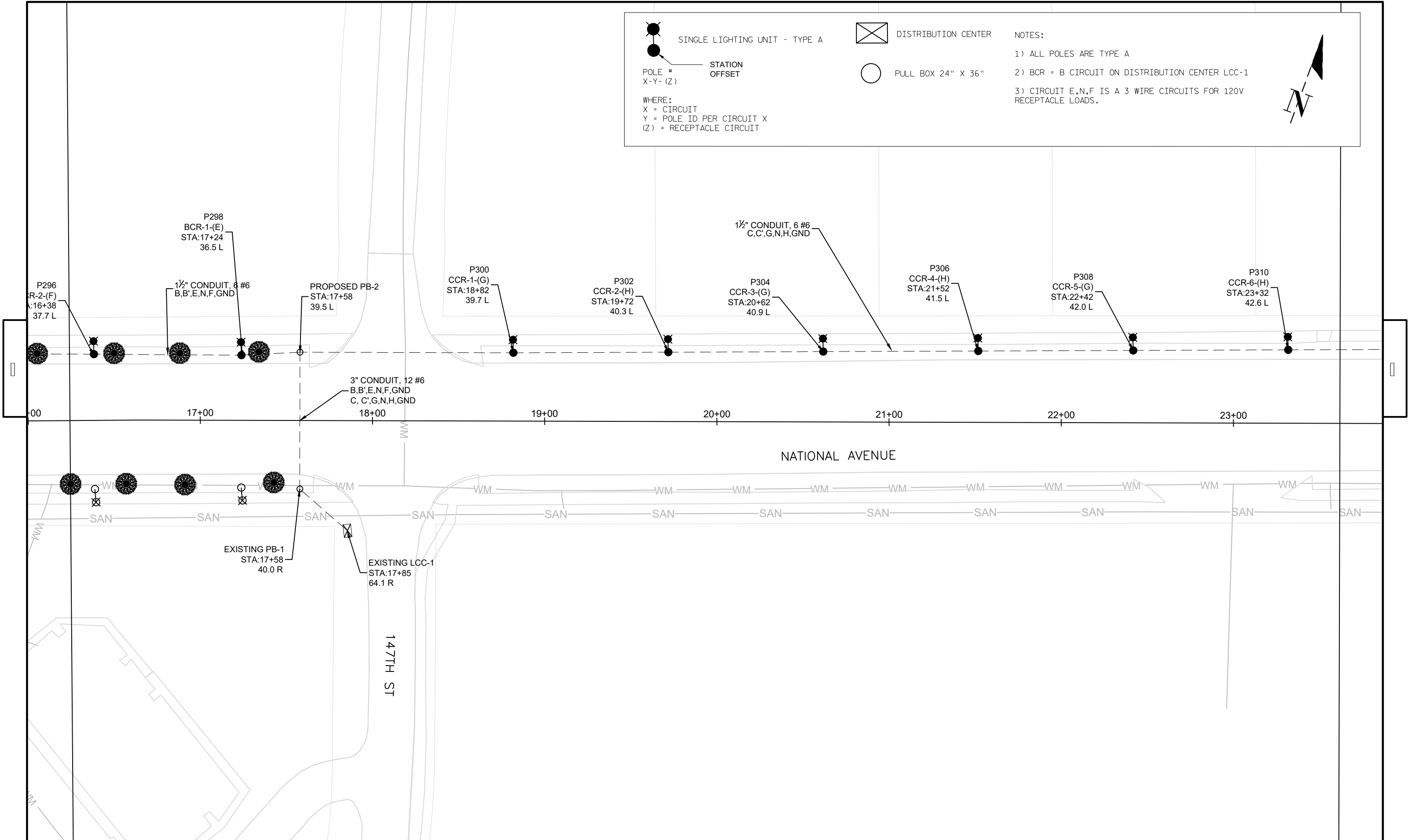
PULL BOX 24" X 36"

NOTES:

1) ALL POLES ARE TYPE A

2) BCR = B CIRCUIT ON DISTRIBUTION CENTER LCC-1

3) CIRCUIT E,N,F IS A 3 WIRE CIRCUITS FOR 120V RECEPTACLE LOADS.



PROJECT NO: RD-22-01	HWY: NATIONAL AVENUE	COUNTY: WAUKESHA	2022 PEDESTRIAN LIGHTING PROJECT	SHEET	E
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SINGLE LIGHTING UNIT - TYPE A

DISTRIBUTION CENTER

POLE #
X-Y-(Z)

STATION
OFFSET

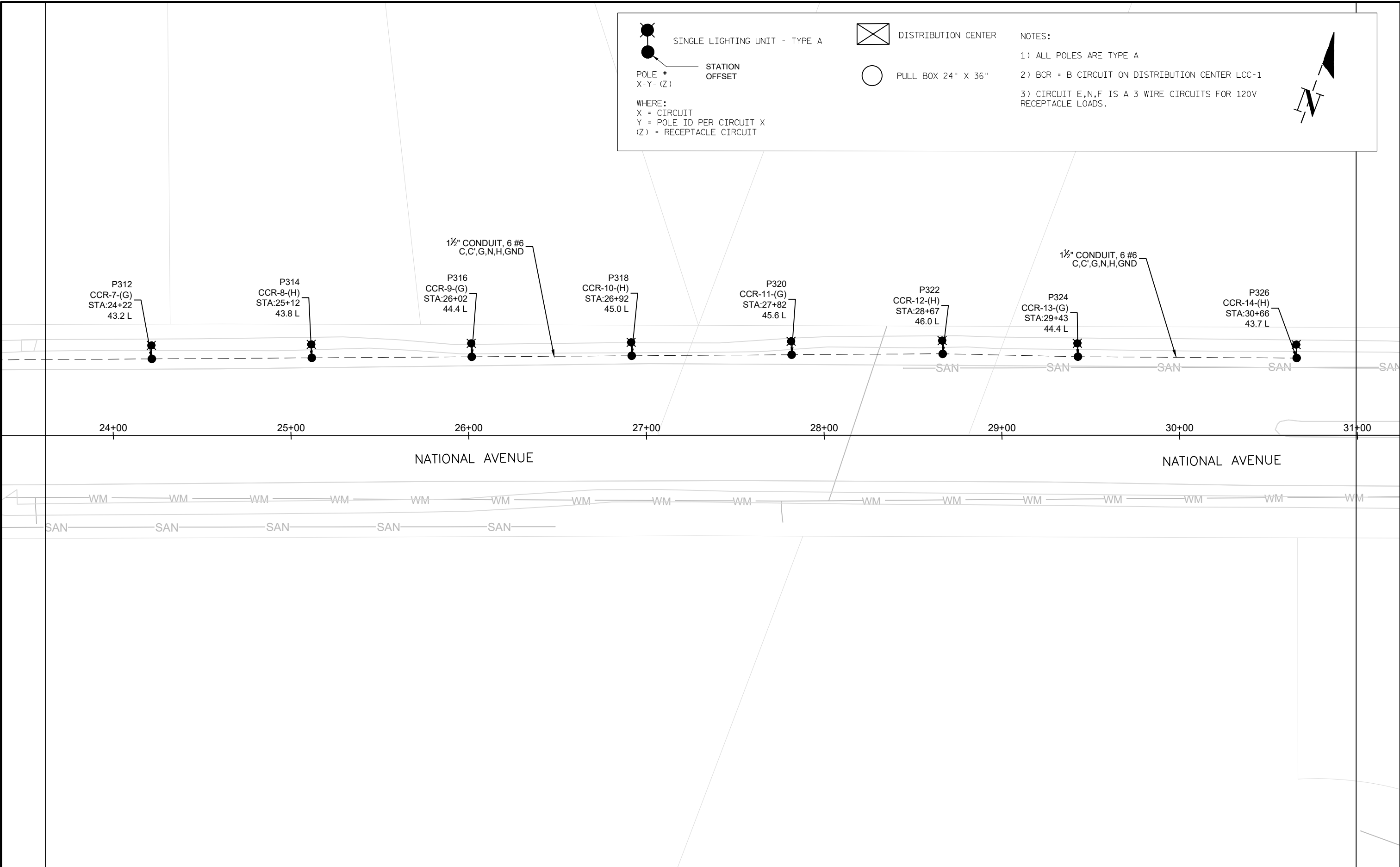
WHERE:
X = CIRCUIT
Y = POLE ID PER CIRCUIT X
(Z) = RECEPTACLE CIRCUIT

NOTES:

