

Common Council MEETING AGENDA



April 23, 2024 - 6:05 PM
(Following the Committee of the Whole Meeting)
City Hall
Council Chambers

Published: 4/19/2024

AGENDA

1. **PRIVILEGE OF THE FLOOR**
2. **CALL TO ORDER, PLEDGE OF ALLEGIANCE**
3. **ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE**
4. **APPROVAL OF MINUTES**
 - A. April 9th, 2024 Common Council Meeting Minutes
5. **REPORTS**
 - A. City Clerk
 - B. Council President
 - C. Mayor
6. **COMMUNICATIONS**
 - A. Eric Kulas Claim
7. **BOARD OF PUBLIC WORKS**
 - A. ITEM 06-24 Discussion and possible action to recommend to Common Council approval of the 2024 Pedestrian Lighting Project contract.
 - B. ITEM 07-24 Discussion and possible action to recommend to Common Council approval of the 2024 Pedestrian Lighting Purchase contract.
 - C. ITEM 08-24 Discussion and possible action to recommend to Common Council approval of Resolution 2024-08 to reallocate funds from the Sidewalk Improvements account to the Lighting-National Avenue account.
8. **FOURTH OF JULY COMMISSION**
 - A. Discussion and possible action to Common Council approval of the RAS to enter into a contract with Chrome Fireworks in the amount of \$40,000 for 4th of July Fireworks
 - B. Discussion and possible action to Common Council approval of the RAS to enter into a contract with Area Tent in the amount of \$19,763.66 for rentals and service from July 3, 2024-July 5, 2024
9. **UTILITY COMMITTEE**
 - A. UT 05-24 Recommend to the Common Council to reject the bid from C&K Services, Inc. of Newburg, as the bid did not meet the requirements listed in the bid forms.
 - B. UT 06-24 Recommend to the Common Council to amend the 2024 Water CIP Budget in the amount of \$28,715.00 to complete the Pump House Roof Replacement Project.
10. **MAYORAL APPOINTMENTS**
 - A. Discussion and Possible Action to approve the Mayoral Appointments per the list as presented
11. **DEFERRED, REFERRED & TABLED ITEMS**
12. **ITEMS REMOVED FROM CONSENT AGENDA, if any**

13. CONSENT AGENDA-----

- A.** *Items under the Consent Agenda have passed unanimously by the Committee of the Whole. Items not passed by a unanimous vote will be removed from consent agenda and will be considered separately.*

14. MINUTES

- A.** April 9, 2024, Committee of the Whole Minutes

15. UTILITY & FINANCE

- A.** Discussion and possible action to approve the April 24th Water Utility claims for \$319,577.80, Sewer Utility claims in the amount of \$15,714.81 and General City claims for \$595,023.08. US Bank Visa EFT of \$32,008.81.

16. MISCELLANEOUS

- A.** Fire Department Update by Fire Chief Polzin
- B.** Election of Alderperson to serve on the Plan Commission - Per Section 275.15(B)(1) - One alderperson shall be elected by 2/3 vote of the Common Council
- C.** Discussion and possible action on whether to allow Class B and Class C establishments in the City of New Berlin to remain open until 4 am during the Republican National Convention (RNC) from July 15th-18th, 2024 established by the 2023 Wisconsin Act 73. Alternatively, the City Council may choose to "opt-out" of the extended hours and maintain existing closing hours by adopting Ordinance No. 2691, as required in Act 73, Part 64 (c)(3)
- D.** Discussion and possible action to approve a contract for \$87,151.16 with Trees On The Move for landscape materials and installation at the New Berlin Activity and Recreation Center.

17. END CONSENT AGENDA-----

18. ADJOURN

Supplemental Information:

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



Common Council MEETING MINUTES

April 9, 2024 - 6:05 PM
City Hall
Council Chambers

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

MINUTES

1. PRIVILEGE OF THE FLOOR

No constituents participated in Privilege of the Floor

2. CALL TO ORDER, PLEDGE OF ALLEGIANCE

Mayor Ament called the meeting to order at 6:09 PM and led the Pledge of Allegiance.

3. ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE

City Clerk Rubina R. Medina took the roll call as follows:

Present: Alderperson Hopkins, Alderperson Maxey, Alderperson Harenda, Alderperson Stribl, Alderperson Kroupa, Alderperson La Fever, Alderperson Horbinski

Staff Present: City Attorney Mark Blum, City Clerk Rubina R. Medina

The City Clerk stated that a quorum had been established, and the meeting was properly noticed.

4. APPROVAL OF MINUTES

A. March 26, 2024, Common Council Meeting Minutes

MOTION: Motion to approve

VOTE: Motion by: Kroupa
Second by: Harenda
Motion 7-0

5. REPORTS

A. City Clerk

City Clerk Rubina R. Medina stated that the Spring Election was held on April 2nd and the overall voter participation for the City of New Berlin was 34%. Waukesha County has completed canvassing the City of New Berlin election results today, and no inconsistencies were found. Rubina thanked the poll workers and voters for participating in this election. The next regular election is the Partisan Primary on August 13th.

B. Council President

No Report.

C. Mayor

- Congratulations to **Roadrunner Express Car Wash** located at 5275 S. Mooreland Road, on being named our **April Business of the Month**. Roadrunner Express is committed to providing fast car washes, oil changes, and automotive maintenance by qualified service technicians. For more information, please contact them at (262) 505-6575.

- The **New Berlin Police & Fire** will be playing the Waukesha Police & Fire Departments on Friday **April 12th** at Waukesha South High School located at 401 E Roberta Avenue. Admission is \$5, kids 12 and under are free! Doors open at 6 pm, game time is 7:00 pm. Join us for some friendly competition at this “Boots & Badges” basketball game. All proceeds go towards the Waukesha Food Pantry. Special halftime show by Dancing Grannies & Waukesha South Dance Team.
- Just a reminder that April 30th is the deadline for nominations for the **John Bauer Employee Excellence Award**. The Mayor’s Office is seeking nominations of City employees for this award. Nominations should be a written description of no more than 500 words explaining how this employee has had a positive impact on colleagues and/or the residents of the City of New Berlin. Nominations should be submitted to Maya Schneider in the Mayor’s Office.
- The **Spring National Drug Take Back Day** has been scheduled for Saturday **April 27th**. The **New Berlin Police Department** will once again be partnering with Froedert & The Medical College of Wisconsin to host a local drive-through event at Moorland Reserve (4805 S. Mooreland Road) from **10:00 a.m. until 2:00 p.m.** For more information, please contact the New Berlin Police Department.
- **Discover New Berlin** will be held this Saturday, **April 27th** at the New Berlin Eisenhower Middle/High School Gym located at 4333 S. Sunny Slope Road. The event runs from **9 a.m. to 1 p.m.** and is a free community-wide event open to the public. Discover New Berlin is a showcase of things that make our city a great place to live, work, and play. It is produced in conjunction with the School District of New Berlin, the New Berlin Chamber of Commerce & Visitors Bureau and the City of New Berlin. It features local businesses, schools, governmental agencies, civic groups, faith-based organizations, and a job fair
- The **New Berlin Veteran Memorial Society** is having their **Annual Fundraiser on April 20 from 3:00 p.m. – 10:00 p.m.** at the New Berlin VFW located at 17980 Beloit Road. This event will have live music by country legends Tim Sellers Country Legends, as well as fun raffle giveaways. All are encouraged to join the fun and support our New Berlin Veterans Memorial Society. For more information, please call (262) 363-2097.
- Lastly, The **New Berlin Recreation Department’s Summer Activity Guide** is available. **Summer Registration begins April 16th at 9:00 a.m.** For more information or registration questions, please contact the New Berlin Recreation Department.

6. COMMUNICATIONS

No Communications

7. DEFERRED, REFERRED & TABLED ITEMS

No items

8. ITEMS REMOVED FROM CONSENT AGENDA, if any

No items

9. **CONSENT AGENDA**-----

A. *Items under the Consent Agenda have passed unanimously by the Committee of the Whole. Items not passed by a unanimous vote will be removed from consent agenda and will be considered separately.*

MOTION: Motion to approve the consent agenda

VOTE: Motion by: Kroupa
Second by: Horbinski
Motion 7-0

10. MINUTES

- A. March 26, 2024, Committee of the Whole Meeting Minutes

11. UTILITY & FINANCE

- A. Discussion and possible recommendation to Common Council approval of April 10, 2024, Water Utility Claims in the amount of \$614,918.49, Sewer Utility Claims in the amount of \$41,019.03, and General City Claims in the amount of \$986,741.04. We Energies EFT of \$84,735.94

12. MISCELLANEOUS

- A. New Berlin Food Pantry Presentation
- B. Discussion and possible recommendation to the Common Council approval of Resolution No. 2024-05, a Resolution to approve the Suburban Critical Incident Team Agreement
- C. Discussion and possible recommendation to the Common Council approval of Resolution No. 2024-06, a Resolution to approve the Suburban Critical Incident Team Mutual Aid Agreement with Brookfield Fire Department
- D. Discussion and possible recommendation to the Common Council approval of Resolution No. 2024-07, a Resolution to approve the Suburban Critical Incident Mutual Aid Agreement with Lake Country Fire and Rescue

13. END CONSENT AGENDA-----

14. ADJOURN

MOTION: Motion to adjourn at 6:16 PM

VOTE: Motion by: Kroupa
Second by: Stribl
Motion 7-0

*Respectfully Submitted,
Rubina R. Medina, New Berlin City Clerk*

On the morning of March 24th, 2024 at approximately 2:30 am, I was driving North on Mooreland Road. When approaching the intersection of Mooreland and Greenfield, I noticed police presence and it appeared they had just pulled over and possibly pulled over a vehicle. I proceeded to drive on Mooreland due to this. No roads were blocked off and nothing gave appearance that I was not able to drive on this route. I looked in my rearview, and saw about 5 cop cars appear on the hill in back of me traveling at high speeds. I then started to pull over to get out of the way, and as I was pulling over, I glanced to my left and saw a police officer behind a light post. He then proceeded to scream for me to stop as unknown to me, they were in an active police chase and had laid down spike strips/stop sticks. I was already in the process of stopping when I hit the strips/sticks that were laid out. Due to this my tires were flattened and I came to a halt. The road was not blocked off nor was any signage, cones, etc. out to warn drivers of the ongoing chase and strips being laid out.

I got out of the vehicle, and at this time no one came over to me to assist or speak to me. I had to limp the vehicle over to the Walmart parking lot that was nearby. I then called the police to make them aware of the situation. I was told an officer would get back to me as soon as possible. Officer Leskinen, with the New Berlin Police Department, called and inquired if I was still in the area and I confirmed I was. I met Officer Leskinen at Kwik Trip on Mooreland after my father, Matt Kulas, arrived to pick me up. Officer Leskinen had me fill out a statement and told me to get a receipt for the tow and tires and that the city would reimburse me as this was not my fault. He was concerned that no one at the time came to help me and apologized multiple times. He stated that in other words a lot happened in a short amount of time and this was why the roads were not blocked off more or less.