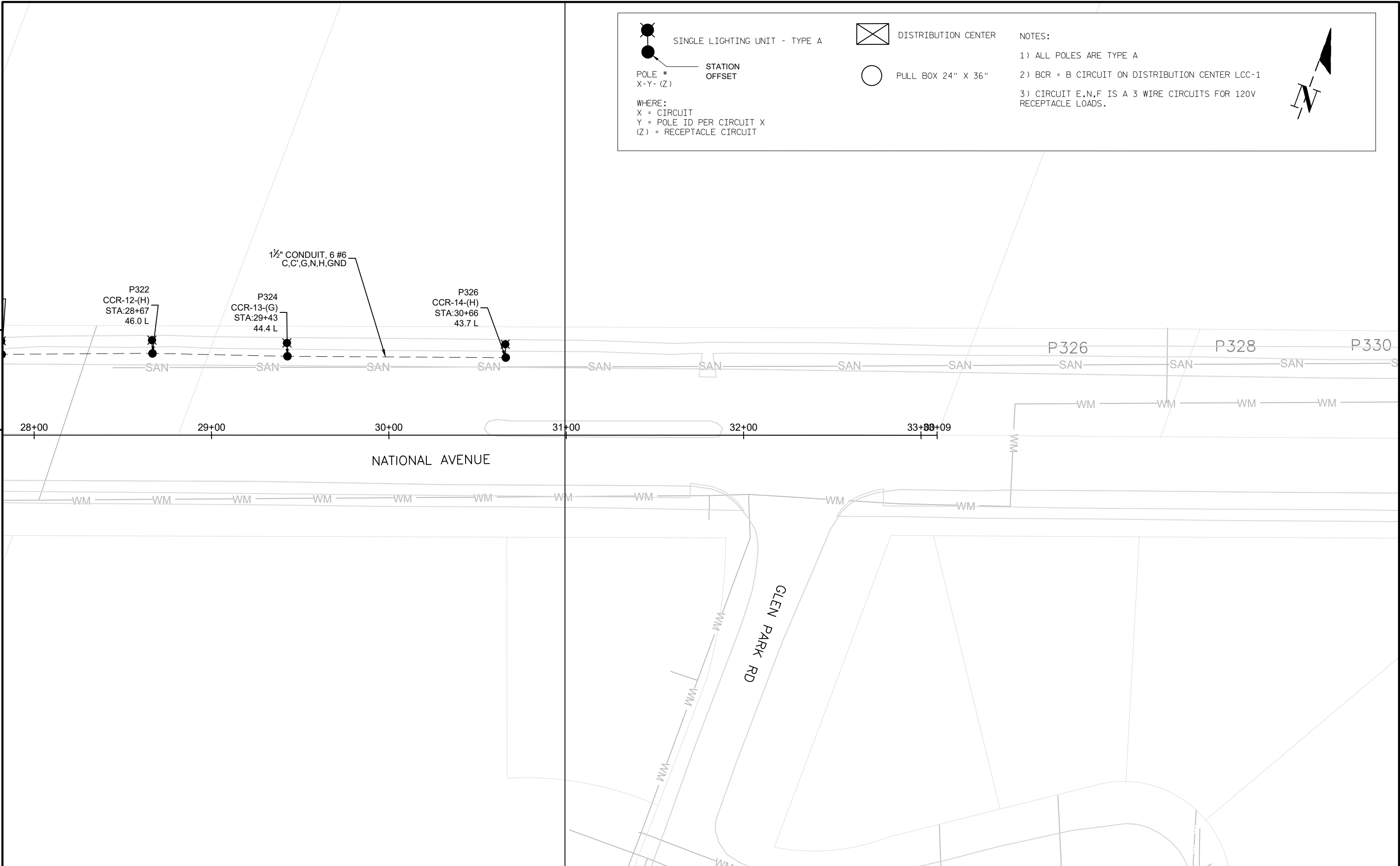
1) ALL POLES ARE TYPE A

2) BCR = B CIRCUIT ON DISTRIBUTION CENTER LCC-1

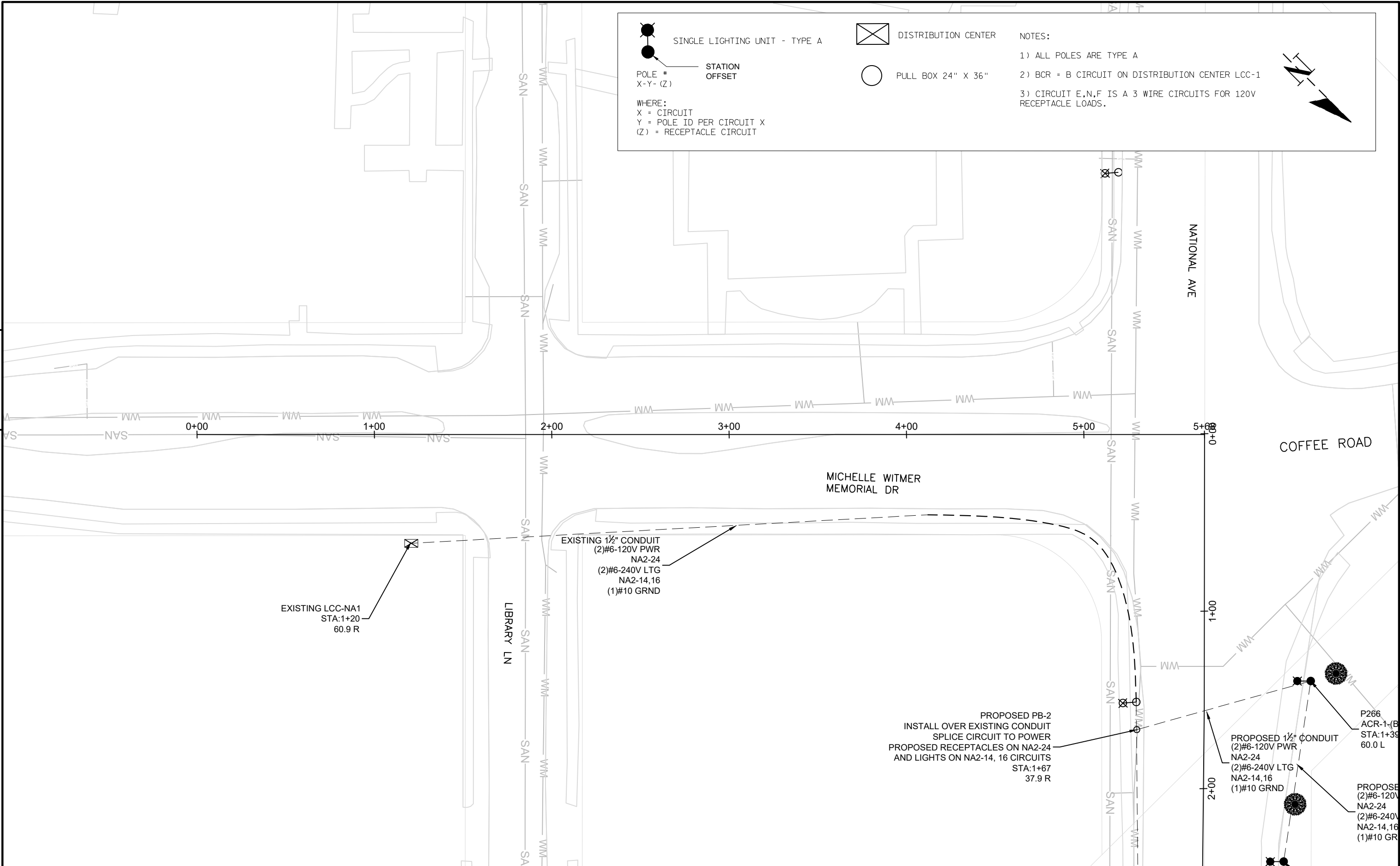
3) CIRCUIT E,N,F IS A 3 WIRE CIRCUITS FOR 120V RECEPTACLE LOADS.



PROJECT NO:	RD-22-01	HWY: NATIONAL AVENUE	COUNTY: WAUKESHA	2022 PEDESTRIAN LIGHTING PROJECT	SHEET	E
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PROJECT NO: RD-22-01	HWY: NATIONAL AVENUE	COUNTY: WAUKESHA	2022 PEDESTRIAN LIGHTING PROJECT	SHEET	E
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PROJECT NO: RD-22-03	HWY: MICHELLE WITMER MEMORIAL DR	COUNTY: WAUKESHA	2022 PEDESTRIAN LIGHTING PROJECT	SHEET	E
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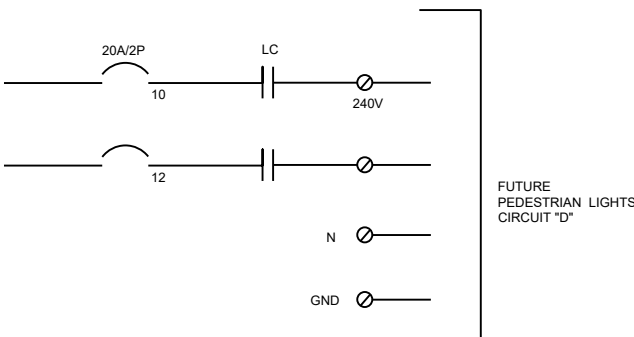
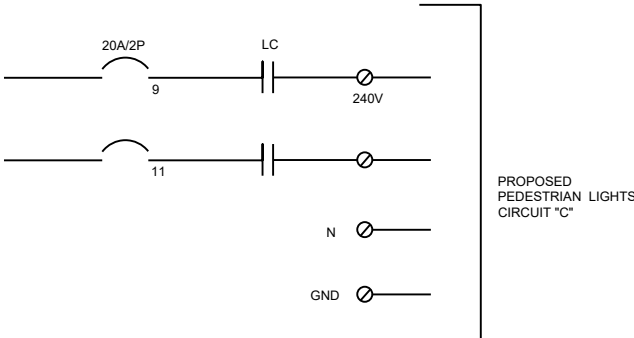
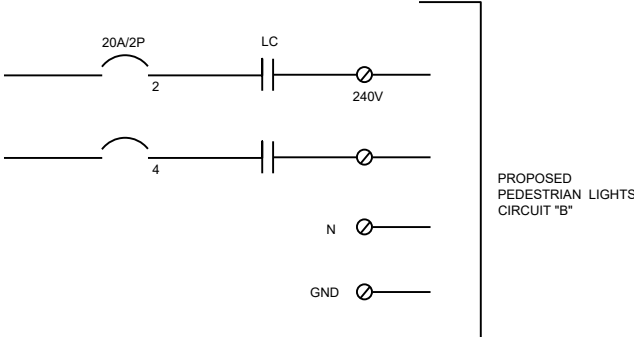
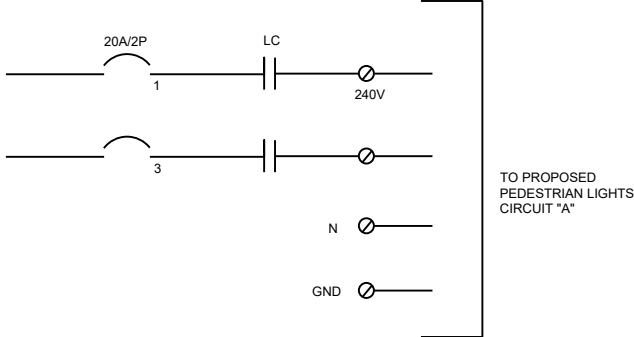
LIGHTING AND MISCELLANEOUS ASSOCIATED WITH EXISTING LCC-1								
		OFFSET		STREET	PULL BOXES STEEL 24X36-INCH	ELECTRICAL WIRE LIGHTING 12 AWG	CONCRETE BASES TYPE 5 SPECIAL	DECORATIVE POLE, ARM, LUMINAIRE LED
CCR-14	30+66	LT	23.5	NATIONAL AVE	-	95	1	1
CCR-13	29+43	LT	24.5	NATIONAL AVE	-	95	1	1
CCR-12	28+67	LT	25.5	NATIONAL AVE	-	95	1	1
CCR-11	27+82	LT	26.5	NATIONAL AVE	-	95	1	1
CCR-10	26+92	LT	27.5	NATIONAL AVE	-	95	1	1
CCR-9	26+02	LT	28.5	NATIONAL AVE	-	95	1	1
CCR-8	25+12	LT	29.5	NATIONAL AVE	-	95	1	1
CCR-7	24+22	LT	30.5	NATIONAL AVE	-	95	1	1
CCR-6	23+32	LT	31.5	NATIONAL AVE	-	95	1	1
CCR-5	22+42	LT	32.5	NATIONAL AVE	-	95	1	1
CCR-4	21+52	LT	33.5	NATIONAL AVE	-	95	1	1
CCR-3	20+62	LT	34.5	NATIONAL AVE	-	95	1	1
CCR-2	19+72	LT	40.3	NATIONAL AVE	-	95	1	1
CCR-1	18+82	LT	39.7	NATIONAL AVE	-	95	1	1
PB-2	17+58	LT	39.5	NATIONAL AVE	1	-	-	-
BCR-1	17+24	LT	36.5	NATIONAL AVE	-	95	1	1
BCR-2	16+38	LT	37.7	NATIONAL AVE	-	95	1	1
BCR-3	15+38	LT	39.5	NATIONAL AVE	-	95	1	1
BCR-4	14+60	LT	37.8	NATIONAL AVE	-	95	1	1
BCR-5	13+76	LT	39.6	NATIONAL AVE	-	95	1	1
BCR-6	12+92	LT	39.2	NATIONAL AVE	-	95	1	1
BCR-7	10+82	LT	47.2	NATIONAL AVE	-	95	1	1
BCR-8	9+94	LT	47.2	NATIONAL AVE	-	95	1	1
BCR-9	9+01	LT	47.2	NATIONAL AVE	-	95	1	1
BCR-10	8+13	LT	47.1	NATIONAL AVE	-	95	1	1
BCR-11	7+29	LT	46.1	NATIONAL AVE	-	95	1	1
BCR-12	6+47	LT	45	NATIONAL AVE	-	95	1	1
BCR-13	5+69	LT	45.6	NATIONAL AVE	-	95	1	1
BCR-14	4+58	LT	46	NATIONAL AVE	-	95	1	1
TOTALS					1	2660	28	28

LIGHTING AND MISCELLANEOUS ASSOCIATED WITH EXISTING LCC-NA1								
		OFFSET		STREET	PULL BOXES STEEL 24X36-INCH	ELECTRICAL WIRE LIGHTING 12 AWG	CONCRETE BASES TYPE 5 SPECIAL	DECORATIVE POLE, ARM, LUMINAIRE LED
PB-3	1+67	RT	37.9	NATIONAL AVE	1	-	-	-
ACR-1	1+39	LT	60	NATIONAL AVE	-	95	1	1
ACR-2	2+41	LT	45.6	NATIONAL AVE	-	95	1	1
ACR-3	3+69	LT	46	NATIONAL AVE	-	95	1	1
TOTALS					1	285	3	3

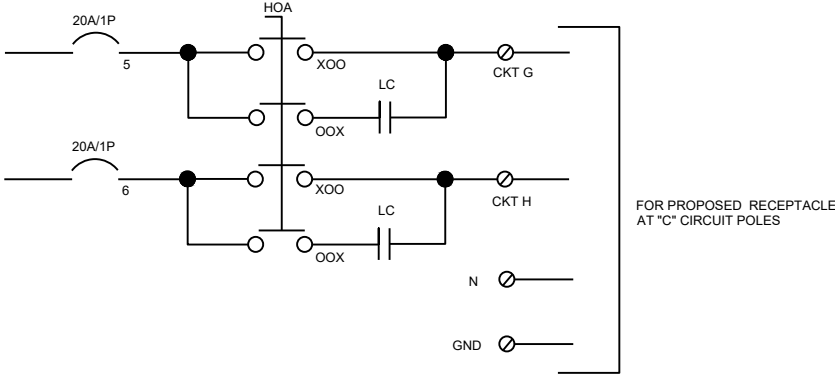
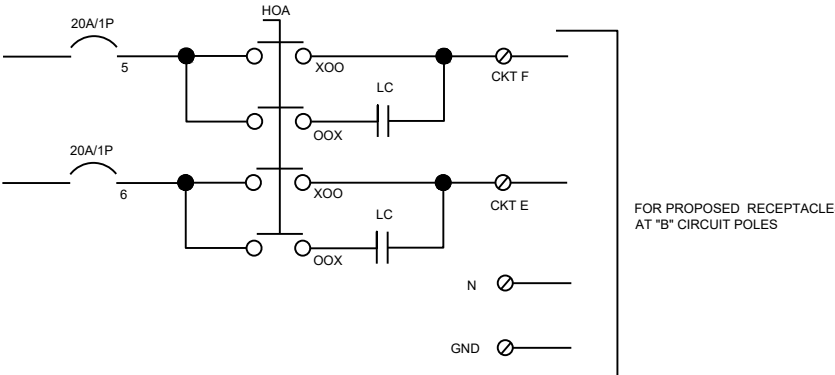
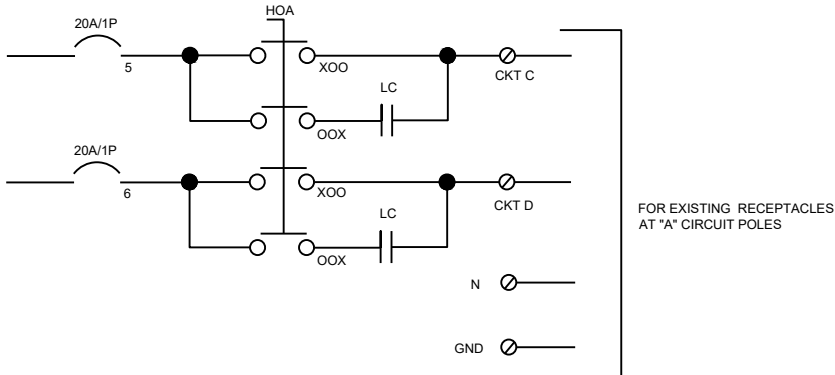
PROJECT NO: RD-22-03	HWY:NATIONAL AVE	CITY OF NEW BERLIN	2022 PEDESTRIAN LIGHTING PROJECT	SHEET
FILE NAME : P:\DCD\PROJECTS\RD\RD-22-03 2022 PEDESTRIAN LIGHTING\CAD\NATIONAL AVE PEDESTRIAN LIGHTING.DWG LAYOUT NAME - SHEET - (26)				
PLOT DATE : 5/17/2022 9:32 AM				
PLOT BY : PICHLER, LUCAS				
PLOT NAME :				
PLOT SCALE : NTS				
WISDOT/CADDs SHEET 42				

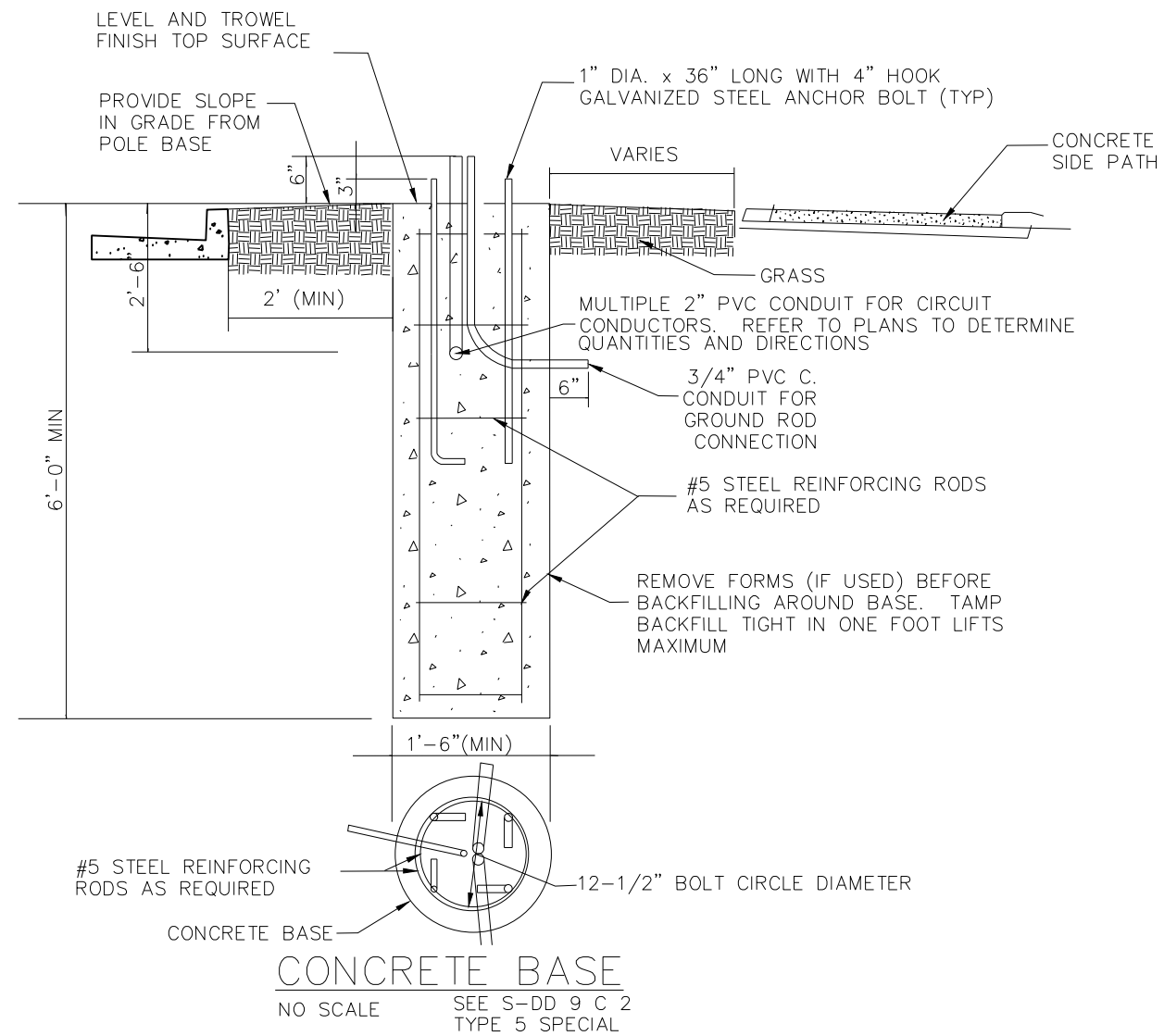
WIRING AND CONDUIT ASSOCIATED WITH LCC-1				
		CONDUIT RIGID NONMETALLIC SCHEDULE 40 1.5-INCH	ELECTRICAL WIRE LIGHTING 6 AWG	CONDUIT RIGID NONMETALLIC SCHEDULE 40 3-INCH
FROM	TO	LF	LF	LF
CCR-14	CCR-13	123	780	-
CCR-13	CCR-12	76	498	-
CCR-12	CCR-11	85	552	-
CCR-11	CCR-10	90	582	-
CCR-10	CCR-9	90	582	-
CCR-9	CCR-8	90	582	-
CCR-8	CCR-7	90	582	-
CCR-7	CCR-6	90	582	-
CCR-6	CCR-5	90	582	-
CCR-5	CCR-4	90	582	-
CCR-4	CCR-3	90	582	-
CCR-3	CCR-2	90	582	-
CCR-2	CCR-1	90	582	-
CCR-1	PB-2	124	786	-
PB-2	PB-1	-	1032	79
PB-1	LCC-1	-	528	-
PB-2	BCR-1	34	246	-
BCR-1	BCR-2	34	246	-
BCR-2	BCR-3	34	246	-
BCR-3	BCR-4	86	558	-
BCR-4	BCR-5	100	642	-
BCR-5	BCR-6	78	510	-
BCR-6	BCR-7	84	546	-
BCR-7	BCR-8	84	546	-
BCR-8	BCR-9	89	576	-
BCR-9	BCR-10	109	696	-
BCR-10	BCR-11	87	564	-
BCR-11	BCR-12	94	606	-
BCR-12	BCR-13	88	570	-
BCR-13	BCR-14	84	546	-
TOTALS		2393	17094	79

WIRING AND CONDUIT ASSOCIATED WITH LCC-1				
		CONDUIT RIGID NONMETALLIC SCHEDULE 40 1.5-INCH	ELECTRICAL WIRE LIGHTING 6 AWG	
FROM	TO	LF	LF	REMARKS
PB-3	ACR-1	102	654	
ACR-1	ACR-2	103	660	
ACR-2	ACR-3	128	810	
TOTALS		333	2124	



PANEL (LCC-1)					
LOAD DESCRIPTION		CCT	PHASE	CCT	LOAD DESCRIPTION
EXISTING LIGHTS ACR-1 THROUGH ACR-14		1	A	2	FUTURE B CIRCUIT
		3	B	4	
RECEPTACLES AT EXISTING "A" CIRCUIT POLES (C)		5	A	6	RECEPTACLES AT EXISTING "A" CIRCUIT POLES (D)
PROPOSED B CIRCUIT RECEPTACLES		7	B	8	
PROPOSED C CIRCUIT		9	A	10	FUTURE D CIRCUIT
		11	B	12	
PROPOSED C CIRCUIT RECEPTACLES		13	A	14	PROPOSED C CIRCUIT RECEPTACLES
FUTURE D CIRCUIT RECEPTACLES		15	B	16	
		17	A	18	
		19	B	20	





RD-22-03 2022 Pedestrian Lighting Project
Bid Results
8-Jun-22

Bidder	Bid Bond	Pre- qualification	Base Bid	Rank
Wil-Surge Electric, Inc	X	X	\$ 149,856.04	1
MP Systems, Inc.	X	X	\$ 177,848.11	2
Outdoor Lighting Const. Co., Inc	X	X	\$ 185,906.04	3
Pro Electric, Inc.	X	X	\$ 225,970.56	4
Engineer's Estimate			\$ 142,030.20	

RD-22-03 2022 Pedestrian Lighting Project
CONTRACT RD-22-03
Cells Highlighted in Yellow Denote Errors Found. Total Prices Calculated from Bid Unit Cost Submitted.

Base Bid				Wil-Surge Electric, Inc		MP Systems, Inc.		Outdoor Lighting Const. Co., Inc		Pro Electric, Inc.		Engineer's	
ITEM NO.	ITEM	QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
1	Concrete Bases, Type 2, Special	31	EACH	\$ 938.84	\$ 29,104.04	\$ 1,268.11	\$ 39,311.41	\$ 1,074.20	\$ 33,300.20	\$ 1,077.76	\$ 33,410.56	\$ 1,040.00	\$ 32,240.00
2	Assemble & Install Type I Decorative Pole, Arm, Luminaire	31	EACH	\$ 205.00	\$ 6,355.00	\$ 622.84	\$ 19,308.04	\$ 888.80	\$ 27,552.80	\$ 1,077.19	\$ 33,392.89	\$ 560.00	\$ 17,360.00
3	Furnish and Install Dead-Front GFCI	31	EACH	\$ 194.00	\$ 6,014.00	\$ 157.01	\$ 4,867.31	\$ 334.60	\$ 10,372.60	\$ 356.44	\$ 11,049.64	\$ 220.00	\$ 6,820.00
4	Pull Box, Steel, 24X36 Inch	2	EACH	\$ 992.00	\$ 1,984.00	\$ 1,289.44	\$ 2,578.88	\$ 1,120.60	\$ 2,241.20	\$ 1,113.45	\$ 2,226.90	\$ 890.00	\$ 1,780.00
5	Electrical Wire, Lighting, 12 AWG	2945	LF	\$ 0.98	\$ 2,886.10	\$ 1.14	\$ 3,357.30	\$ 0.94	\$ 2,768.30	\$ 0.92	\$ 2,709.40	\$ 0.95	\$ 2,797.75
6	Electrical Wire, Lighting, 6 AWG	19218	LF	\$ 2.32	\$ 44,585.76	\$ 2.32	\$ 44,585.76	\$ 1.82	\$ 34,976.76	\$ 1.80	\$ 34,592.40	\$ 1.65	\$ 31,709.70
7	Conduit, Rigid, Non-Metallic, Schedule 40, 1.5-Inch	2726	LF	\$ 15.89	\$ 43,316.14	\$ 12.59	\$ 34,320.34	\$ 11.63	\$ 31,703.38	\$ 19.45	\$ 53,020.70	\$ 13.90	\$ 37,891.40
8	Conduit, Rigid, Non-Metallic, Schedule 40, 3-Inch	79	LF	\$ 22.00	\$ 1,738.00	\$ 19.72	\$ 1,557.88	\$ 27.20	\$ 2,148.80	\$ 24.39	\$ 1,926.81	\$ 20.65	\$ 1,631.35
9	Traffic Control	1	LS	\$ 5,422.00	\$ 5,422.00	\$ 7,244.27	\$ 7,244.27	\$ 19,967.00	\$ 19,967.00	\$ 31,401.89	\$ 31,401.89	\$ 4,200.00	\$ 4,200.00
10	Restoration	1	LS	\$ 8,451.00	\$ 8,451.00	\$ 20,716.92	\$ 20,716.92	\$ 20,875.00	\$ 20,875.00	\$ 22,239.37	\$ 22,239.37	\$ 5,600.00	\$ 5,600.00
				Total	\$ 149,856.04	Total	\$ 177,848.11	Total	\$ 185,906.04	Total	\$ 225,970.56	Total	\$ 142,030.20

STAFF REPORT

EXECUTIVE SUMMARY

CUSTOMER/PROJECT:

Milwaukee Metro Sewerage District (MMSD)
Funding Agreement

LOCATION:

Citywide

REQUEST:

To approve the Funding Agreement between
Milwaukee Metro Sewerage District (MMSD) and
the City of New Berlin Utilities Department

UTILITY MANAGER RECOMMENDATION:

Recommend to the Common Council to approve the Milwaukee Metro Sewerage District (MMSD) Funding Agreement for the Private Property Infiltration and Inflow (PPI/I) in an amount not to exceed \$1,586,000.00 for cost incurred throughout the work described in Attachment A in this agreement.

DETAILS IN ATTACHED STAFF REPORT

**CITY OF NEW BERLIN
UTILITIES DEPARTMENT
STAFF REPORT**

NEW BERLIN – MMSD PPII 2022 Funding Agreement

DATE STAFF REPORT CREATED:	June 15, 2022
CUSTOMER/PROJECT NAME:	MMSD Funding Agreement
ISSUE/DESCRIPTION OF PROJECT:	This project consists of PPI/I repairs to laterals from the 2013 Dye Water Testing Project.
DATE OF COMPLETENESS DETERMINATION:	December, 2023
REQUESTED ACTION:	Recommend to the Common Council to approve the Milwaukee Metro Sewerage District (MMSD) Funding Agreement for the Private Property Infiltration and Inflow (PPI/I) in an amount not to exceed \$1,586,000.00 for cost incurred throughout the work described in Attachment A in this agreement.
FISCAL IMPACT:	\$1,586,000.00 (Funds to be reimbursed from MMSD Intergovernmental Agreement)
SOURCE OF FUNDS:	MMSD Grant Fund Account/Utility will be reimbursed for expenses. Account #8100-1131-52050
RATIONAL:	To repair private lateral to reduce infiltration and inflow to prevent basement backups.
UTILITY MANAGER RECOMMENDATION:	See Executive Summary
ATTACHMENTS:	Funding Agreement M10005NB03

Funding Agreement M10005NB03

Private Property Infiltration and Inflow Reduction Agreement

This Agreement is made between the Milwaukee Metropolitan Sewerage District (District) with its principal place of business at 260 West Seeboth Street, Milwaukee, Wisconsin 53204-1446 and the City of New Berlin (Municipality), with its municipal offices at 3805 South Casper Drive, New Berlin, Wisconsin 53151.