Later that day, I had the vehicle towed to Tires Plus in Franklin as this was the only place that could get me in same day as I am a LYFT driver and need my car to work for income. I did obtain receipts for the tow and tire replacement. I then proceeded to go to the police station to bring in my receipts. When I got to the station the officer that took the receipts said Officer Leskinen would get back to me in a few days.

When Officer Leskinen called me, he had stated at that time I had needed to go thru my insurance to be reimbursed for the tires and tow. This was not disclosed to me in our original conversation. I had expressed to him that I had already paid out of pocket for the tires and tow. He then stated that he would talk to his supervisor and call me back. He called me back and his supervisor advised him to let me know to file a claim with city hall as I should not be paying anything out of pocket for this incident as this was not my fault. I did go to city hall and was asked to write out this statement report in order to obtain reimbursement. The total I am requesting for reimbursement is as follows:

Tow: \$160

Tires: \$940.76

Total Reimbursement: \$1100.76

Additional Info: Report Number-E24006063



Eric Kulas

Phone: 262-895-9457 Address: 5637 Root River Dr. Greendale, WI 53129

RECEIVED

APR 10 2024

**CITY OF NEW BERLIN
OFFICE OF THE CITY CLERK
RUBINA R. MEDINA**



www.TiresPlus.com

Cust Status: Drop Off

Appt: No

FINAL INVOICE

FRANKLIN - 10800 W SPEEDWAY DRIVE, FRANKLIN, WI. 53132 - 262.465.2932

Service Advisor: 2 MICHELLE
Customer Details:
KULAS, ERIC
6199 HIGHLAND LN
APT 1
GREENDALE, WI 53129-1918
262.895.9457

Wheel Lock:
Alt. Auth. Name & Phone:
N/A

Technician: 55 KEVIN
Vehicle Details:
2012 ACURA MDX BASE
3.7L V6 FI GAS
VIN #: 2HNYD2H3XCH510836
LIC #: ATL-2067 WI
MILEAGE: 133,401

Ex 4006089

Description	Rev Hist /Article # ID	Qty	Unit Price	Extended Price	Job Total
FIRESTONE TIRE PACKAGE	1 02				883.16
IT IS RECOMMENDED TO REPLACE ALL FOUR DO TO TH AWD SYSTEM					
005387 DESTINATION LE3 BL 255/55R18 XL109H 70,000 Mile Limited Warranty	005387 55TN	4	208.99	835.96	
DOT# 1RB2TLE312823					
DOT# 1RB2TLE312823					
DOT# 1RB2TLE312823					
DOT# 1RB2TLE313123					
TIRE-DISC \$40 INSTANT Savings off 4 FS/FSAS Tires	7078444 55TN	-4	10.00	-40.00	
NEW TIRE WHEEL BALANCE LABOR	7013632 55TS	4	12.99	51.96	
SCRAP TIRE RECYCLING FEE	7075078 55TN	4	5.58	22.32	
TPMS VALVE SERVICE KIT LABOR	7008190 55TS	4	3.23	12.92	
TIRE INSTALLATION	7015016 02TS	4	N/C	N/C	
COURTESY CHECK	02				
Battery Test Results: Your battery is measuring within the manufacturer's specification for required CCA. Your battery has sufficient power and should reliably start the vehicle. You're recommended to have your battery tested after 90 days.					
COURTESY CHECK	7046930 55TS	1	N/C	N/C	
TPMS RESET SYSTEM	1 02				
TPMS-RESET W/O TIRE REPLACE/REPAIR/ROTAT	7007250 55TS	1	N/C	N/C	

ORDER NOTES

No manufacturer's recommended services were found.

All parts are new unless otherwise specified.

Payment History:
Cash Tendered 1,000.00

Total Tendered 1,000.00
Change Due 59.24

Summary:

Parts	795.96
Labor	87.20
Shop Supplies	5.19
Sub-Total	888.35
Tax (5.90%)	52.41
Total	\$940.76



www.TiresPlus.com
FINAL INVOICE

Cust Status: Drop Off Appt: No

FRANKLIN - 10800 W SPEEDWAY DRIVE, FRANKLIN, WI. 53132 - 262.465.2932

I acknowledge notice and oral approval of
a change in the original estimated price.

Signature or Initials

Revision History:	Rev Amt
1) 03/24/2024 03:25PM	-29.66 KULAS, ERIC IN PERSON

Declined Work:
FRONT BRAKE JOB (DISC)
REAR BRAKE JOB (DISC)

Information on tire warranty, maintenance, and safety can be located at
<https://www.tiresplus.com/tires/warranty-options/>
or by calling toll free 800-847-3272 to obtain a free printed copy



I have received the above goods and/or services. If this is a
credit card purchase, I agree to pay and comply with my
cardholder agreement with the issuer.

Customer Signature



Motor vehicle repair practices are regulated by chapter ATCP132, Wis. Adm. Code, administered by the Bureau of Consumer
Protection, Wisconsin Dept. Agriculture, Trade and Consumer Protection, PO Box 8911, Madison, Wisconsin 53708-8911

HOW ARE WE DOING?

Tell us about your experience today!

Complete a 4-minute survey for a chance to win one of ten \$50 gift cards each month!
Visit www.TiresPlusSurvey.com within 4 days and enter Code 906089-104973



Speedy Peedy Towing And Recovery LLC

10921 W Mitchell Street, Milwaukee WI 53214
Phone: (414) 399-3849

Receipt
Invoice #24-13079

Printed 3/25/2024

Call # 13079
Date/Time Requested 3/24/2024 @ 10:08 AM
Contact Eric, (262) 895-9457

Authorized by Cash/Private Retail Customer
Tow From 15205 W Greenfield Ave, New Berlin, WI 53151
Tow To 10800 W Speedway Dr, Franklin, WI 53132

Year	Make	Model	Color	VIN	Plate	Odometer
2012	Acura	MDX	Silver	2HNYD2H3XCH510836	ATL2067 WI	-

Charge Description	Quantity	Price	Line Total
Unloaded/Enroute Mileage	3.4	\$1.00	\$3.40
Loaded/Hooked Mileage	12.1	\$5.00	\$60.50
Fuel Surcharge	1	\$4.67	\$4.67
Tow/Hook Fee	1	\$90.00	\$90.00

Subtotal \$158.57

Taxes \$9.36

Grand Total \$167.93

Amount Due: \$0.00

Cash payment of \$167.93 applied on 3/25/2024

Speedy Peedy Towing And Recovery LLC appreciates your business; If you have any questions regarding this invoice, please contact us at (414) 399-3849

Signature: _____

View photos for this tow online at <https://app.towbook.com/PublicAccess/Invoice2.aspx?id=186804572&sc=f4e383b13f>



MOTION SHEET

TO: Common Council
Mayor Ament
Ald. Horbinski

FROM: Board of Public Works

DATE: April 23, 2024

RE: April 15, 2024 BPW items requiring Common Council action

A.	ITEM 06-24 Discussion and possible action to recommend to Common Council approval of the 2024 Pedestrian Lighting Project contract.
<u>Council Motion:</u>	
	This item was considered at the BPW meeting on April 15, 2024. It was recommended to the Common Council by a unanimous vote. I do hereby make a motion to recommend to the Common Council the approval of the awarding of a Construction Contract to the lowest responsive, responsible bidder, WIL-Surge Electric, Inc., for the 2024 Pedestrian Lighting Project Contract in an amount of \$66,079.73 with inspection and contingencies, the not to exceed Total Project Costs are \$70,000.00 from account 04251100 63600 C2024.
B.	ITEM 07-24 Discussion and possible action to recommend to Common Council approval of the 2024 Pedestrian Lighting Purchase contract.
<u>Council Motion:</u>	
	This item was considered at the BPW meeting on April 15, 2024. It was recommended to the Common Council by a unanimous vote. I do hereby make a motion to recommend to the awarding of a Construction Contract to the lowest responsive, responsible bidder, Rexel, USA, Inc., for the 2024 Pedestrian Lighting Purchase Contract in an amount of \$179,961.68 from accounts 04251100 63600 C2024, 04251100 63600 C2023, 04252900 61130 C2022 and 04251100 63600 C2021



C.	ITEM 08-24 Discussion and possible action to recommend to Common Council approval of Resolution 2024-08 to reallocate funds from the Sidewalk Improvements account to the Lighting-National Avenue account.
Council Motion:	
	This item was considered at the BPW meeting on April 15, 2024. It was recommended to the Common Council by a unanimous vote. I do hereby make a motion to recommend to the Common Council approval of a Resolution to Reallocate Funds from the Sidewalk Improvements CIP Account 04251100 63601 C2021 to the Lighting & Improvements – National Avenue CIP Account 04251100 63600 C2021.

STAFF REPORT EXECUTIVE SUMMARY

APPLICANT: City of New Berlin

PROJECT: 2024 Pedestrian Lighting Project

LOCATION: South side of National Avenue from 147th Street 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 2024 Pedestrian Lighting Project Contract in an amount of \$66,079.73 with inspection and contingencies, the not to exceed Total Project Costs are \$70,000.00 from account 04251100 63600 C2024.

1. Funding Sources:
Lighting and Pedestrian Improvements: 04251100 63600 C2024 Amount: \$ 70,000.00
2. The 2024 Pedestrian Lighting contract will include installation of fifteen (15) decorative pedestrian lights and poles along National Ave. and all necessary conduit and wiring for the system.
3. On April 10, 2024, the City of New Berlin received two (2) bids from contractors for the 2024 Pedestrian Lighting Contract. The apparent low bidder is WIL-Surge Electric, Inc., of Butler, Wisconsin.
 - a. Summary of Contracted Amounts:

Base Bid:	\$ 66,079.73
<u>Contingencies (~6%):</u>	<u>\$ 3,920.27</u>
Total Project Costs:	\$70,000.00
 - 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 April 15, 2024

2024 Pedestrian Lighting Project

DATE STAFF REPORT CREATED: April 11, 2024

APPLICANT: City of New Berlin

REQUEST / DESCRIPTION OF PROJECT: The 2024 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 south side of National Avenue from 147th Street 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: Two (2) Bids - A summary of the bids received is attached.

SELECTED CONTRACTOR: WIL-Surge Electric, Inc.

FISCAL IMPACT:

Base Bid:	\$ 66,079.73
<u>Contingencies (~6%):</u>	<u>\$ 3,920.27</u>
Total Project Costs:	\$70,000.00

SOURCE OF FUNDS

Lighting and Pedestrian Improvements: 04251100 63600 C2024

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.

P:\DCD\Admin\Engineering\BPW\Staff Reports\2024\ITEM 06-24 Approval of 2024 Pedestrian Lighting Contract.doc

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. In 2022, 31 lights were installed from Coffee Road to Glen Park Road on the north side of National Ave.
10. In 2023, the City partnered with Waukesha County during their Moorland Road reconstruction project to connect the public lights from the Qdoba plaza to the City circuits, add lights along the east side of Moorland from National Ave. to Howard Ave. and relocate a few poles due to the intersection expansion.
11. Construction work is planned to be completed by the end of October, 2024.
12. In 2024, the City plans to again purchase the light poles as part of a separate contract 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 2024 Pedestrian Lighting Project Contract in an amount of \$66,079.73 with inspection and contingencies, the not to exceed Total Project Costs are \$70,000.00 from account 04251100 63600 C2024.