WHEREAS, Wisconsin law, through Section 66.0301 Stats., authorizes any municipality to enter into an intergovernmental cooperation agreement with another municipality for the furnishing of services; and

WHEREAS, the District is responsible for collecting and treating wastewater from the Municipality's locally owned collection system; and

WHEREAS, the Municipality's sewers collect wastewater from lateral sewers located on private property and owned by private property owners; and

WHEREAS, during wet weather events stormwater enters lateral sewers through defective pipes and leaky joints and connections ("infiltration") and stormwater also enters lateral sewers from foundation drains, improper connections and other sources ("inflow"); and

WHEREAS, infiltration and inflow increase the amount of wastewater that the District must collect and treat; and

WHEREAS, during wet weather events infiltration and inflow ("I/I") into privately owned sewers contributes to the risk of sewer overflows; and

WHEREAS, the District has established the Private Property Infiltration and Inflow Reduction Program (Program) to provide guidelines, requirements, and a funding structure for municipalities to complete I/I reduction work on private property through the District Private Property Infiltration and Inflow Policy (Policy); and

WHEREAS, the Municipality wishes to participate in the Program;

NOW, THEREFORE, in consideration of the mutual promises made by the parties to this Agreement, the parties agree as follows:

1. Term of Agreement

This Agreement becomes effective immediately upon signature by both parties and shall remain in effect until the earliest of (1) the Municipality receiving final payment from the District, (2) December 31, 2023, or (3) termination of this Agreement as otherwise set forth herein.

2. District Funding

The District shall reimburse the Municipality in an amount not to exceed \$1,586,000 for approved private property I/I costs incurred through the work described in Attachment A ("the Work"). Provided the Municipality is in compliance with the terms of this Agreement, the District funding shall be provided on a reimbursement basis in accordance with Section 8 below. No reimbursement will be made for costs incurred prior to the effective date of this Agreement or for costs that are not supported by documentation as outlined by this Agreement.

3. Program Publicity and Outreach Requirements

- a. The Municipality shall identify the District as a funder in informational literature and signage relating to the Work. Samples of all public involvement/public education documents shall be provided to the District for review prior to being distributed to the public.
- b. A minimum of a one (1) week notice of any public meetings shall be provided to the District. In the event the District is unable to attend and participate, detailed meeting minutes shall be provided within five (5) days of the meeting.

4. Selection of Professional Service Providers by Municipality

The selection of professional service providers to perform Work funded by this Agreement shall be in accordance with the Municipality's ordinances and policies.

5. Selection of Non-Professional Service Providers by Municipality

Pursuant to a public Request for Qualifications process, the District has developed an Approved Contractors List, organized by work type to ensure all Work funded by the District maintains specific quality standards. Those Approved Contractors and their suppliers can submit products they intend to utilize for inclusion in the District's Approved Products List. The appropriate subset of the Approved Contractor List and the Approved Products List shall be utilized as part of Municipality's bidding process for contracts to perform Work funded by this Agreement.

In addition to the above, all non-professional service providers to perform Work funded by this Agreement shall be procured in accordance with both State of Wisconsin statutes and regulations and the Municipality's ordinances and policies. Whenever Work valued over \$25,000 is procured without the use of a public sealed bidding process, the District may request, and the Municipality must provide an opinion from a licensed attorney representing the Municipality stating that the procurement is in compliance with State of Wisconsin law and Municipal ordinances.

In addition:

- a. The Municipality shall provide the District with the opportunity to review and comment on the complete set of bidding documents prior to solicitation of bids, quotes or proposals as set forth in Attachment B;
- b. Municipality shall provide the District with all bids and proposals for review prior to the award of the contract, as set forth in Attachment B. The District reserves the right to revoke funding based on project award to contractors who are not on the District's list of Authorized Contractors.

6. Non-professional Service Contract Terms and Conditions

The Municipality agrees to include Attachment C in all non-professional service contracts relating the Work. Failure to include Attachment C in the non-professional service contracts will constitute a material breach of this Agreement.

7. Contractor Pay Applications

Prior to the Municipality paying contractors for Work funded by this Agreement, the District shall be provided an opportunity to review and endorse the contractor pay applications.

The Municipality shall submit contractor pay applications for review through a Comment Form in the District's online application, eBuilder. All contractor pay applications shall include supporting documentation certifying that the Municipality has received and reviewed a proportionate amount of contract deliverables for which the Contractor is responsible.

The District shall review pay applications within seven (7) calendar days of submission. If the Municipality does not receive a response from the District within seven (7) calendar days, the application shall be considered approved.

8. Procedure for Reimbursement

The Municipality shall submit reimbursement requests to the District a minimum of four (4) times throughout this Agreement.

Each reimbursement request shall include:

An invoice from the Municipality clearly stating the requested reimbursement amount;

All consultant invoices, approved contractor pay applications, and other expense invoices;

All deliverables listed in Attachment B, proportionate and applicable to the Work completed as related to the request.

Invoices from consultants shall provide the hourly billing rates, the hours worked by individuals, and a summary of the tasks completed.

Reimbursement requests should be submitted within a reasonable period of time of the costs being incurred. The initial reimbursement request shall be submitted prior to twenty-five-percent (25%) of Work being completed. The final reimbursement request shall be submitted upon completion of all Work. All reimbursement requests must be received prior to expiration of this Agreement.

Reimbursement requests, the supporting documentation of costs shall be submitted through eBuilder. The corresponding deliverables shall be submitted as set forth in Attachment B. Questions should be directed to the District Senior Project Manager (SPM):

Jerome Flogel, P.E
Senior Project Manager
Milwaukee Metropolitan Sewerage District
260 West Seeboth Street
Milwaukee, WI 53204 – 1446

Final payment will not be provided until the Work is complete and all deliverables set forth in Attachment B have been received.

9. Changes in Work and Modifications to the Agreement

Any proposed changes to the Work must be submitted to the District, in writing, in advance of the Work being completed. The District will not reimburse for Work that is not included in Attachment A (including all professional services and non-professional services contracts procured through the Work outlined in Attachment A) unless prior written approval has been requested from the District and approval has been obtained through the eBuilder change process.

This Agreement may be modified only in writing signed by both parties or through the eBuilder change process.

10. Responsibility for Work

The Municipality is responsible for overseeing construction and shall provide full time construction inspection for all Work. Each inspector shall be experienced, qualified, and certified for the scope of the Work.

11. Post-Construction Verification

The Municipality and its contractor(s), if applicable, shall report to the District any problems that arise with or related to the completed Work, whether discovered through inspection or through complaints from homeowners, for a period of ten (10) years following substantial completion. The Municipality shall also report any actions taken to investigate the complaint, and if within the warranty period, to resolve the issue.

The Municipality shall be responsible for reporting post-work flow monitoring data and or other data related to identified measures of success for at least five (5) years post-work completion or as long as data is available, whichever period is longer.

All warranty inspection costs incurred by the District due to Municipality's failure to enforce the warranty inspection requirement in its construction contract(s) shall either be: (1) deducted from Municipality's Program account; or (2) invoiced to Municipality.

The terms of this Section 11 shall survive termination of this Agreement.

12. Permits, Certificates and Licenses

The Municipality is solely responsible for ensuring compliance with all federal, state and local laws requiring permits, certificates and licenses required to implement the Work.

13. Insurance

The District shall not provide any insurance coverage of any kind for the Work or for the Municipality. Municipality shall ensure that each contractor and subcontractor have adequate insurance to perform the Work and names the Municipality as an additional insured on its Commercial General Liability Insurance policies.

14. Terminating the Agreement

The District may terminate this Agreement at any time prior to commencement of the Work. After the Work has commenced, the District may terminate the Agreement only for good cause, such as, but not limited to, breach of agreement by the Municipality. The Municipality may terminate the Agreement at any time but will not receive any payment from the District if the Work is not completed.

15. Exclusive Agreement

This is the entire Agreement between the Municipality and the District regarding reimbursement for Work.

16. Severability

If any part of this Agreement is held unenforceable, the rest of the Agreement will continue in effect.

17. Applicable Law

This Agreement is governed by the laws of the State of Wisconsin.

18. Resolving Disputes

If a dispute arises under this Agreement, the parties agree to first try to resolve the dispute with the help of a mutually agreed-upon mediator in Milwaukee County. Any costs and fees other than attorney fees associated with the mediation shall be shared equally by the parties. If the dispute is not resolved within thirty (30) days after it is referred to the mediator, either party may take the matter to court.

19. Notices

Unless otherwise set forth herein, all notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

- when delivered personally to the recipient's address as stated on this Agreement; or
- three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated on this Agreement.

20. No Partnership

This Agreement does not create a partnership relationship nor give the Municipality the apparent authority to make promises binding upon the District. The Municipality does not have authority to enter into contracts on the District's behalf.

21. Assignment

The Municipality may not assign any rights or obligations under this Agreement without the District's prior written approval.

22. Public Records

The Municipality agrees to cooperate and assist the District in the production of any records in the possession of the Municipality that are subject to disclosure by the District pursuant to the State of Wisconsin's Open Records Law, §§19.31-19.39, Wis. Stats. The Municipality agrees to indemnify the District against any and all claims, demands, and causes of action resulting from the Municipality's failure to comply with this requirement. Nothing contained within this Agreement is intended to be a waiver or estoppel of the City of New Berlin or its insured or rely upon the limitations, defenses and immunities contained within Wisconsin law, including those set forth in Wisconsin Statute Sec. 893.80, 895.52 and 345.05. To the extent that indemnification is available and enforceable, the City or its insured shall not be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims under Wisconsin law.

**MILWAUKEE METROPOLITAN
SEWERAGE DISTRICT**

CITY OF NEW BERLIN

By: _____
Kevin L. Shafer, P.E, Executive Director

By: _____
Jim Hart, Utility Manager

Date: _____

Date: _____

Approved as to form:

Approved as to form:

Attorney for the District

Attorney for the Municipality

ATTACHMENT A
Municipality Work Plan



2021 PPII Work Plan

This checklist / template serves as the standard form for submitting a Work Plan to MMSD as a request to commit funds from your Municipal Funding Allocation Account to a project proposed for reimbursement through the MMSD PPII Reduction-M Program. If approved, the Work Plan will be the basis for a Funding Agreement between the municipality and MMSD. Please complete all fields comprehensively and submit this electronically-fillable-form and supporting document attachments via email.

I. CONTACT INFORMATION

Municipality	
Applicant Name: Jim Hart	Municipality: City of New Berlin
Mailing Address: 3805 South Casper Drive, New Berlin, WI 53151	
Phone #: 262-786-7211	Email: jhart@newberlin.org
Primary Contact: Jim Hart	Primary Contact email: jhart@newberlin.org
Primary contact phone #: 262-786-7211	
Consultant (if applicable)	
Firm: raSmith	Consultant's PM's Name: Ben High, P.E.
Consultant Email: ben.high@rasmith.com	Consultant Phone number: 262-317-3273

II. PROPOSED SCOPE OF WORK

1. What type of work will be included in this work plan application? Check all applicable.

- ☐ Planning ☐ Investigative ☒ Construction/Rehab ☐ Post Project Evaluation ☐ Training
☐ Other

2. What is the total value of the request by the municipality for funding through the PPII program for work outlined in this work plan? \$ 1,586,000.00

3. Provide the scope of work that will be included in this work plan.

Dye testing and mainline televising that was completed in 2013 identified locations of public and private dye and Clearwater leaks within sewersheds 3001, 3005, 3006, and 2011. At total of 228.0 gpm private leaks were found within the 2011 basin, 184.7 gpm with dye and 43.4 gpm with Clearwater. Locations of public I&I in the neighborhood were addressed in 2013, but steps to address the private I&I within the Regal Manor neighborhood are proposed as part of this workplan.

The City of New Berlin is proposing a lateral rehabilitation work plan to complete the pipe bursting of approximately 70 private sanitary sewer laterals. Each lateral to be pipe burst will have lateral televising occur after rehabilitation to document the lateral post-rehabilitation. To complete the rehabilitation, affected properties will be contacted by the City with an informational letter and a consent form before work occurs. A licensed sub-contractor will perform the rehabilitation with the supervision of an inspector provided by the Consulting Engineer.

4. What entity is responsible for each work scope item e.g. municipality staff, consultant, contractor, District, etc.

All coordination, inspection, and reporting for the project will be performed by the City of New Berlin with the assistance of the Engineering Consultant, raSmith. The rehabilitation work will be completed by a licensed sub-contractor selected by the City through a solicitation process.

5. What is the total number of properties in the project area? 70

6. What is the assumed number of participating properties? 70

7. What is your justification for the assumed participation rate?

- ☐ Prioritization of properties based on investigative work ☐ Assumed percent of total based on previous projects ☐ Existing ROE agreements
☒ Other (Fill in Blank): If an affected property opts out, a different location will substituted in.

III. PROJECT AREA CHARACTERISTICS

1. What is the predominant age of the homes in the project area?			
☐ Pre 1940's ☐ 1940 – 1960 ☒ 1961-1980 ☐ 1981-Present			
2. What is the average lot size within the project area?		0.35	☐ SF ☒ Acres
3. In this area, is it typical that foundation drains are connected?			☐ Yes ☒ No
4. What sewershed(s) or metershed(s) is this project located in? 2011-D, 2011-E			
5. Collection system characteristics in project areas:			
Approximate year sanitary sewer was installed:	Host Pipe Material(s):	Pipe Size(s):	Pipe Shape(s):
1970	☒ VCP ☐ Ductile Iron ☐ Cast-Iron ☒ Concrete ☐ Asbestos ☒ PVC	6", 8" & 12"	☒ Circular ☐ Other
6. Within the project area, is the mainline rehabilitated?			☒ Yes ☐ No
If "Yes," provide details on the year(s) the work was completed, the type and location of rehabilitation used, and if any rehabilitation of the sanitary sewer laterals within the ROW was completed.			
In late 2013, the city addressed the majority of public I&I locations within the mainline and manhole infiltration witnessed during dye flooding with a grouting project.			