Attachments:

Contract for Project No. RD-24-05A
Project Drawings
Summary of Bids Received

2024 PEDESTRIAN LIGHTING PROJECT

CONTRACT RD-24-05A

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-24-05A

2024 PEDESTRIAN LIGHTING PROJECT
CITY OF NEW BERLIN, WISCONSIN

TABLE OF CONTENTS FOR
2024 PEDESTRIAN LIGHTING PROJECT
CONTRACT RD-24-05A
CITY OF NEW BERLIN, WISCONSIN

ADVERTISEMENT FOR BIDS	AD-1 → AD-2
SUBCONTRACTOR LIST	SL-1
BIDDER'S QUALIFICATION STATEMENT	QS-1 → QS-11
SUBCONTRACTOR'S QUALIFICATION STATEMENT	SQS-1 → SQS-4
GENERAL CONDITIONS	GC-1 → GC-62
SPECIAL PROVISIONS	SP-1 → SP-8
BID PROPOSAL FORM	P-1 → P-3
CONTRACT	C-1 → C-5
BID BOND	BB-1
PERFORMANCE BOND	PB-1 → PB-3
PAYMENT BOND	PA-1 → PA-3
PROJECT DRAWINGS	ATTACHMENT A

PROJECT NO. RD-24-05A
2024 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 April 3, 2024 for the 2024 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 \$22 by inputting Quest project #8944621 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 15 City-provided pedestrian lights connected to existing electrical circuits. Approximate quantities of work are estimated as follows:

Base Bid

Concrete Bases	15 EA
Install Decorative Pole, Arm, Luminaire LED	15 EA
Conduit Rigid Non Metallic, Schedule 40, 1.5-Inch	1,400 LF
Electrical Wiring, Lighting	10,800 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, March 13, 2024
Wednesday, March 20, 2024

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

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

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

CONTRACTUAL RESPONSIBILITY

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

Trade	Percentage of Work

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

☐ Yes

☐ No

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

When	Where	Why

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

☐ Yes

☐ No

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

Firm Name(s)	When	Where	Why

CITY OF NEW BERLIN
PRE-QUALIFICATION STATEMENT
CONTRACTUAL RESPONSIBILITY SECTION

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

☐ Yes

☐ No

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

When	Where	Why

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

☐ Yes

☐ No

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

When	Where	Why

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

Project	Location

BONDING RESPONSIBILITY

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

Name	Address

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

Name	Address

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

☐ Yes

☐ No

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

When	Where	Why

List current limits of bonding capacity: _____

List your current average bond premium cost: _____ %

CONTRACTOR'S FINANCIAL STATEMENT

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

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

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

Name of firm preparing statement: _____

Are any of the firm's assets assigned?

☐ Yes

☐ No

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

Assigned Asset	Purpose

GENERAL DATA

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

Project	Trade	Year

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

☐ Yes

☐ No

Are you familiar with its terms and conditions?

☐ Yes

☐ No

Are you familiar with the City's specifications?

☐ Yes

☐ No

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

☐ Yes

☐ No

AFFIDAVIT

STATE OF WISCONSIN

_____ } ss
_____ County

_____, being duly sworn, deposes and says
that he is the _____ (Official
capacity/title) of the firm _____ and that the answers to
the foregoing questions and all statements therein contained are true and correct, and
that any Owner, Bonding Company, or other agency herein named is hereby authorized
to supply the City of New Berlin with any information deemed necessary to verify this
statement.

Subscribed and sworn to before me

This ____ day of _____, 20__

_____ Notary Public

_____ County, Wisconsin

My Commission Expires: _____

ATTACH
STATEMENT OF FINANCIAL CONDITIONS

SUBCONTRACTOR'S QUALIFICATION STATEMENT

Submitted to
The City of New Berlin

Submit one copy of qualification for each Subcontractor.

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

NAME OF PERSON SUBMITTING STATEMENT:

NAME OF FIRM:

ADDRESS:

TELEPHONE NUMBER: _____

LOCATION OR PRINCIPAL OFFICE:

CHECK ONE:

Corporation ____ Partnership ____ Individual ____ Jt Venture ____

Limited Liability Company _____ Other ____

Signature

TYPE OF WORK SPECIALIZATION: _____ CONSTRUCTION

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

3. If a corporation, provide the following information:
 - a. Date of incorporation:
 - b. State of incorporation:
4. If individual or partnership, provide the following information:
 - a. Date of organization:
 - b. Name and address of all partners (state whether general or limited partnership):
5. If Joint Venture, Limited Liability Company or other organization than a corporation or partnership, describe the organization and name principals:
6. List the percentage of work normally performed with your own work force. List those trades below:
7. Have you ever failed to complete any work awarded to you? If so, state when, where, and why:
8. Has any officer or partner of your organization ever been an officer or partner of another organization that failed to complete a pool contract? If so, state the circumstances:
- 9a. List the names of the project, owner, architect, general contractor or construction manager, contract amount, current percent complete, and scheduled completion date of the major construction projects your organization has in progress at this time:

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

10. List your trade references:

11. List your banking references:

12. List your bonding references:

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

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

- a. Current Assets: Cash, joint venture accounts, accounts receivable, notes receivable, accrued interest on notes, deposits, materials, and prepaid expenses, net fixed assets, and other assets.
- b. Current Liabilities: Accounts payable, notes payable, accrued interest on notes, provision for income taxes, advances received from owner, accrued salaries,

accrued payroll taxes, other liabilities, and capital (stock, authorized and outstanding shares par values, and earned surplus).

- c. Date of statement or balance sheet:
- d. Name of firm preparing statement:

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

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

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

17. Describe your Quality Control Program:

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

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

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and

Issued and Published Jointly by



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NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by



CONSTRUCTION SPECIFICATIONS INSTITUTE

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

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

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

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

40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
41. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
42. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
43. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
44. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
45. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.
46. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
47. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
49. *Unit Price Work*—Work to be paid for on the basis of unit prices.
50. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
51. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an

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

1.02 Terminology

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

B. *Intent of Certain Terms or Adjectives:*

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

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

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

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

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

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

2.02 *Copies of Documents*

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

2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on

Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

- A. Standards, Specifications, Codes, Laws, and Regulations
 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

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

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

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.

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

3.06 *Electronic Data*

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

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

4.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

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

1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

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

C. *Possible Price and Times Adjustments:*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor’s cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and

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

- c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
- 3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

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

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

B. *Not Shown or Indicated:*

- 1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the

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

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

4.05 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

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

5.02 *Licensed Sureties and Insurers*

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

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

5.03 *Certificates of Insurance*

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

5.04 *Contractor's Insurance*

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

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

5.05 *Owner's Liability Insurance*

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

5.06 *Property Insurance*

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

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

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

5.07 *Waiver of Rights*

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

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

5.08 *Receipt and Application of Insurance Proceeds*

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

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

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

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

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

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

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

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

- 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service.
- b. Contractor certifies that, if approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

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

- c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
 - 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services; and
 - 4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

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

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

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

Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 *Use of Site and Other Areas*

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

- 1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
- 2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
- 3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought

by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

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

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and

shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is

required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

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

1. *Shop Drawings:*

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples:*

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

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Submittal Procedures:*

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

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

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

D. Engineer's Review:

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures:

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 *Continuing the Work*

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

6.19 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 - 1. observations by Engineer;
 - 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. use or occupancy of the Work or any part thereof by Owner;
 - 5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
 - 6. any inspection, test, or approval by others; or
 - 7. any correction of defective Work by Owner.

6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

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

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

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
1. written notice thereof will be given to Contractor prior to starting any such other work; and
 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

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

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

7.03 *Legal Relationships*

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

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of Engineer*

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

8.03 *Furnish Data*

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

8.04 *Pay When Due*

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

8.05 *Lands and Easements; Reports and Tests*

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

8.06 *Insurance*

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

8.07 *Change Orders*

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

8.08 *Inspections, Tests, and Approvals*

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

8.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

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

8.11 *Evidence of Financial Arrangements*

A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 *Compliance with Safety Program*

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

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents.

9.02 *Visits to Site*

A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or

continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

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

9.04 *Authorized Variations in Work*

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

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

9.06 *Shop Drawings, Change Orders and Payments*

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

9.07 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

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

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

9.09 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not

exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 *Compliance with Safety Program*

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

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 *Execution of Change Orders*

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

10.04 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 *Claims*

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

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

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

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

11.01 *Cost of the Work*

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of

said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

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

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not

limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

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

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

11.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:*
 1. Contractor agrees that:
 - a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance:*
 1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to

the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
 - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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

12.01 *Change of Contract Price*

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

C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or
2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

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

12.03 *Delays*

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

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

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

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

13.01 *Notice of Defects*

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

13.02 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

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

13.07 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
 2. correct such defective Work; or
 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

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

13.09 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

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

14.02 *Progress Payments*

A. *Applications for Payments:*

- 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an

Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

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

B. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or

- involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
- b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
 5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

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

D. Reduction in Payment:

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

14.03 Contractor's Warranty of Title

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

14.04 Substantial Completion

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before

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

- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 *Partial Utilization*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
 - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. *Application for Payment:*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

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

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying

documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due:

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

14.08 *Final Completion Delayed*

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

14.09 *Waiver of Claims*

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

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 - 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 - 3. Contractor's repeated disregard of the authority of Engineer; or
 - 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
 - 1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 - 2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
 - 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when

so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

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

15.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 - 3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 - 4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *Contractor May Stop Work or Terminate*

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

to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 *Methods and Procedures*

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

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

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

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

17.02 *Computation of Times*

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

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

**SPECIAL PROVISIONS
CONTRACT RD-24-05A
2024 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 8, 2024** and be completed by **October 25, 2024**. After October 25, 2024, 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 **May 24, 2024**.

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, and shall adhere to all conditions 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 & Payment

The City will measure "Concrete Bases, Type 5, Special" as each individual unit, 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. This area shall be kept clean and free of debris. The Contractor shall be responsible for disposing of all packaging materials. A dumpster may be brought on site to dispose of packaging materials, but may only be placed in a location approved by the City. All disposal costs shall be considered incidental to this item. 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 & Payment

The Engineer will measure "Assemble & Install Type I Decorative Pole, Arm, Luminaire" as each

individual light pole, arm and luminaire acceptably completed. 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 & Payment

The City will measure Furnish and Install Dead-Front GFCI as each unit acceptably completed. Payment shall be full compensation for all labor, equipment, materials, and incidentals necessary to complete this item of work.

XII. 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 & Payment

The City will measure “Electrical Wire, Lighting, 12 AWG” by the linear foot acceptably completed. Payment shall be full compensation for all labor, equipment, materials, and incidentals necessary to complete this item of work.

XIII. 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 & Payment

The City will measure Electrical Wire, Lighting, 6 AWG as each linear foot, acceptably completed. Payment shall be full compensation for all labor, equipment, materials, and incidentals necessary to complete this item of work.

XIV. Conduit Rigid Non Metallic Schedule 40, 1 ½ -Inch

Description

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

Materials

Conform to materials requirements for standard Conduit Rigid Non Metallic Schedule 40, 1 ½ -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 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 & Payment

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

XV. 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.

Measurement & 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.

XVI. 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 & Payment

The City will measure Restoration as Lump Sum acceptably completed. 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-24-05A
2024 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-24-05A Total Project Quantities					
Item No.	Description	Unit Cost	Unit	Quantity	Total Cost
1	Concrete Bases, Type 5, Special		EACH	15	
2	Assemble & Install Type I Decorative Pole, Arm, Luminaire		EACH	15	
3	Furnish and Install Dead-Front GFCI		EACH	15	
4	Electrical Wire, Lighting, 12 AWG		LF	1425	
5	Electrical Wire, Lighting, 6 AWG		LF	9318	
6	Conduit, Rigid, Non-Metallic, Schedule 40, 1.5-Inch		LF	1400	
7	Traffic Control		LS	1	
8	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 25, 2024. 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-24-05A**

This Contract made this _____ day of _____, 2024, 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 May 24, 2024. The City of New Berlin is requesting that the work start no later than **July 8, 2024** and be completed by **October 25, 2024**.

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
2024 Pedestrian Lighting Project, Contract RD-24-05A, 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.

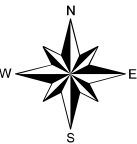
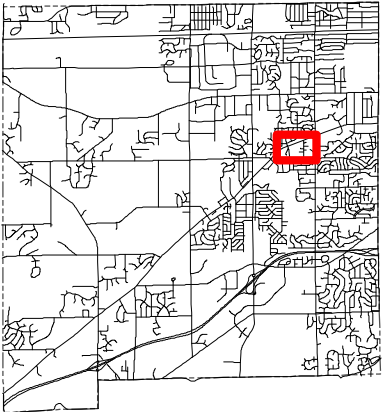
15. DEFINITIONS

- 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
PROJECT DRAWINGS



Pedestrian Lighting
Project Area



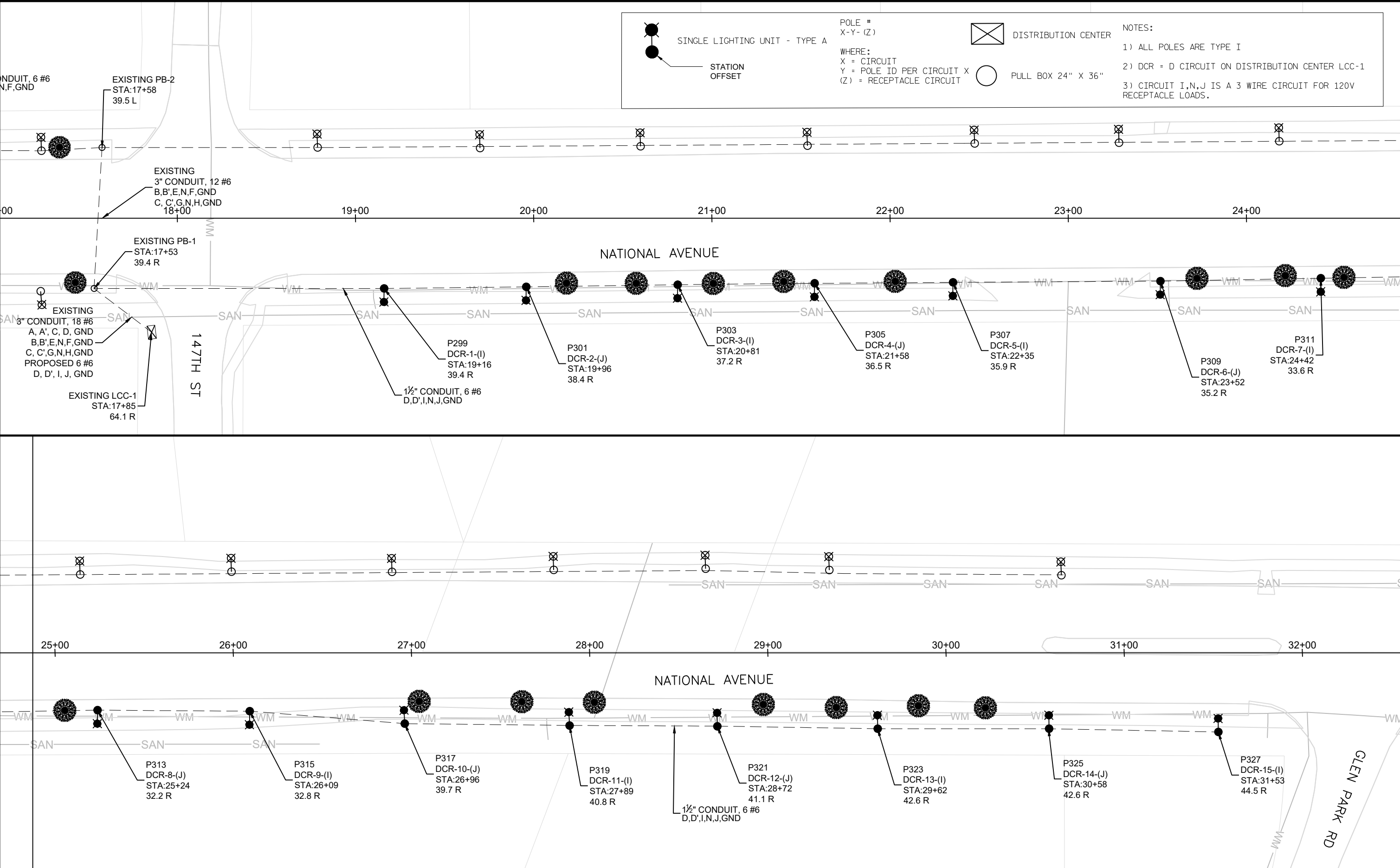
City of New Berlin
RD-24-05
2024 Pedestrian
Lighting Project

Table of Contents:

- Sheet 1: Title Sheet
- Sheet 2: Plan Sheet
- Sheet 3: LCC-1 Quantities
- Sheet 4: LCC-1 Wiring Diagram
- Sheet 5: Concrete Base Detail



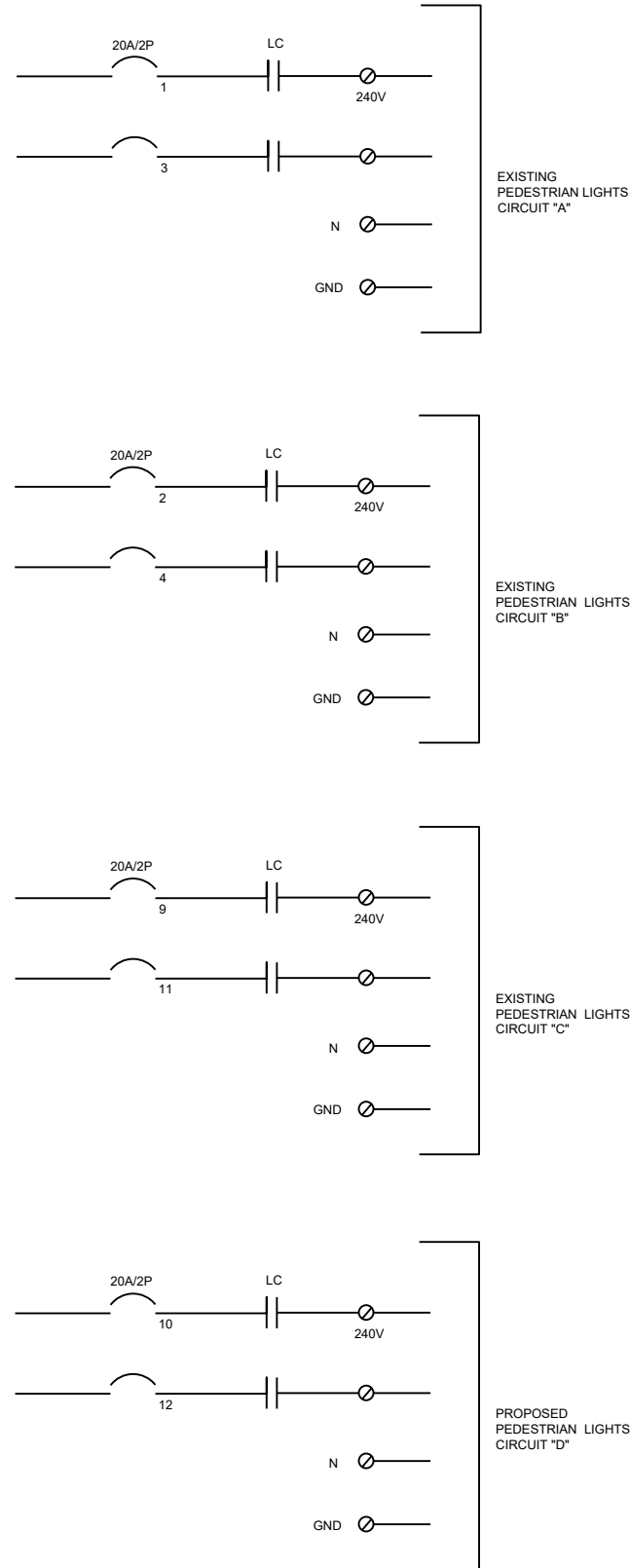
City of New Berlin
Department of Community Development
3805 S Casper Drive, New Berlin WI 53151
(262) 797-2445 www.newberlin.org