7. Will public infrastructure work be contracted or completed with the private property work?

☒ Yes ☐ No

If "Yes", provide details of the public work.

The sanitary mainline at each connection will be repaired with a 5 linear foot segment of pipe. This is to eliminate any defects within the private connection to mainline. An in-line wye will be placed at the lateral reinstating it to the mainline. The 5 foot segment of mainline shall be connected with non-shear couplings and a concrete collar. The public work occurring will be to repair the roadway above the pipe bursting and connection replacement. All trenched areas within the pavement and within three feet of pavements shall be backfilled with slurry. The pavement area will be restored with 10" of 1-1/4" base, 3.25" of 3 LT 58-28 S asphalt binder, and 1.75" of 5 LT 58-28 S.

8. Include with your application, two maps; one of the limits of the sewershed(s) or metershed(s) the project is in, and one of the project limits. The maps shall meet the following requirements.

- Maps shall use a streets or aerial view as base map.
- Major street names shall be labeled and legible.
- Limits of the sewershed(s), metershed(s), and project limits shall be defined by a bold red line.
- Sanitary and storm system line work shall be shown at a scale appropriate to the scale of the drawing
- A north arrow and legend shall be included.
- Maps shall be between 5 and 40 scale and to a standard paper size i.e. 8.5"x11, 11"x17", etc.
- Maps shall be submitted as PDF electronic files.

IV. PROJECT JUSTIFICATION

1. Has any planning and/or investigative work within the project area been completed to date? (i.e. Flow monitoring, interior home inspections, sewer CCTV, analysis of flooding/backup issues in the area, etc.) ☐ Yes ☐ No

If "Yes," was the work completed through a previous PPII funding agreement? ☒ Yes ☐ No

If the answer is "Yes" to both questions, describe the work completed and cite report names and funding agreement reference numbers the work was completed under.

If work was completed independent of the PPII program, included the report(s) with application in electronic format and list the name of the report in this section.

In 2013, the City of New Berlin Private Property Infiltration and Inflow Reduction Program occurred. The City selected four areas to perform the dye water testing and closed circuit television (CCTV) work. The areas are referred to as Sewersheds 3001, 3005, 3006 and 2011. During this project, locations were identified as sources of I&I to be considered for rehabilitation at a later date. The neighborhood of Regal Manor (the project area) is within Sewershed 2011.

Additionally, all locations to be rehabilitated lead into a sewer line in which a raSmith flow meter collects data and has been monitoring the higher amounts of water flow during storm events.

2. Describe how the project area and approach was chosen and prioritized.

The project area was determined by the 2013 dye flooding that took place within the City of New Berlin. The 2013 project area was determined by areas that experience greater flow during rain events as determined by ongoing flow monitoring. Lift station #1, which is downstream of the Sewershed had historically seen high flow before and after rain events. The results of dye flooding presented a total of 228gpm of private I&I with an average leaking rate of 2.5gpm. All properties that presented dye or Clearwater leaks were prioritized for pipe bursting on this project.

3. What is the status of all project area sewershed(s)/metershed(s) as related to the District Chapter 3 rules for wet weather performance?

☐ Non-compliant ☒ Compliant ☐ Inconclusive ☐ Not Analyzed

If "Noncompliant," has PPII work been completed to date within the Project Area metershed(s)? If yes, provide details on the scope of work completed and location.

4. Does the municipality have any permitted (or unpermitted) wet-weather bypass locations in the project area? If “Yes,” provide approximate frequency and average volume per frequency for over the last ten years.	☒ Yes ☐ No
5. Does the project area have a history of CSOs or SSOs? If “Yes,” provide the frequency of occurrences over the last ten years.	☐ Yes ☒ No
6. Does the municipality have recurring basement backup reports in the project area? If “Yes”, please provide the average annual number of reports in the last ten years and the estimated storm recurrence interval that typically causes basement backups.	☐ Yes ☒ No
7. Do you have metering, lift station run time, bypass pumping, basement backup, or any other pre-project baseline data?	☒ Yes – go to item 8 ☐ No – go to item 9
8. Describe and detail information on the pre-project baseline data you have collected including type, location, and date ranges. If a MMSD meter is used as a source for this data, provide meter name and location. The City has a sanitary sewer flow monitoring program to quantify the amount of water within the sewer system before and after rain events. Flow meters for Sewershed 2011-D and 2011-E at manholes 07M224003 (S. Sovereign Drive) and 07N224071 (S. Hearth Ridge Drive) respectively. These locations were monitored March 2020-October 2020 and March 2021-November 2021. Additionally, all locations within the project are located downstream of lift station #1 which has been monitored by raSmith for years. Utilizing the data recorded before the lining occurs will provide baseline flow data that can be used as baseline data.	

9. Do you plan on collecting pre-project baseline data as part of this project?

☐ Yes – go to item 10

☒ No – go to item 11

10. Describe the pre-project data that will be collected to provide a baseline for improvement? If you intend to use the MMSD portable meters, list the quantity, expected time frame installation and monitoring period.

N/A

11. How do you intend to report project performance results? (metrics and target objectives of the project)

N/A

V. PROJECT GOALS

1. What are the municipality's goals and objectives for the completed project? Please provide qualitative and quantitative measurables for success as they relate to the goals and objectives.

The goal of this project is to reduce private property I/I into the sanitary sewer system. The dye flooding study performed in 2013 will serve as a baseline condition of these leaking laterals prior to rehabilitation. Ongoing flow monitoring data will be used to give a "pre" and "post" rehabilitation analysis that will be used to quantify the effectiveness of the rehabilitation work. By performing this work, the sewer system will keep operating at an increased level of service moving forward.

The City will continue their ongoing sanitary sewer flow monitoring program to quantify the effectiveness of the above rehabilitation technique (cost of monitoring is locally funded, and will remain so). The City has been monitoring varying areas of the City for years, but this year has incorporated specific metering that isolates this study area to provide more detailed information on what is occurring in this area. Analysis of the metered data collected thus far has begun to determine what the impact of this rehabilitation will mean to the overall reduction in I/I experienced in this area.

VI. SCHEDULE

Include a schedule of the work with all major tasks and milestone dates for completion including District and municipal administrative approvals, local board/council approvals, work task start and finish, public outreach, deliverables, and reimbursements. The schedule needs to be realistic and achievable based on District approval timelines, local approval timelines, bidding process timelines, work production rates, and weather-related considerations. Identify and highlight any milestone dates by which the municipality is requesting the District to meet to keep your schedule (e.g. local council or board agenda deadlines). Provide the schedule in PDF format.

VII. FINANCIALS

1. Include a comprehensive cost estimate broke down to the task level which includes costs for: all internal municipal staff time which is being requested to be reimbursed, professional services including hours estimates and rates, construction costs by estimated units and estimated unit costs, inspection services, public outreach, and staff training. Attach an Excel version of the estimate to the application when submitting.

2. Are other funding sources, besides MMSD PPII funds, contributing to the total project ☐ Yes ☒ No
cost? i.e. municipal funds, grant funding, property owner cost share, etc.

If "Yes," list all addition funding sources, the specific work which will be covered by an additional funding sources, and the value.

3. Describe your anticipated frequency of reimbursement requests to the District. (The funding agreement terms may dictate this frequency depending on the type of work).

The City will submit reimbursement requests as this project progresses to help control costs at the City level. These reimbursement requests would most likely begin after rehabilitation begins and continue as work progresses on the project. The anticipated reimbursements will more than likely at the end of each working month of the project.

4. What department/individual/entity will be submitting and processing the reimbursement requests?
Please include the name and contact information.

The City of New Berlin will be handling the reimbursement requests with the assistance of raSmith.

Barbara Byczynski, bbyczynski@newberlin.org
Ben High, P.E., ben.high@rasmith.com

5. MMSD requires all invoicing to be submitted via e-Builder. Will e-Builder training be necessary for the department/individual/entity that will be submitting and processing the reimbursement requests? ☐ Yes ☒ No

6. Describe the municipal process(es) for procurement of all professional and non-professional (field work and construction) components of work and the basis for each.

The City will publicly bid the rehabilitation work described above, and will choose the most responsible bidder that meets the City's desired outcome, the schedule for the project, and is an approved contractor by MMSD. Professional and inspection work will be directly solicited to raSmith.

7. Explain the means and methods for segregating the costs (MMSD reimbursable costs and public work costs).

All of the work associated with this project is considered reimbursable to MMSD.

8. Provide the names and position titles of all municipal staff that will be required to sign the funding agreement. (i.e. mayor, city/village administrator, city/village clerk, city attorney, etc.)

Name: Jim Hart

Position Title: Utility Manager

Name:

Position Title:

Name:

Position Title:

Name:

Position Title:

Name:

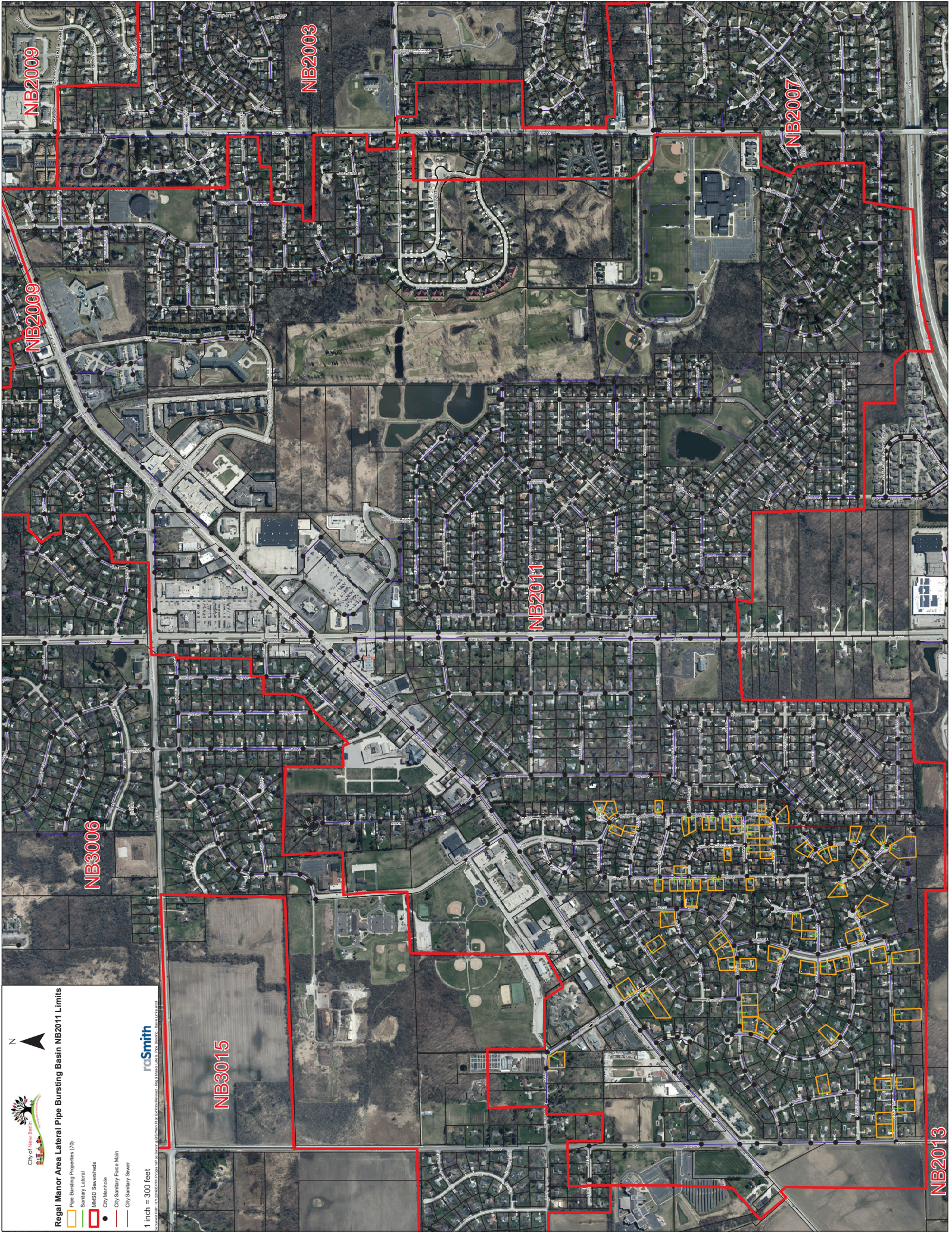
Position Title:

Name:

Position Title:

VIII. PUBLIC OUTREACH

1. Describe in detail your public outreach approach and what entity/individuals/departments will be responsible for the public outreach. Describe the venues and platforms that will be used. Describe the timing and anticipated level of effort that is anticipated to be necessary for the public outreach effort. Describe any public outreach work that has already been completed or is in progress. If a specific person or entity is responsible for public outreach, include the name and contact information. (Examples of public outreach include, but are not limited to; mailings, websites, social media, canvassing, public meetings, etc.)
 - a. The City, with assistance from the Consulting Engineer, will notify affected properties with an informational letter outlining the scope of the project and desired outcome. The first letter will be sent out 7 months prior to the estimated start of work. The second letter will be sent out to non-participating parcels 2 months after the first letter.
 - b. The letters will include a property owner consent form to allow for the rehabilitation work to occur within their laterals (i.e. private property).
 - c. The City potentially plans to host a public information meeting (MMSD staff will be invited to attend) to explain the project details to the affected properties so they understand the purpose and goals of the project. The plan is to conduct this meeting at a facility within or nearby the project area to encourage attendance and involvement in the process. This meeting will be held 4 months prior to the estimated start of work so homeowners can attend the meeting.
 - d. All project related questions will be directed through the Consulting Engineer via email or phone. Contact Information: Ben High, P.E., 262-317-3273, ben.high@rasmith.com





City of New Britain

Regal Manor Area Lateral Pipe Bursting Basin NB2011 Limits

- Pipe Bursting Properties (70)
- Sanitary Lateral
- MMWD Sewerbachs
- City Manhole
- City Sanitary Force Main
- City Sanitary Sewer



N



rsSmith

1 inch = 300 feet

Map prepared by: 10/10/2019 11:57 AM. Project: 10/10/2019 11:57 AM. Drawn by: 10/10/2019 11:57 AM. Checked by: 10/10/2019 11:57 AM. Approved by: 10/10/2019 11:57 AM. Date: 10/10/2019 11:57 AM. Project: 10/10/2019 11:57 AM. Drawn by: 10/10/2019 11:57 AM. Checked by: 10/10/2019 11:57 AM. Approved by: 10/10/2019 11:57 AM.