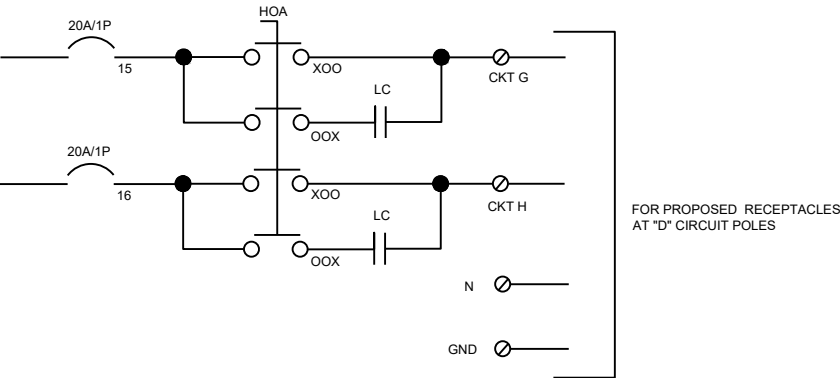
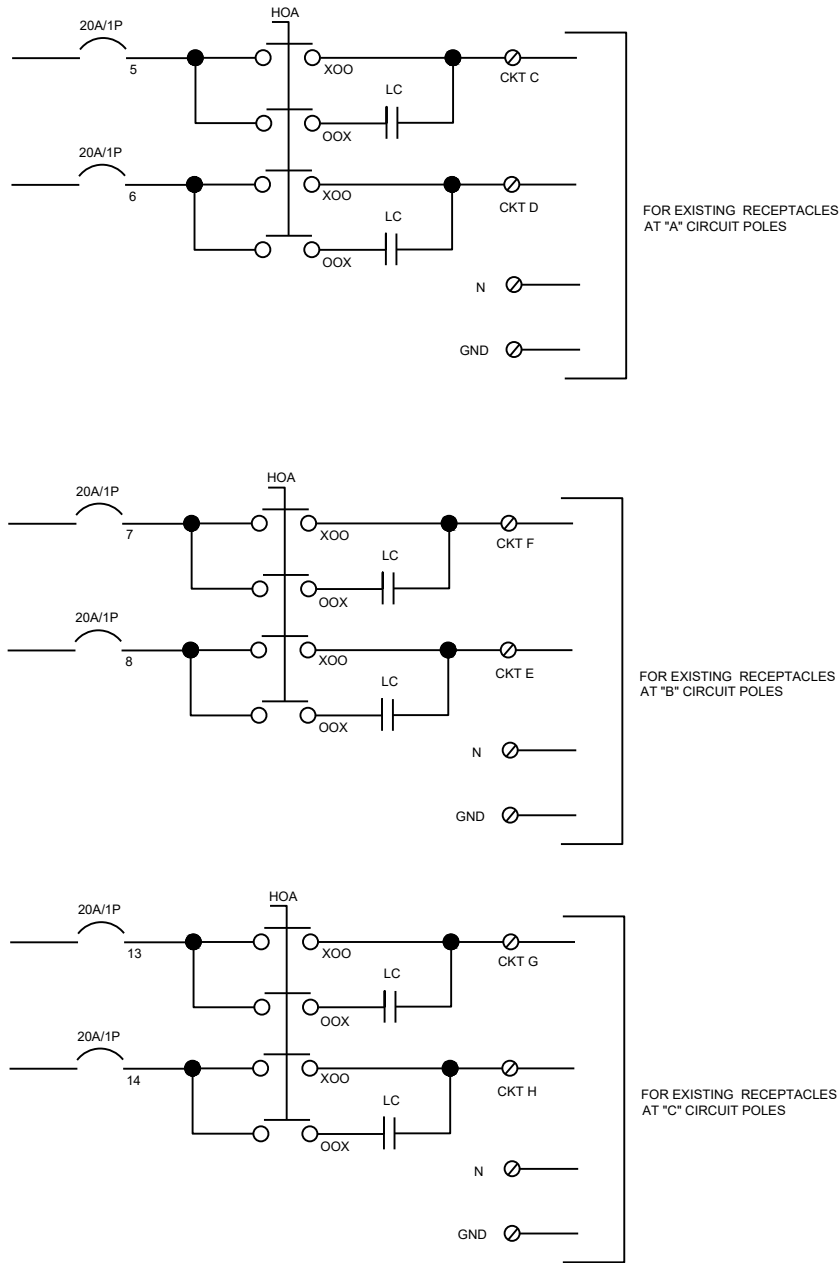
PROJECT NO: RD-24-05A	HWY: NATIONAL AVE	COUNTY: WAUKESHA	2024 PEDESTRIAN LIGHTING PROJECT	SHEET	E
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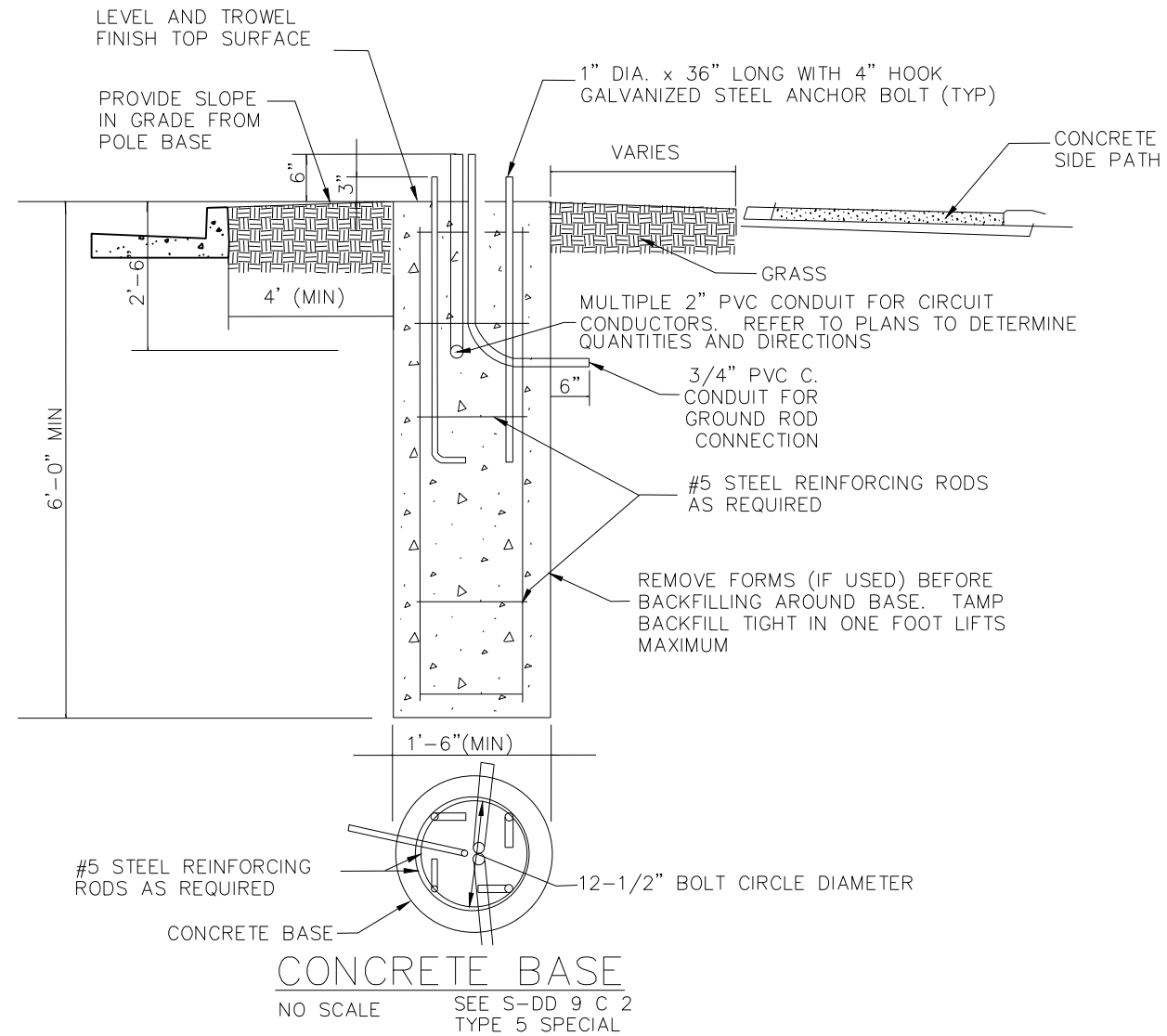
LIGHTING AND MISCELLANEOUS ASSOCIATED WITH EXISTING LCC-1							
POLE #	STATION	OFFSET FROM REFERENCE LINE		STREET	ELECTRICAL WIRE LIGHTING 12 AWG	CONCRETE BASES TYPE 5 SPECIAL	DECORATIVE POLE, ARM, LUMINAIRE LED
DCR-1	19+16	RT	39.4	NATIONAL AVE	95	1	1
DCR-2	19+96	RT	38.4	NATIONAL AVE	95	1	1
DCR-3	20+81	RT	37.2	NATIONAL AVE	95	1	1
DCR-4	21+58	RT	36.5	NATIONAL AVE	95	1	1
DCR-5	22+35	RT	35.9	NATIONAL AVE	95	1	1
DCR-6	23+52	RT	35.2	NATIONAL AVE	95	1	1
DCR-7	24+42	RT	33.6	NATIONAL AVE	95	1	1
DCR-8	25+24	RT	32.2	NATIONAL AVE	95	1	1
DCR-9	26+09	RT	32.8	NATIONAL AVE	95	1	1
DCR-10	26+96	RT	39.7	NATIONAL AVE	95	1	1
DCR-11	27+89	RT	40.8	NATIONAL AVE	95	1	1
DCR-12	28+72	RT	41.1	NATIONAL AVE	95	1	1
DCR-13	29+62	RT	42.6	NATIONAL AVE	95	1	1
DCR-14	30+58	RT	42.6	NATIONAL AVE	95	1	1
DCR-15	31+53	RT	44.5	NATIONAL AVE	95	1	1
TOTALS					1425	15	15

WIRING AND CONDUIT ASSOCIATED WITH LCC-1			
		CONDUIT RIGID NONMETALLIC SCHEDULE 40 1.5-INCH	ELECTRICAL WIRE LIGHTING 6 AWG
FROM	TO	LF	LF
LCC-1	PB-1	0	288
PB-1	DCR-1	163	1020
DCR-1	DCR-2	80	522
DCR-2	DCR-3	85	552
DCR-3	DCR-4	77	504
DCR-4	DCR-5	77	504
DCR-5	DCR-6	117	744
DCR-6	DCR-7	90	582
DCR-7	DCR-8	82	534
DCR-8	DCR-9	85	552
DCR-9	DCR-10	87	564
DCR-10	DCR-11	93	600
DCR-11	DCR-12	83	540
DCR-12	DCR-13	90	582
DCR-13	DCR-14	96	618
DCR-14	DCR-15	95	612
TOTALS		1400	9318



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





RD-24-05A 2024 Pedestrian Lighting Project
 Bid Results
 April 10, 2024 @ 10:00 A.M.

BIDDER	BID BOND	PRE-QUAL STATEMENT	ADDENDUM 1	BASE BID	RANKING
WIL-Surge Electric, Inc.	X	X	X	\$ 66,079.73	1
Paul G Senft & Sons Trenching, LLC	X	X	X	\$ 81,499.55	2
Engineer's Estimate				\$ 73,288.45	

RD-24-05A 2024 Pedestrian Lighting Project
CONTRACT RD-24-05A
Cells Highlighted in Yellow Denote Errors Found. Total Prices
Calculated from Bid Unit Cost Submitted.

Base Bid				WIL-Surge Electric, Inc.		Paul G Senft & Sons Trenching, LLC		Engineer's Estimate	
ITEM NO.	ITEM	QUANTITY	UNIT	UNIT	TOTAL	UNIT	TOTAL	UNIT	TOTAL
				PRICE	PRICE	PRICE	PRICE	PRICE	PRICE
1	Concrete Bases, Type 5, Special	15	EACH	\$ 950.00	\$ 14,250.00	\$ 1,900.00	\$ 28,500.00	\$ 1,040.00	\$ 15,600.00
2	Assemble & Install Type I Decorative Pole, Arm, Luminaire	15	EACH	\$ 485.00	\$ 7,275.00	\$ 850.00	\$ 12,750.00	\$ 560.00	\$ 8,400.00
3	Furnish and Install Dead-Front GFCI	15	EACH	\$ 185.00	\$ 2,775.00	\$ 280.00	\$ 4,200.00	\$ 220.00	\$ 3,300.00
4	Electrical Wire, Lighting, 12 AWG	1,425	LF	\$ 0.95	\$ 1,353.75	\$ 0.85	\$ 1,211.25	\$ 0.95	\$ 1,353.75
5	Electrical Wire, Lighting, 6 AWG	9,318	LF	\$ 1.61	\$ 15,001.98	\$ 1.85	\$ 17,238.30	\$ 1.65	\$ 15,374.70
6	Conduit, Rigid, Non-Metallic, Schedule 40, 1.5-Inch	1,400	LF	\$ 13.91	\$ 19,474.00	\$ 8.00	\$ 11,200.00	\$ 13.90	\$ 19,460.00
7	Traffic Control	1	LS	\$ 2,700.00	\$ 2,700.00	\$ 4,100.00	\$ 4,100.00	\$ 4,200.00	\$ 4,200.00
8	Restoration	1	LS	\$ 3,250.00	\$ 3,250.00	\$ 2,300.00	\$ 2,300.00	\$ 5,600.00	\$ 5,600.00
				Total	\$ 66,079.73	Total	\$ 81,499.55	Total	\$ 73,288.45

STAFF REPORT

EXECUTIVE SUMMARY

APPLICANT: City of New Berlin

PROJECT: 2024 Pedestrian Lighting Purchase

LOCATION: South side of National Avenue from 147th Street 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, *Rexel, USA, Inc.*, for the 2024 Pedestrian Lighting Purchase Contract in an amount of \$179,961.68 from accounts 04251100 63600 C2024, 04251100 63600 C2023, 04252900 61130 C2022 and 04251100 63600 C2021

1. Funding Sources:
2. Lighting – National Ave: 04251100 63600 C2024 Amount: \$105,000.00
3. Lighting – National Ave: 04251100 63600 C2023 Amount: \$ 19,005.99
4. Activity & Recreation Center: 04252900 61130 C2022 Amount: \$ 14,620.36
5. Lighting & Improvements–National & Moorland: 04251100 63600 C2021 Amount: \$ 41,335.33
6. The 2024 Pedestrian Lighting Purchase Contract will include the purchase of twenty one (21) pedestrian lights, five (5) replacement joint covers, and two (2) sets of replacement banner arms. Fifteen of the poles will be installed as part of the 2024 Pedestrian Lighting Project along the south side of National Avenue from 147th Street to Glen Park Road. One of the poles, the replacement joint covers, and the replacement banner arms will be used at the Activity and Recreation Center. Five of the poles will be used as spares by the Department of Public Works as rotational poles as they remove, refinish, and replace existing poles.
7. On April 10, 2024, the City of New Berlin received one (1) bid from contractors for the 2024 Pedestrian Lighting Purchase Contract. The apparent low bidder is Rexel, USA, Inc., of Milwaukee, Wisconsin.

a. Summary of Contracted Amounts:

Base Bid: \$ 179,961.68

Total Project Costs: \$179,961.68

DETAILS IN ATTACHED STAFF REPORT

CITY OF NEW BERLIN
DEPARTMENT OF COMMUNITY DEVELOPMENT
COMMON COUNCIL STAFF REPORT

Meeting of April 15, 2024

2024 Pedestrian Lighting Purchase

DATE STAFF REPORT CREATED: April 11, 2024

APPLICANT: City of New Berlin

REQUEST / DESCRIPTION OF PROJECT: The 2024 Pedestrian Lighting Purchase will consist of:

1. The purchase of twenty one (21) pedestrian lights, five (5) replacement joint covers, and two (2) sets of replacement banner arms.
2. Fifteen of the poles will be installed as part of the 2024 Pedestrian Lighting Project along the south side of National Avenue from 147th Street to Glen Park Road.
3. One of the poles, the replacement joint covers, and the replacement banner arms will be used at the Activity and Recreation Center.
4. Five of the poles will be used as spares by the Department of Public Works as rotational poles as they remove, refinish, and replace existing poles.

BIDS RECEIVED: One (1) Bid - A summary of the bids received is attached.

SELECTED CONTRACTOR: Rexel, USA, Inc.

FISCAL IMPACT:

Base Bid: \$ 179,961.68

Total Project Costs: \$179,961.68

SOURCE OF FUNDS

Lighting – National Ave:	04251100 63600 C2024	Amount:	\$105,000.00
Lighting – National Ave:	04251100 63600 C2023	Amount:	\$ 19,005.99
Activity & Recreation Center:	04252900 61130 C2022	Amount:	\$ 14,620.36
Lighting & Improvements–National & Moorland:	04251100 63600 C2021	Amount:	\$ 41,335.33

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. In 2022, 31 lights were installed from Coffee Road to Glen Park Road on the north side of National Ave.
10. In 2023, the City partnered with Waukesha County during their Moorland Road reconstruction project to connect the public lights from the Qdoba plaza to the City circuits, add lights along the east side of Moorland from National Ave. to Howard Ave. and relocate a few poles due to the intersection expansion.
11. Construction work is planned to be completed by the end of October, 2024.
12. In 2024, the City plans to again purchase the light poles as part of a separate contract 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, Rexel, USA, Inc., for the 2024 Pedestrian Lighting Purchase Contract in an amount of \$179,961.68 from accounts 04251100 63600 C2024, 04251100 63600 C2023, 04252900 61130 C2022 and 04251100 63600 C2021.

Attachments:

Contract for Project No. RD-24-05B
Project Drawings
Summary of Bids Received

2024 PEDESTRIAN LIGHT
PURCHASE

CONTRACT RD-24-05B

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-24-05B

2024 PEDESTRIAN LIGHT PURCHASE

CITY OF NEW BERLIN, WISCONSIN

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2024 PEDESTRIAN LIGHT PURCHASE
CONTRACT RD-24-05B
CITY OF NEW BERLIN, WISCONSIN

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PROJECT NO. RD-24-05B
2024 Pedestrian Light Purchase
New Berlin, Wisconsin

ADVERTISEMENT FOR BIDS

BID OPENING: The City of New Berlin hereby gives notice that sealed bids will be received by the City Clerk, City Hall, 3805 S. Casper Drive, New Berlin, WI, until 10:00 a.m., local time, on Wednesday April 3, 2024 for the 2024 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 \$22 by inputting Quest project #8958860 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.

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 deliver 21 pedestrian lighting poles and miscellaneous accessories to the City of New Berlin. Approximate quantities of materials to be supplied are estimated as follows:

Base Bid

Furnish Decorative Pole, Arm, Luminaire	21 EA
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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, March 13, 2024
Wednesday, March 20, 2024

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

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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-24-05B
2024 PEDESTRIAN LIGHT PURCHASE**

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 all materials be delivered no later than August 9, 2024. After August 9, 2024, a fee of \$250.00 per day will be charged to the Contractor for construction delay. The anticipated Contract Award date and Notice to Proceed date for this Contract will be **May 24, 2024**.

III. General

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

Providing and delivering light poles and accessories to the City of New Berlin Recycling Center, located at 3711 S. Casper Drive, New Berlin, WI 53151. The receiving hours are 7:00 AM to 3:00 PM. The City will provide the necessary personnel and equipment necessary to unload and store the light poles and accessories.

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. 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.

The Contractor shall submit shop drawings to the City for approval prior to ordering any material. 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.

V. 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. The Contractor shall provide all necessary safety equipment needed to deliver the materials.

VI. Warranty

The Contractor shall provide a three (3) year warranty on all poles, arms, fixtures, luminaires or other accessories. Upon notice of any defect covered under warranty, the Contractor shall respond within 3 business days.

VII. Type 1, Decorative Pole, Bracket Arm, Luminaire, Anchor Bolts

Description

The Contractor shall provide the necessary Pole, Banner Arms, Bracket Arm, Luminaire, and all necessary hardware to the City.

Materials

Pole

The pole provided to the City shall be:

Manufacturer: Lumec

Model Number: SAM8V-15-BABS18(2)-CAP1-DRI-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. Joint cover shall consist of a two-piece round joint cover made from cast 356 aluminum, mechanically fastened with stainless steel screws. 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 have 120V duplex receptacle with pad lockable in-use aluminum weatherproof painted aluminum covers. Receptacles shall be NEMA 5-15R. Pole cap shall be Decorative Flat Pole Cap, Overlap type.

Bracket Arm

The bracket arm provided to the City shall be:

Manufacturer: Lumec

Model Number: IF-1A-R5@6-270deg-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. Bracket to be oriented at 270 degrees from access door.

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.

Anchor Bolts

The pole provided to the City shall be:

Model Number: 1X3612 1/2DEC or equal

The anchor bolts shall be made of ASTM F1554 grade 55 steel with a minimum yield strength of 55,000 psi. Nuts made of ASTM F1554-99 grade A steel or better. The thread adjustment shall be ANSI class 2B regardless of the diameter of the bolts. The washers shall be made of ASTM grade F-844 steel or better. All galvanized parts shall be hot-dip galvanized with minimum requirement the ACNOR G-164 standard.

Measurement & Payment

The Engineer will measure and pay for Type 1 Decorative Pole, Bracket Arm, Luminaire, Anchor Bolts at their respective unit price per each individual component acceptably delivered. Payment shall be full compensation for manufacturing and delivering the components and all incidentals required to complete these items of work.

VIII. Type 2, Decorative Pole, Bracket Arms, Luminaire

Description

The Contractor shall provide the necessary Pole, Arm, Luminaire and all necessary hardware to the City. This item specifically does not include anchor bolts.

Materials

Pole

The pole provided to the City shall be:

Manufacturer: Lumec

Model Number: SAM8V-15-BABD18(2)-CAP1-DRI-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. Joint cover shall consist of a two-piece round joint cover made from cast 356 aluminum, mechanically fastened with stainless steel screws. Base cover shall consist of a two piece round base cover cast from 356 aluminum and secured with stainless steel screws. Unit shall have two way (180-degree) 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 have 120V duplex receptacle with pad lockable in-use aluminum weatherproof painted aluminum covers. Receptacles shall be NEMA 5-15R. Pole cap shall be Decorative Flat Pole Cap, Overlap type.

Bracket Arms

The bracket arms provided to the City shall be:

Manufacturer: Lumec

Model Number: IF-2-R5@6-BKTX

Arms 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.

Measurement & Payment

The Engineer will measure and pay for Type 1 Decorative Pole, Bracket Arm, Luminaire, Anchor

Bolts at their respective unit price per each individual component acceptably delivered. Payment shall be full compensation for manufacturing and delivering the components and all incidentals required to complete these items of work.

IX. Replacement SAM8V-15 Joint Cover

Description

The Contractor shall provide the necessary Joint Cover and all necessary hardware to the City.

Materials

Joint Cover

The joint cover provided to the City shall be:
Manufacturer: Lumec

Joint cover shall consist of a two-piece round joint cover made from cast 356 aluminum, mechanically fastened with stainless steel screws. Joint cover shall be compatible with SAM8V-15 style pole assembly.