Probable Project Schedule for New Berlin 2022 Pipe Bursting Project

Task	Probable Start Date	Probable Completion Date	Duration (Days)
Work Plan Submittal		2/25/2022	0
Funding Agreement Process	2/28/2022	7/15/2022	137
Public Outreach	7/18/2022	9/16/2022	60
Plans & Specifications	9/19/2022	10/21/2022	32
Solicitation for Bids	10/24/2022	11/4/2022	11
Bid Opening		11/9/2022	0
Project Award (Utility Committee Approval)		11/22/2022	0
Project Work with Inspection by Consultant	4/3/2023	9/22/2023	141
Submittal for Reimbursement	9/23/2023	9/20/2023	28

Engineer's Opinion of Probable Project Cost

PROJECT: City of New Berlin - Regal Manor Lateral Pipe Bursting Project

DATE: February 9, 2022

BY: BGH

This represents Engineer's judgement based upon information received at date hereof. No representation is made that proposals, bids or costs received from contractors will compare favorably or proximately with this opinion. This is a preliminary opinion without benefit of knowledge usually ascertained during design and construction plan development.

NO.	ITEM	UNIT	UNIT COST	QUANTITY	ITEM COST
1	Traffic Control	LS	\$ 10,000.00	1	\$ 10,000.00
2	Mobilization	LS	\$ 10,000.00	1	\$ 10,000.00
3	Warranty Lateral Televising	EA	\$ 640.00	70	\$ 44,800.00
4	6" Dia Sanitary Lateral - Pipe Bursting	LF	\$ 193.00	5,249	\$ 1,013,057.00
5	6" Dia PVC Sanitary Sewer Lateral (Slurry Backfill)	LF	\$ 195.00	345	\$ 67,275.00
6	6" Dia PVC Sanitary Sewer Lateral (Granular Backfill)	LF	\$ 150.00	5	\$ 750.00
7	6" Dia PVC Sanitary Sewer Riser Lateral (Slurry Backfill)	LF	\$ 245.00	14	\$ 3,430.00
8	8" PVC Sanitary Sewer (Slurry Backfill)	LF	\$ 275.00	275	\$ 75,625.00
9	12" PVC Sanitary Sewer (Slurry Backfill)	LF	\$ 345.00	35	\$ 12,075.00
10	12" PVC Sanitary Sewer (Granular Backfill)	LF	\$ 300.00	5	\$ 1,500.00
11	Connection to Existing Lateral Piping	EA	\$ 610.00	70	\$ 42,700.00
12	Lawn Restoration	SY	\$ 45.00	150	\$ 6,750.00
13	1.75" Asphalt Surface (5 LT 58-28 S)	TON	\$ 65.00	44	\$ 2,860.00
14	3.25" Asphalt Binder (3 LT 58-28 S)	TON	\$ 60.00	83	\$ 4,980.00
15	Dense Graded Base (1-1/4")	TON	\$ 15.00	242	\$ 3,630.00
16	5" Concrete Sidewalk	SF	\$ 10.00	275	\$ 2,750.00
17	7" Concrete Driveway	SY	\$ 100.00	12	\$ 1,200.00
MC1	4"-6" Sanitary Lateral Spot Repair within Pavement	LF	\$ 350.00	10	\$ 3,500.00
MC2	4"-6" Sanitary Lateral Spot Repair within Turf	LF	\$ 250.00	10	\$ 2,500.00
Subtotal					\$1,309,382
10% Construction Contingency					\$130,938
Construction Project Total					\$1,440,320
1	Project Specifications	HOUR	\$ 131.00	90	\$ 11,790.00
2	Engineering Plans & Exhibits	HOUR	\$ 131.00	90	\$ 11,790.00
3	Project Related Questions from Residents	HOUR	\$ 131.00	40	\$ 5,240.00
4	Create Informational Letter for Property Owners	HOUR	\$ 131.00	10	\$ 1,310.00
5	Distribute Informational Letter	HOUR	\$ 131.00	20	\$ 2,620.00
6	Coordinate Participating Properties	HOUR	\$ 131.00	40	\$ 5,240.00
7	Create Public Message via New Berlin Website	HOUR	\$ 131.00	10	\$ 1,310.00
8	Report & Exhibits for Summary Report	HOUR	\$ 105.00	60	\$ 6,300.00
9	Inspection Hours	HOUR	\$ 127.00	785	\$ 99,695.00
Engineering / Inspection Project Total					\$145,295
Project Total					\$1,585,615
Funding Agreement Project Total					\$1,586,000

ATTACHMENT B
Agreement Deliverables

Pre-Construction Deliverables (To be submitted as indicated prior to beginning of construction):

1. A minimum of a one (1) week notice of any project meetings shall be provided to the District SPM via email. In the event the District is unable to attend and participate, detailed meeting minutes shall be provided within five (5) days of the meeting.
2. Draft specifications, plans, and bidding documents shall be submitted to the District SPM via email or other approved digital transfer method a minimum of one (1) week prior to bidding.
3. Final bid documents shall be provided to the District SPM via email or other approved digital transfer method for review and approval prior to advertisement of the contract for bid.
4. Bid results from all procurement processes associated with the project shall be provided to the District SPM via email or other approved digital transfer method upon close of the bid process prior to award of contract.
5. A template Right of Entry Agreement shall be submitted to the District for review prior to distribution to property owners for signatures. Each Right of Entry or Access Agreement shall include a provision allowing the District and Municipality to enter the property for a period of three (3) years following construction to inspect the work and determine the success of repairs.
6. Electronic copies of the executed contract documents shall be provided to the District SPM prior to the Municipality's issuance of the Notice to Proceed.

Construction Deliverables (To be submitted as indicated and will be reviewed with any reimbursement request):

7. All Contractor/consultant submittals to the Municipality shall be reviewed and approved by the municipal engineer or designee and supplied to the District prior to the commencement of the work contained in the submittal.
8. A minimum of a one (1) week notice of any project meetings shall be provided to the District SPM via email. In the event the District is unable to attend and participate, detailed meeting minutes shall be provided within five (5) days of the meeting.
9. An accurate schedule of field activities shall be provided to the District SPM via email or telephone call at least one week in advance of activity commencement.
10. Progress reports on project activities and public involvement activities shall be provided to the District SPM via email on a monthly basis.
11. Quality control and quality assurance (QA/QC) reports and testing results that are documented by the Contractors and Municipality's field engineer/inspector shall be submitted to the District SPM via email or other approved digital transfer method on a monthly basis or with reimbursement request, whichever occurs more frequently. All

QA/QC submittals shall include a summary tabulation by property indexed by tax ID number with review confirmation by the Municipality's engineer.

12. Inspection reports from the field engineer for work completed shall be submitted to the District SPM via email or other approved digital transfer method on a monthly basis or with reimbursement request, whichever occurs more frequently.
13. All construction contract deliverables organized, formatted, and delivered as specified by the contract and approved by the District. Samples of deliverable formats are recommended to be provided to the District prior to construction.

Post-Construction Deliverables (To be submitted prior to final reimbursement being processed):

14. The Final Project Summary Report shall be submitted to the District SPM via email with, or prior to, the final reimbursement request. The template that must be used can be found on the District's website: <https://www.mmsd.com/government-business/rules-regulations/private-property-i-i>
15. Copies of the Right of Entry or Access Agreements for each homeowner, if required by the Work Plan, shall be submitted to the District SPM via email or other approved digital transfer method.
16. Documentation of the limits of the lateral replacement expressed in text and graphics (map overlay) shall be provided to each participating property owner, and copied to the District. The document shall include disclosure of all known deficiencies in the lateral that were not remedied and the responsibilities of the property owner.
17. Municipality will be responsible for providing pre-work flow monitoring data.
18. The Municipality shall provide documentation of the resolution of all punch list items of the Municipality and the District.
19. Through the use of District template spreadsheet (provided by the District), submission of participating parcels information including without limitation: property tax id., address, and column categories of work performed by property following the District template form data fields and format.
20. Following completion of the Work, the Municipality shall complete a survey of all property owner participants, compile the results, and submit the survey forms and results to the District through an approved digital transfer method, format, and file type. The survey deliverable shall include a summary of results in spreadsheet format.

ATTACHMENT C
Requirements of Contractor

Contractor's Work under this Contract is funded in whole or in part by the Milwaukee Metropolitan Sewerage District's Private Property Infiltration and Inflow Program ("Program"). Pursuant to the terms of that Program, the following terms and conditions must be included in all construction contracts. Defined terms shall have the meaning assigned to them in the Funding Agreement between the District and the Municipality, which shall be provided to Contractor upon request. If a term or condition set forth herein conflicts with the terms and conditions set forth in the bid documents, the terms and conditions below take precedence.

1. **Contractor Emergency Response Plan.** Within 14 days of the Notice to Proceed from Municipality, the Contractor shall submit to the Municipality and the District an Emergency Response Plan (ERP). This plan shall include at a minimum the following information: (1) the Contractor's site representative that will be responsible for all emergency calls, 24 hours per day/7 days per week for the duration of the project with all of their contact information; (2) the contact information for the Contractor's foreman; (3) the contact information for each municipal representative that the Contractor will contact, in the event of an emergency; (4) the contact information for the District's Senior Project Manager (5) the contact information for the Clean Up/Dig Up contractor that will be on-call for emergencies throughout the duration of this project; (6) and a detailed narration of the step-by-step sequence of events and communications that the Contractor will take in the event of an emergency throughout the duration of this project.
2. **Warranty:** All Work performed under this Contract shall be warranted by Contractor for a period of no less than three (3) years from substantial completion. The warranty shall be enforceable by each of the Municipality, the District as funder, and the homeowner as it relates to a particular property. At least three (3) months prior to the end of the warranty period, Contractor shall perform a warranty inspection.
3. **Retainage:** Retainage shall be held by Municipality in compliance with Wis. Stat. § 66.0901 (9) (b), and shall not be released until the Work is complete, inclusive of the warranty inspection.
4. **Warranty Inspection:** Contractor shall complete a warranty inspection via third party of the Work, via CCTV or other method approved in advance by the Municipality and the District, at least 90 days prior to the warranty expiration. All inspection results, including video and associated files with Pipeline Assessment Certification Program (PACP) coding shall be provided to the Municipality and the District within fifteen (15) days of inspection. The retainage portion of this Contract shall not be paid until the warranty inspection is complete. Contractor's obligations to perform a warranty inspection shall survive termination of this Contract.
5. **Reporting:** For a period of ten (10) years post substantial completion, if the Contractor becomes aware of any problems arising with the Work, Contractor shall notify the Municipality and the District.
6. **Assignment:** The Municipality's obligations under this Contract are fully assignable to the District. The Contractor's consent is not required prior to the Municipality's assignment and the District's assumptions of Municipality's rights hereunder.

STAFF REPORT

EXECUTIVE SUMMARY

CUSTOMER/PROJECT:	2021 Compliance Maintenance Annual Report (CMAR)
LOCATION:	N/A
REQUEST:	Resolution #22-08
UTILITY MANAGER RECOMMENDATION:	Recommend to the Common Council to approve Resolution #22-08. Compliance Maintenance Annual Report (CMAR) for reporting year 2021.

DETAILS IN ATTACHED STAFF REPORT

**CITY OF NEW BERLIN
UTILITIES DEPARTMENT
STAFF REPORT**

**2021 COMPLIANCE MAINTENANCE ANNUAL REPORT
CMAR**

DATE STAFF REPORT CREATED:	June 22, 2022
CUSTOMER/PROJECT NAME:	Compliance Maintenance Annual Report (CMAR)
ISSUE/DESCRIPTION OF PROJECT:	Approve Resolution #22-08
DATE OF COMPLETENESS DETERMINATION:	Due by June 30, 2022
REQUESTED ACTION:	Recommend to the Common Council to approve Resolution #22-08. Compliance Maintenance Annual Report (CMAR) for reporting year 2021.
FISCAL IMPACT:	N/A
SOURCE OF FUNDS:	N/A

RATIONAL:

The CMAR report needs to have the City of New Berlin Common Council approval annually by June 30th of the following year to be accepted by the Wisconsin Department of Natural Resources (WDNR) for 2021.