Measurement & Payment

The Engineer will measure and pay for Replacement SAM8V-15 Joint Cover at its respective unit price per each individual component acceptably delivered. Payment shall be full compensation for manufacturing and delivering the components and all incidentals required to complete these items of work.

X. Replacement BABD18(2) Banner Arms

Description

The Contractor shall provide the necessary Banner Arms and all necessary hardware to the City.

Materials

Banner Arms

The banner arms provided to the City shall be:
Manufacturer: Lumec
Model Number: BABD18(2)

Banner arms shall be two way (180-degree) 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. Banner arms shall be compatible with SAM8V-15 style pole assembly.

Measurement & Payment

The Engineer will measure and pay for Replacement BABD18(2) Banner Arms at its respective unit price per each set of two components acceptably delivered. Payment shall be full compensation for manufacturing and delivering the components and all incidentals required to complete these items of work.

**CITY OF NEW BERLIN
RD-24-05B
2024 Pedestrian Light Purchase**

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-24-05B 2024 Pedestrian Light Purchase					
Item No.	Description	Unit Cost	Unit	Quantity	Total Cost
1	Type 1, Decorative Pole, Bracket Arm, Luminaire, Anchor Bolts		EACH	20	
2	Type 2, Decorative Pole, Bracket Arms, Luminaire		EACH	1	
3	Replacement SAM8V-15 Joint Cover		EACH	5	
4	Replacement BABD18(2) Banner Arms		EACH	2	
				Total Cost	

Write Out Total: _____

Accompanying this Proposal is a (Certified Check) (Bid Bond) (Bank Draft) in the amount of Five Percent (5%) of amount bid payable to the City of New Berlin, Wisconsin, which (protects) it is agreed will be forfeited to said City of New Berlin if the Undersigned failed to execute the Contract in conformity with the Form of Contract incorporated in the Contract Document, and furnish bond as specified within ten days from the notifications of the award of the Contract to the undersigned. In submitting this Proposal, it is understood and agreed by the undersigned that the right is reserved by the Owner to reject any or all proposals. It is further understood and agreed that this Proposal may not be withdrawn for a period of (60) sixty days from the opening thereof.

If awarded a Contract under this Proposal the undersigned agrees to start work within ten (10) calendar days after the receipt from the Owner of a formal Notice to Proceed. The undersigned further agrees to commence work at the site on a date to be specified in a written order from the Owner, which date will not be prior to that established by the calendar days stated above, except by mutual agreement between the undersigned and the Owner, and agrees to fully complete all work covered by August 9, 2024. 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-24-05B**

This Contract made this _____ day of _____, 2024, 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 May 24, 2024. The City of New Berlin is requesting that the materials be delivered no later than **August 9, 2024**.

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
- Special Provisions
- Bid Proposal Form
- Contract
- Bid Bond
- Sample Shop 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
2024 Pedestrian Light Purchase, Contract RD-24-05B, 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

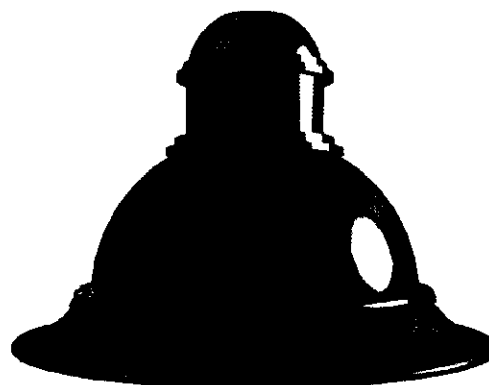
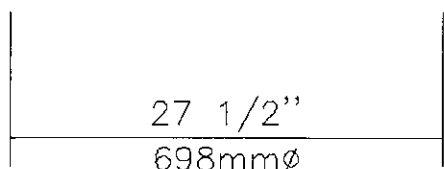
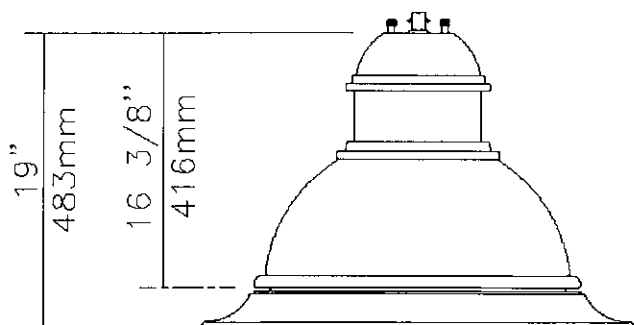
- 15.1. Claimant: An individual or entity having a direct contract with Contractor, or with a first-tier subcontractor of Contractor, to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, 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

**SAMPLE TYPE 1, DECORATIVE POLE, BRACKET ARM, LUMINAIRE, ANCHOR
BOLTS SHOP DRAWING**



LEDGINE



EPA: 1.42 sq ft / weight: 42 lb (19.1 kg)

Note: 3D image may not represent color or option selected.

Logos above include link, click to access.

Qty	17	Luminaire	DMS50-55W48LED5.7K-G3-LE3F-UNV-DMG-BKTX
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Description of Components:

Hood: A die cast A360.1 aluminum dome complete with a cast-in technical ring with latch and hinge. The mechanism shall offer tool-free access to the inside of the luminaire. An embedded memory-retentive gasket shall ensure weatherproofing.

Housing: In a round shape, this housing is made of cast 356 aluminum, c/w a watertight grommet, mechanically assembled to the bracket with four bolts 3/8-16 UNC. This suspension system permits for a full rotation of the luminaire in 90 degree increments.

Light Engine: LEDgine composed of 5 main components: **Heat Sink / Lens / LED Module / Optical System / Driver**
Electrical components are RoHS compliant.

Heat Sink: Heat Sink: Made of die cast A360 aluminum optimising the LEDs efficiency and life, complete with a cast in skirt and technical ring. Product does not use any cooling device with moving parts (only passive cooling device)

Lens: Made of soda-lime clear tempered flat glass lens, mechanically assembled and sealed onto the lower part of the heat sink.

LED Module: Composed of 48 high-performance white LEDs. Color temperature as per ANSI/NEMA bin Cool White, 5700 Kelvin nominal (5665K +/- 355K or 5310K to 6020K), CRI 70 Min. 75 Typical.

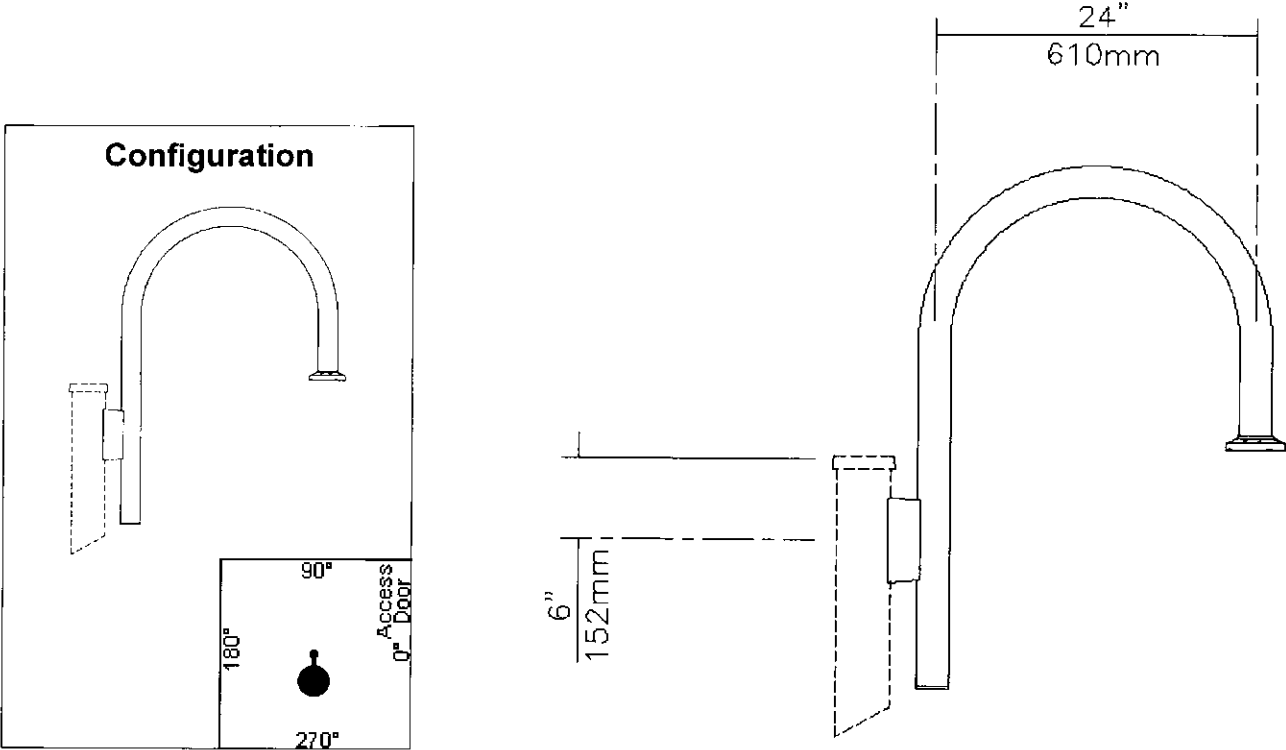
Optical System: (LE3F), IES type III (asymmetrical). Composed of high-performance optical grade PMMA acrylic refractor lenses to achieve desired distribution optimized to get maximum spacing, target lumens and a superior lighting uniformity. Optical system is rated IP66. Performance shall be tested per LM-63, LM-79 and TM-15 (IESNA) certifying its photometric performance. Street side indicated. 0% uplight and U0 per IESNA TM-15.

Driver: High power factor of 90% minimum. Electronic driver, operating range 50/60 Hz. **Auto-adjusting universal voltage input from 120 to 277 VAC rated for both application line to line or line to neutral, Class 1**, THD of 20% max. Maximum ambient operating temperature from -40F(-40C) to 130F(55C) degrees. **Driver comes with dimming compatible 0-10 volts.**

The current supplying the LEDs will be reduced by the driver if the driver experiences internal overheating as a protection to the LEDs and the electrical components. Output is protected from short circuits, voltage overload and current overload. Automatic recovery after correction. Standard built-in driver surge protection of 2.5kV (min).

Driver Options: (DMG), Dimming compatible 0-10 volts. For applicable warranty, certification and operation guide see Lumec dimmable luminaire specification document for unapproved device installed by other. To get document, click on this link: [Specification document](#) or go on web site on this address: https://www.signify.com/b-dam/signify/en-us/brands/lumec/Lumec-un-approved-control-device-installed-by-others-7_d.pdf

Surge Protector: Surge protector tested in accordance with ANSI/IEEE C62.45 per ANSI/IEEE C62.41.2 Scenario I Category C High Exposure 10kV/10kA waveforms for Line-Ground, Line-Neutral and Neutral-Ground, and in accordance with U.S. DOE (Department of Energy) MSSLC (Municipal Solid-State Street Lighting Consortium) model specification for LED roadway luminaires electrical immunity requirements for High Test Level 10kV / 10kA.