UTILITY MANAGER RECOMMENDATION:	See Executive Summary
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ATTACHMENTS:	UT Resolution #22-08 Resolution Accepting the Compliance Maintenance Annual Report for the City of New Berlin Wastewater Utility.
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STATE OF WISCONSIN CITY OF NEW BERLIN WAUKESHA COUNTY

**RESOLUTION NO. 2022-08
A RESOLUTION ACCEPTING THE COMPLIANCE MAINTENANCE ANNUAL REPORT FOR THE
CITY OF NEW BERLIN WASTEWATER UTILITY**

WHEREAS, the City of New Berlin has fully completed and compiled the data for the 2021, Wastewater Utility Compliance Maintenance Annual Report per the State of Wisconsin Department of Natural Resources requirement, and;

WHEREAS, the City of New Berlin Common Council is required to approve this report and all of its contents as related to the City's Wastewater Utility.

NOW THEREFORE BE IT RESOLVED THAT, the City of New Berlin Common Council approves and accepts the Compliance Maintenance Report as related to the City's Wastewater Utility for the 2021 year.

Passed and adopted by the Common Council this 28th day of June, 2022

APPROVED:

David A. Ament, Mayor

Countersigned/Certified:

Rubina Medina, City Clerk

Compliance Maintenance Annual Report

New Berlin Sewage Collection System

Last Updated: Reporting For:
5/20/2022 2021

Financial Management

1. Provider of Financial Information

Name:

John Sughroue

Telephone:

(262) 797-2448

(XXX) XXX-XXXX

E-Mail Address
(optional):

jsughroue@newberlin.org

2. Treatment Works Operating Revenues

2.1 Are User Charges or other revenues sufficient to cover O&M expenses for your wastewater treatment plant AND/OR collection system ?

● Yes (0 points) ☐

○ No (40 points)

If No, please explain:

2.2 When was the User Charge System or other revenue source(s) last reviewed and/or revised?
Year:

2021

● 0-2 years ago (0 points) ☐

○ 3 or more years ago (20 points) ☐

○ N/A (private facility)

2.3 Did you have a special account (e.g., CWP required segregated Replacement Fund, etc.) or financial resources available for repairing or replacing equipment for your wastewater treatment plant and/or collection system?

● Yes (0 points)

○ No (40 points)

0

REPLACEMENT FUNDS [PUBLIC MUNICIPAL FACILITIES SHALL COMPLETE QUESTION 3]

3. Equipment Replacement Funds

3.1 When was the Equipment Replacement Fund last reviewed and/or revised?

Year:

2021

● 1-2 years ago (0 points) ☐

○ 3 or more years ago (20 points) ☐

○ N/A

If N/A, please explain:

3.2 Equipment Replacement Fund Activity

3.2.1 Ending Balance Reported on Last Year's CMAR

\$ 4,099,498.00

3.2.2 Adjustments - if necessary (e.g. earned interest, audit correction, withdrawal of excess funds, increase making up previous shortfall, etc.)

\$ 0.00

3.2.3 Adjusted January 1st Beginning Balance

\$ 4,099,498.00

3.2.4 Additions to Fund (e.g. portion of User Fee, earned interest, etc.)

+

\$ 62,182.00

Compliance Maintenance Annual Report

New Berlin Sewage Collection System

Last Updated: Reporting For:
5/20/2022 2021

3.2.5 Subtractions from Fund (e.g., equipment replacement, major repairs - use description box 3.2.6.1 below*)

- \$ 0.00

3.2.6 Ending Balance as of December 31st for CMAR Reporting Year

\$ 4,161,680.00

All Sources: This ending balance should include all Equipment Replacement Funds whether held in a bank account(s), certificate(s) of deposit, etc.

3.2.6.1 Indicate adjustments, equipment purchases, and/or major repairs from 3.2.5 above.

3.3 What amount should be in your Replacement Fund? \$ 464,942.00

0

Please note: If you had a CWFPP loan, this amount was originally based on the Financial Assistance Agreement (FAA) and should be regularly updated as needed. Further calculation instructions and an example can be found by clicking the SectionInstructions link under Info header in the left-side menu.

3.3.1 Is the December 31 Ending Balance in your Replacement Fund above, (#3.2.6) equal to, or greater than the amount that should be in it (#3.3)?

● Yes

○ No

If No, please explain.

4. Future Planning

4.1 During the next ten years, will you be involved in formal planning for upgrading, rehabilitating, or new construction of your treatment facility or collection system?

● Yes - If Yes, please provide major project information, if not already listed below. ☐ ☐

○ No

Project #	Project Description	Estimated Cost	Approximate Construction Year
1	Liftstation Upgrades	200000	2025
2	PPII Related Projects	2331317	2022
3	Westridge Lift Station	1450000	2022

5. Financial Management General Comments

ENERGY EFFICIENCY AND USE

6. Collection System

6.1 Energy Usage

6.1.1 Enter the monthly energy usage from the different energy sources:

COLLECTION SYSTEM PUMPAGE: Total Power Consumed

Number of Municipally Owned Pump/Lift Stations: 9

Compliance Maintenance Annual Report

New Berlin Sewage Collection System

Last Updated: Reporting For:
5/20/2022 **2021**

	Electricity Consumed (kWh)	Natural Gas Consumed (therms)
January	20,412	
February	21,671	
March	13,471	
April	18,983	
May	12,629	
June	13,069	
July	12,986	
August	12,417	
September	12,737	
October	12,202	
November	15,027	
December	17,762	
Total	183,366	0
Average	15,281	0

6.1.2 Comments:

6.2 Energy Related Processes and Equipment

6.2.1 Indicate equipment and practices utilized at your pump/lift stations (Check all that apply):

- ☐ Comminution or Screening
- ☐ Extended Shaft Pumps
- ☒ Flow Metering and Recording
- ☐ Pneumatic Pumping
- ☒ SCADA System
- ☒ Self-Priming Pumps
- ☒ Submersible Pumps
- ☒ Variable Speed Drives
- ☐ Other:

6.2.2 Comments:

6.3 Has an Energy Study been performed for your pump/lift stations?

● No

○ Yes

Year:

By Whom:

Describe and Comment:

Compliance Maintenance Annual Report

New Berlin Sewage Collection System

Last Updated: Reporting For:
5/20/2022 **2021**

6.4 Future Energy Related Equipment 6.4.1 What energy efficient equipment or practices do you have planned for the future for your pump/lift stations?	
--	--

Total Points Generated	0
Score (100 - Total Points Generated)	100
Section Grade	A

Compliance Maintenance Annual Report

New Berlin Sewage Collection System

Last Updated: Reporting For:
5/20/2022 2021

Sanitary Sewer Collection Systems

1. Capacity, Management, Operation, and Maintenance (CMOM) Program

1.1 Do you have a CMOM program that is being implemented?

- ☒ Yes
- ☐ No

If No, explain:

1.2 Do you have a CMOM program that contains all the applicable components and items according to Wisc. Adm Code NR 210.23 (4)?

- ☒ Yes
- ☐ No (30 points)
- ☐ N/A

If No or N/A, explain:

1.3 Does your CMOM program contain the following components and items? (check the components and items that apply)

- ☒ Goals [NR 210.23 (4)(a)]

Describe the major goals you had for your collection system last year:

1. Comply with the WPDES permit concerning sanitary sewer overflows.
 2. Minimize the occurrence of preventable overflows.
 3. Minimize the life cycle ownership costs of the collection system assets.
 4. Improve or maintain current level of service.
 5. Improve or maintain system reliability.
 6. Reduce the potential threat to human health from sewer overflows.
 7. Provide adequate capacity to convey peak flows.
 8. Manage infiltration and inflow.
 9. Protect collection system worker health and safety.
 10. Operate a continuous CMOM program.

Did you accomplish them?

- ☐ Yes
- ☒ No

If No, explain:

3. Condition assessment program not yet created.
 4. Customer mail survey not completed.
 5. Root cause failure analysis not completed.
 7. Sanitary sewer system modeling not completed.

- ☒ Organization [NR 210.23 (4) (b)] ☐ ☐

Does this chapter of your CMOM include:

- ☒ Organizational structure and positions (eg. organizational chart and position descriptions)
- ☒ Internal and external lines of communication responsibilities
- ☒ Person(s) responsible for reporting overflow events to the department and the public

- ☒ Legal Authority [NR 210.23 (4) (c)]

What is the legally binding document that regulates the use of your sewer system?

City Ordinance

If you have a Sewer Use Ordinance or other similar document, when was it last reviewed and revised? (MM/DD/YYYY) 2009-06-01

Does your sewer use ordinance or other legally binding document address the following:

- ☒ Private property inflow and infiltration
- ☒ New sewer and building sewer design, construction, installation, testing and inspection

Compliance Maintenance Annual Report

New Berlin Sewage Collection System

Last Updated: Reporting For:
5/20/2022 2021

- ☒ Rehabilitated sewer and lift station installation, testing and inspection
- ☒ Sewage flows satellite system and large private users are monitored and controlled, as necessary
- ☒ Fat, oil and grease control
- ☒ Enforcement procedures for sewer use non-compliance

☒ Operation and Maintenance [NR 210.23 (4) (d)]

Does your operation and maintenance program and equipment include the following:

- ☒ Equipment and replacement part inventories
- ☒ Up-to-date sewer system map
- ☐ A management system (computer database and/or file system) for collection system information for O&M activities, investigation and rehabilitation
- ☒ A description of routine operation and maintenance activities (see question 2 below)
- ☒ Capacity assessment program
- ☒ Basement back assessment and correction
- ☒ Regular O&M training

☒ Design and Performance Provisions [NR 210.23 (4) (e)] ☐ ☐

What standards and procedures are established for the design, construction, and inspection of the sewer collection system, including building sewers and interceptor sewers on private property?

- ☒ State Plumbing Code, DNR NR 110 Standards and/or local Municipal Code Requirements
- ☒ Construction, Inspection, and Testing
- ☐ Others:

0

☒ Overflow Emergency Response Plan [NR 210.23 (4) (f)] ☐ ☐

Does your emergency response capability include:

- ☒ Responsible personnel communication procedures
- ☒ Response order, timing and clean-up
- ☒ Public notification protocols
- ☒ Training
- ☒ Emergency operation protocols and implementation procedures

☒ Annual Self-Auditing of your CMOM Program [NR 210.23 (5)] ☐ ☐

☒ Special Studies Last Year (check only those that apply):

- ☐ Infiltration/Inflow (I/I) Analysis
- ☒ Sewer System Evaluation Survey (SSES)
- ☐ Sewer Evaluation and Capacity Management Plan (SECAP)
- ☐ Lift Station Evaluation Report
- ☒ Others:

The City continues to flow monitor the majority of the sanitary sewer system.

2. Operation and Maintenance

2.1 Did your sanitary sewer collection system maintenance program include the following maintenance activities? Complete all that apply and indicate the amount maintained.

Cleaning	14	% of system/year
Root removal	0	% of system/year
Flow monitoring	100	% of system/year
Smoke testing	0	% of system/year
Sewer line televising	16	% of system/year

Manhole inspections

Compliance Maintenance Annual Report

New Berlin Sewage Collection System

Last Updated: Reporting For:
5/20/2022 **2021**

Lift station O&M	34	% of system/year
Manhole rehabilitation	120	# per L.S./year
Mainline rehabilitation	3	% of manholes rehabbed
Private sewer inspections	0	% of system/year
Private sewer I/I removal	0	% of private services
River or water crossings	0	% of pipe crossings evaluated or maintained
Please include additional comments about your sanitary sewer collection system below:		

3. Performance Indicators

3.1 Provide the following collection system and flow information for the past year.

21.46	Total actual amount of precipitation last year in inches
34.50	Annual average precipitation (for your location)
186.9	Miles of sanitary sewer
9	Number of lift stations
1	Number of lift station failures
0	Number of sewer pipe failures
0	Number of basement backup occurrences
12	Number of complaints
	Average daily flow in MGD (if available)
	Peak monthly flow in MGD (if available)
	Peak hourly flow in MGD (if available)

3.2 Performance ratios for the past year:

0.11	Lift station failures (failures/year)
0.00	Sewer pipe failures (pipe failures/sewer mile/yr)
0.00	Sanitary sewer overflows (number/sewer mile/yr)
0.00	Basement backups (number/sewer mile)
0.06	Complaints (number/sewer mile)
	Peaking factor ratio (Peak Monthly:Annual Daily Avg)
	Peaking factor ratio (Peak Hourly:Annual Daily Avg)

4. Overflows

LIST OF SANITARY SEWER (SSO) AND TREATMENT FACILITY (TFO) OVERFLOWS REPORTED **				
Date	Location	Cause	Estimated Volume	
None reported				

** If there were any SSOs or TFOs that are not listed above, please contact the DNR and stop work on this section until corrected.

Compliance Maintenance Annual Report

New Berlin Sewage Collection System

Last Updated: Reporting For:
5/20/2022 **2021**

5. Infiltration / Inflow (I/I)

5.1 Was infiltration/inflow (I/I) significant in your community last year?

☐ Yes

☒ No

If Yes, please describe:

5.2 Has infiltration/inflow and resultant high flows affected performance or created problems in your collection system, lift stations, or treatment plant at any time in the past year?

☐ Yes

☒ No

If Yes, please describe:

5.3 Explain any infiltration/inflow (I/I) changes this year from previous years:

No change.

5.4 What is being done to address infiltration/inflow in your collection system?

The City plans to continue planned inspection and maintenance activities to address I&I in the sanitary sewer system.

Total Points Generated	-
Score (100 - Total Points Generated)	-
Section Grade	-

Compliance Maintenance Annual Report

New Berlin Sewage Collection System

Last Updated: Reporting For:
5/20/2022 2021

Grading Summary

WPDES No: 0047341

SECTIONS	LETTER GRADE	GRADE POINTS	WEIGHTING FACTORS	SECTION POINTS
Financial	A	4	1	4
Collection	-			
TOTALS			1	4
GRADE POINT AVERAGE (GPA) = 4.00				

Notes:

A = Voluntary Range (Response Optional)

B = Voluntary Range (Response Optional)

C = Recommendation Range (Response Required)

D = Action Range (Response Required)

F = Action Range (Response Required)

Compliance Maintenance Annual Report

New Berlin Sewage Collection System

Last Updated: Reporting For:
5/20/2022 2021

Resolution or Owner's Statement

Name of Governing
Body or Owner:

City of New Berlin

Date of Resolution or
Action Taken:

Resolution Number:

Date of Submittal:

ACTIONS SET FORTH BY THE GOVERNING BODY OR OWNER RELATING TO SPECIFIC CMAR SECTIONS (Optional for grade A or B. Required for grade C, D, or F):

Financial Management: Grade = A

Collection Systems: Grade = -

(Regardless of grade, response required for Collection Systems if SSOs were reported)

ACTIONS SET FORTH BY THE GOVERNING BODY OR OWNER RELATING TO THE OVERALL GRADE POINT AVERAGE AND ANY GENERAL COMMENTS

(Optional for G.P.A. greater than or equal to 3.00, required for G.P.A. less than 3.00)

G.P.A. = 4.00



The New Berlin Public Library

Annual Update... in **Five** Pictures

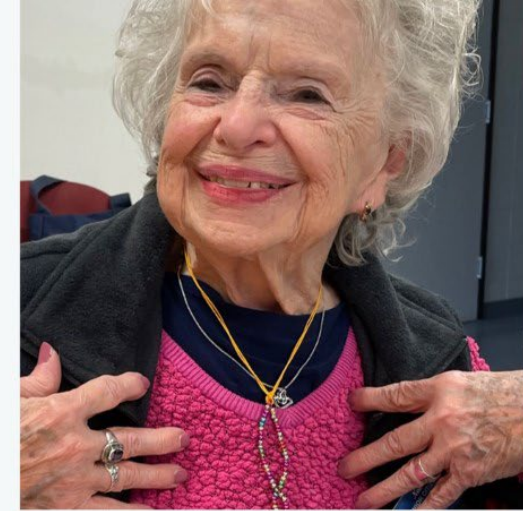
5. COVID-19 Rebound of Library Services



- With in-person story times and programming opportunities limited in 2021, our staff pivoted to STEM and STEAM based kits curated for all ages.
- We virtually engaged with patrons through Take N' Make Kits. In this picture, a little New Berlin scientist, is learning about the cycles of the moon using our Oreo cookie STEM kit and instructions.
- As our gathering space opened back up in 2022 we immediately resumed programming. In our first full month of Youth Services Activity, we saw **350**, Baby-5 year olds for story time with Miss Brenda, Miss Kate and Miss Christine.
- Librarians began planning forward and at this time, all Library audience, Youth (Birth to 7), Tween (8-12), Teen (13-18) and Adult Programs are at a full pre-Pandemic level of offerings.

4. Library Outreach Services

- Relationships with community partners are key to the Library's success. Together in 2021 and 2022, City of New Berlin Departments, civic groups, the School District of New Berlin, corporate and small business have joined us to help us engage community members with Library services.
- The following smiles in this picture are from members of the New Berlin Senior Center. Library staff visit the Center to provide resources and services for book discussion groups and craft club.
- Our popular Home Delivery Program allows us to hand deliver books to New Berlin Senior homes and residences facilities.



SMILES.

New Berlin
Senior Center
Craft Club



PIC•COLLAGE

3. Library Services

- Users have more access to print, media and digital collections than ever.
- The Library's eContent platform offers a variety of formats from streaming services using **Hoopla** and downloadable books, audio and magazines using **Libby**.
- Librarian staff audit the print collection to ensure a balanced variety of contemporary and traditional materials and formats. The New Berlin Library's large print collection is one of the Bridges Library System's largest, and we were the first to have vinyl records in the collection.

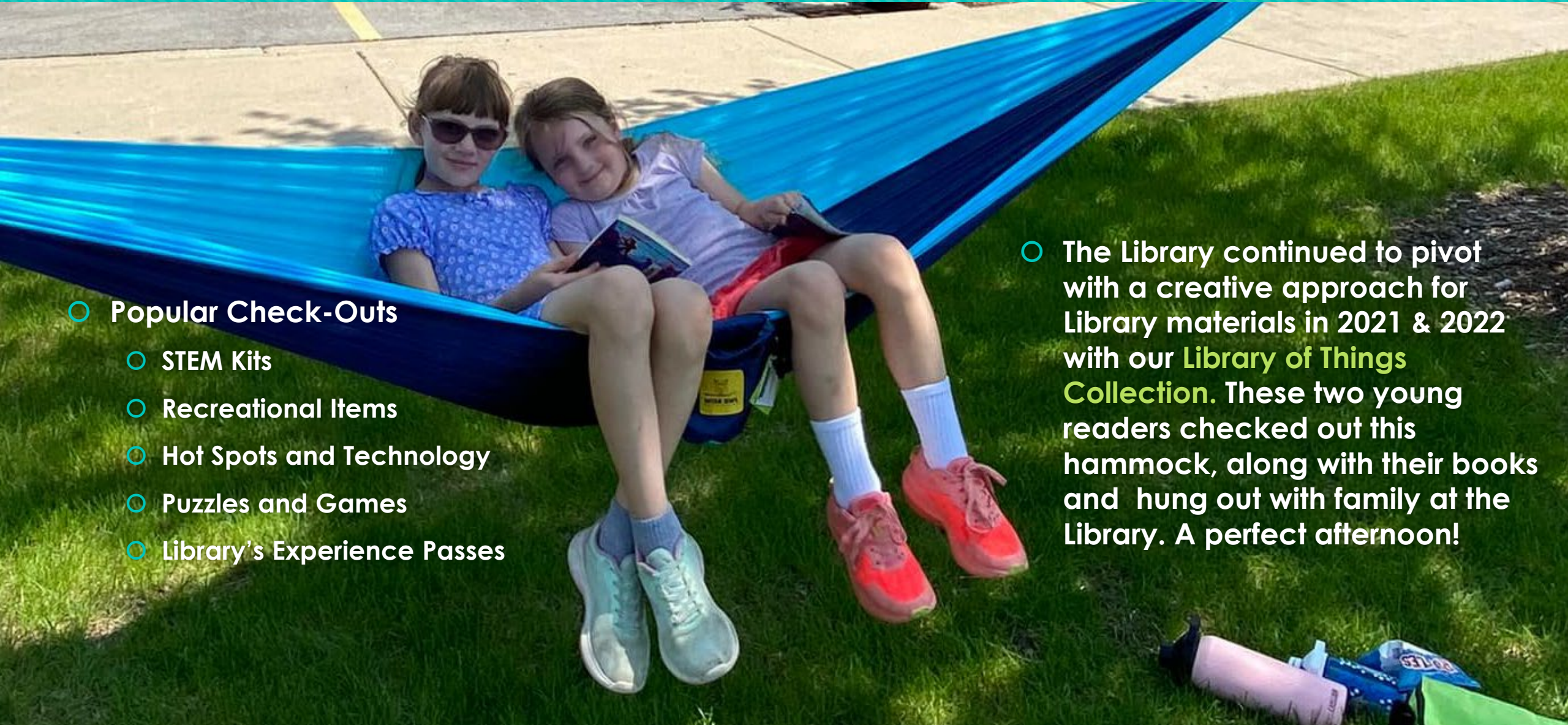


2. Library of Things Collection

- Popular Check-Outs

- STEM Kits
- Recreational Items
- Hot Spots and Technology
- Puzzles and Games
- Library's Experience Passes

- The Library continued to pivot with a creative approach for Library materials in 2021 & 2022 with our **Library of Things Collection**. These two young readers checked out this hammock, along with their books and hung out with family at the Library. A perfect afternoon!



1. Dedicated Library Staff

The Library's extraordinary staff of Circulation Aides, Librarians, Interns, Shelves, Custodians and Volunteers keep the needs of the New Berlin community their top priority.

Below the Library's Youth Services Team help dedicate the Community Storybook Trail at Prohealth Care Park





REQUESTED ACTION STATEMENT

June 23, 2022

TO: Mayor Ament
Common Council

FROM: Chief Jeff Hingiss, Police Department

ISSUE:

Recommend Council approval of contractual documents between the City of New Berlin and Axon Enterprise, Inc. to purchase additional Axon ProLicenses.

REQUESTED:

Recommend Council approval of contractual documents between the City of New Berlin and Axon Enterprise, Inc. to purchase additional Axon ProLicenses.

FISCAL IMPACT:

Although the total cost is \$6,669.00, there is no Fiscal Impact to the approved police department operating budget for the next five years. The police department will utilize funds from the current State of Wisconsin American Rescue Plan Act Funding for LE to cover the costs of these additional licenses. We have confirmed with the Department of Administration that this is an eligible expense for these funds. These costs will cover the additional three licenses through March 2027 (5 years). After the current five year Axon contract expires, we will re-evaluate all the products associated with our body/fleet camera program.

RATIONALE:

This quote/contract requires approval to finalize the purchase of additional ProLicenses. Due to the initial unknowns associated with management and redaction requirements of the camera video, we initially purchased three ProLicenses. The purchase of three additional licenses will increase efficiencies and ensure redundancies within the department. Additional clerks will be able to redact video and additional staff will be able to assist in the management of all our Axon related products. Please see the following attached quote.

- Axon Pro License Quote (#Q-394436-44735.915JS) Sales Terms and Conditions.

Initial Axon contracts have already been reviewed by Attorney Blum and the language has not changed with these additional license.

Respectfully Submitted,

Chief Jeff Hingiss



Axon Enterprise, Inc.
17800 N 85th St.
Scottsdale, Arizona 85255
United States
VAT: 86-0741227
Domestic: (800) 978-2737
International: +1.800.978.2737

Q-394436-44735.915JS

Issued: 06/23/2022

Quote Expiration: 07/31/2022

Estimated Contract Start Date: 07/01/2022

Account Number: 112386

Payment Terms: N30

Delivery Method: Fedex - Ground

SHIP TO	BILL TO
16300 W National Ave 16300 W National Ave New Berlin, WI 53151-5510 USA	New Berlin Police Department - WI 16300 W National Ave New Berlin, WI 53151-5510 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
Robbie Taylor Phone: (480) 502-6274 Email: rtaylor@axon.com Fax:	Steve Thompson Phone: 2627808116 Email: thompson@nbpolice.org Fax: (262) 782-9033

Quote Summary

Program Length	57 Months
TOTAL COST	\$6,669.00
ESTIMATED TOTAL W/ TAX	\$6,669.00

Discount Summary

Average Savings Per Year	\$0.00
TOTAL SAVINGS	\$0.00

Payment Summary

Date	Subtotal	Tax	Total
Jul 2022	\$1,333.80	\$0.00	\$1,333.80
Mar 2023	\$1,333.80	\$0.00	\$1,333.80
Mar 2024	\$1,333.80	\$0.00	\$1,333.80
Mar 2025	\$1,333.80	\$0.00	\$1,333.80
Mar 2026	\$1,333.80	\$0.00	\$1,333.80
Total	\$6,669.00	\$0.00	\$6,669.00

Quote Unbundled Price:	\$6,669.00
Quote List Price:	\$6,669.00
Quote Subtotal:	\$6,669.00

Pricing

All deliverables are detailed in Delivery Schedules section lower in proposal

Item	Description	Qty	Term	Unbundled	List Price	Net Price	Subtotal	Tax	Total
A la Carte Software									
ProLicense	Pro License Bundle	3	57		\$39.00	\$39.00	\$6,669.00	\$0.00	\$6,669.00
Total							\$6,669.00	\$0.00	\$6,669.00

Delivery Schedule

Software

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
Pro License Bundle	73683	10 GB EVIDENCE.COM A-LA-CART STORAGE-	9	07/01/2022	03/31/2027
Pro License Bundle	73746	PROFESSIONAL EVIDENCE.COM LICENSE	3	07/01/2022	03/31/2027

Payment Details

Jul 2022

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 1	ProLicense	Pro License Bundle	3	\$1,333.80	\$0.00	\$1,333.80
Total				\$1,333.80	\$0.00	\$1,333.80

Mar 2023

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 2	ProLicense	Pro License Bundle	3	\$1,333.80	\$0.00	\$1,333.80
Total				\$1,333.80	\$0.00	\$1,333.80

Mar 2024

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 3	ProLicense	Pro License Bundle	3	\$1,333.80	\$0.00	\$1,333.80
Total				\$1,333.80	\$0.00	\$1,333.80

Mar 2025

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 4	ProLicense	Pro License Bundle	3	\$1,333.80	\$0.00	\$1,333.80
Total				\$1,333.80	\$0.00	\$1,333.80

Mar 2026

Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 5	ProLicense	Pro License Bundle	3	\$1,333.80	\$0.00	\$1,333.80
Total				\$1,333.80	\$0.00	\$1,333.80

Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.

Standard Terms and Conditions

Axon Enterprise Inc. Sales Terms and Conditions

Axon Master Services and Purchasing Agreement:

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at www.axon.com/legal/sales-terms-and-conditions), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. In the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern to the extent it includes the products and services being purchased and does not conflict with the Axon Customer Experience Improvement Program Appendix as described below.

ACEIP:

The Axon Customer Experience Improvement Program Appendix, which includes the sharing of de-identified segments of Agency Content with Axon to develop new products and improve your product experience (posted at www.axon.com/legal/sales-terms-and-conditions), is incorporated herein by reference. By signing below, you agree to the terms of the Axon Customer Experience Improvement Program.

Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

Signature

Date Signed

6/23/2022