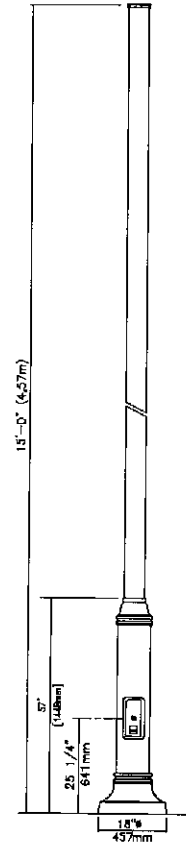
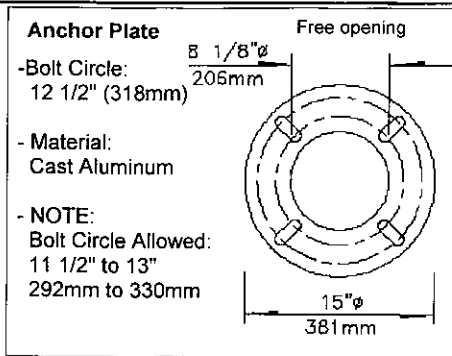
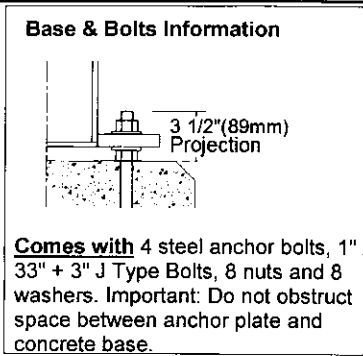
Qty	17	Bracket	IF-1A-R5@6-270deg-BKTX
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Description of Components:

Arm: Shall be made from 6061-T6 aluminum tubing, 2 3/8in. (60mm) outside diameter, mechanically assembled.

Bracket Options: (270deg),Bracket to be oriented at 270 degree from access door.

Bracket Properties (Weight and EPA): 9 lbs (4.1 kg), 1.41 ft²



Qty 17 Pole SAM8V-15-BABS18(2)-CAP1-DRI-BKTX

Description of Components:

Pole Shaft: Shall be made from a 5 9/16" (141mm) round extruded 6061-T6 aluminum tubing, having a 0.250" (6.4mm) wall thickness, welded to the pole base.

Joint Cover: Two-piece round joint cover made from cast 356 aluminum, mechanically fastened with stainless steel screws.

Pole Base: Shall be made from a 8 5/8" (219mm) round extruded 6061-T6 aluminum tubing base having a 0.148" (3.8mm) wall thickness, welded to both the bottom and top of the anchor plate.

Maintenance Opening: The pole shall have a 4 1/2" x 10" (114mm x 254mm) maintenance opening centered 25 1/4" (641mm) from the bottom of the anchor plate, complete with a weatherproof embossed aluminum cover and a copper ground lug.

Base Cover: Two piece round base cover made from cast 356 aluminum, mechanically fastened with stainless steel screws.

Pole Options: (BA) single position, upper and lower arms (2), banner arms made of steel tubing, 1 1/16" (27mm) outside diameter, breakaway-type lower arm, mechanically assembled to the pole, complete with a standard cast aluminum decorative ball.

(CAP1) Decorative Flat Pole Cap, Overlap type. **(DR)** Duplex receptacle, WR Weather Resistant, 120 volts, **complete with an in-use weatherproof aluminum painted cover.** Possibility of padlock (Padlock not included). **15 amp., NEMA 5-15R.**

Note: A tenon will be provided when the luminaire or bracket does not fit directly on pole shaft. Tenon not shown on the drawing.

IMPORTANT: Lumec strongly recommends the installation of the complete lighting assembly with all of its accessories upon the anchoring of the pole. This will ensure that the structural integrity of the product is maintained throughout its lifetime.

Pole Weight: 70 lbs (31.8 kg)

Miscellaneous

Description of Components:

Wiring: Gauge (#14) TEW/AWM 1015 or 1230 wires, 6" (152mm) minimum exceeding top of pole.

Hardware: All exposed screws shall be complete with Ceramic primer-seal basecoat to reduce seizing of the parts and offers a high resistance to corrosion. All seals and sealing devices are made and/or lined with EPDM and/or silicone and/or rubber.

Anchor Bolts: Anchor bolts made of ASTM F1554 grade 55 steel with a minimum yield strength of 55,000 psi. Nuts made of ASTM F1554-99 grade A steel or better. The thread adjustment is ANSI class 2B regardless of the diameter of the bolts. Washers made of ASTM grade F-844 steel or better. All galvanized parts are hot-dip galvanized with minimum requirement the ACNOR G-164 standard.

Finish: Color to be **black textured RAL9005TX (BKTX)** and in accordance with the AAMA 2603 standard. Application of polyester powder coat paint (4 mils/100 microns) with ± 1 mils/24 microns of tolerance. The Thermosetting resins provides a discoloration resistant finish in accordance with the ASTM D2244 standard, as well as luster retention in keeping with the ASTM D523 standard and humidity proof in accordance with the ASTM D2247 standard.

The surface treatment achieves a minimum of 2000 hours for salt spray resistant finish in accordance with testing performed and per ASTM B117 standard.

Pole Information: (R5@6), Bracket to be side mounted on a round pole from 5" min. to 6" (127mm min. to 152mm).

LED products manufacturing standard: The electronic components sensitive to electrostatic discharge (ESD) such as light emitting diodes (LEDs) are assembled in compliance with IEC61340-5-1 and ANSI/ESD S20.20 standards so as to eliminate ESD events that could decrease the useful life of the product.

Quality Control: The manufacturer must provide a written confirmation of its ISO 9001-2008 and ISO 14001-2004 International Quality Standards Certification.

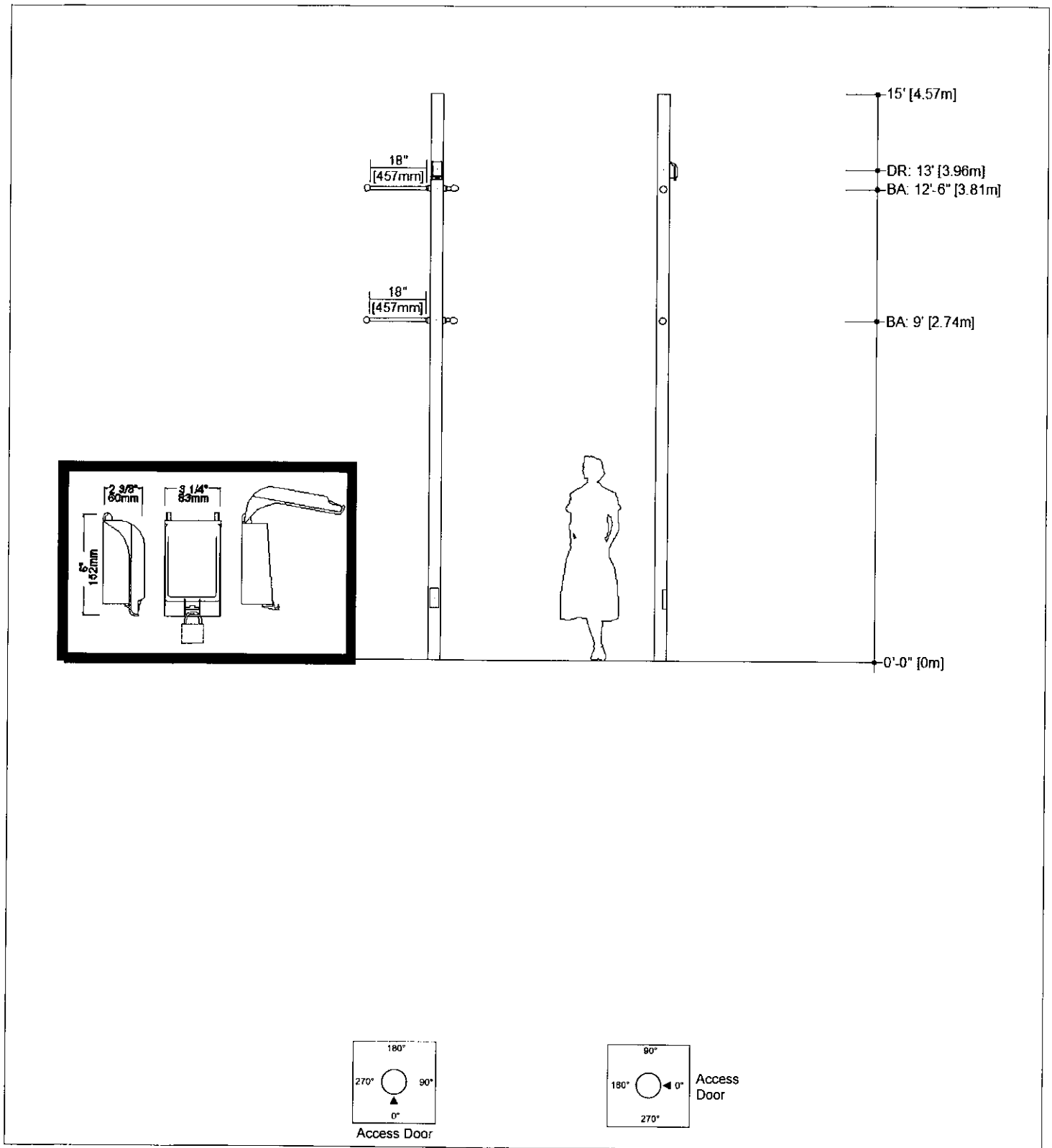
Vibration Resistance: The DMS50 meets the **ANSI C136.31, 2010**, American National Standard for Roadway Luminaire Vibration specifications for Bridge/overpass applications. (Tested for 3G over 100 000 cycles)

Aluminum poles are not recommended in high vibration environments such as bridge, overpass, top of building, airport, train station, etc.

Mechanical resistance: This design information is intended as a general guideline only. The customer is solely responsible for proper selection of pole, luminaire, accessories and foundation under the given site conditions and intended usage. The addition of any other item to the pole may dramatically impact the wind load on that pole. It is strongly recommended that a qualified professional be consulted to analyze the loads given the user's specific needs to ensure proper selection of the pole, luminaire, accessories, and foundation. Lumec assumes no responsibility for such complete analysis or product selection. Failure to insure proper site analysis, pole selection, loads and installation can result in pole failure, leading to serious injury or property damage.

Web site information details: / [cULus Certification](#) / [CSA Pole Certification](#)

Parametric Options Illustration
(schematic pole shown, for actual pole representation please refer to previous pages)



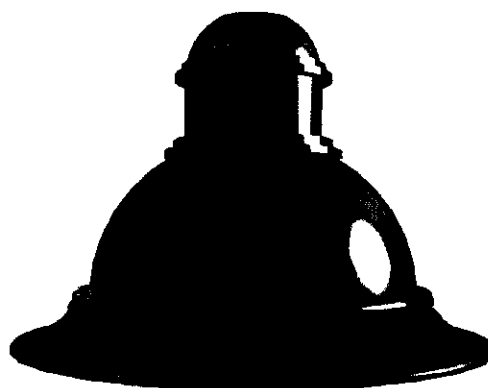
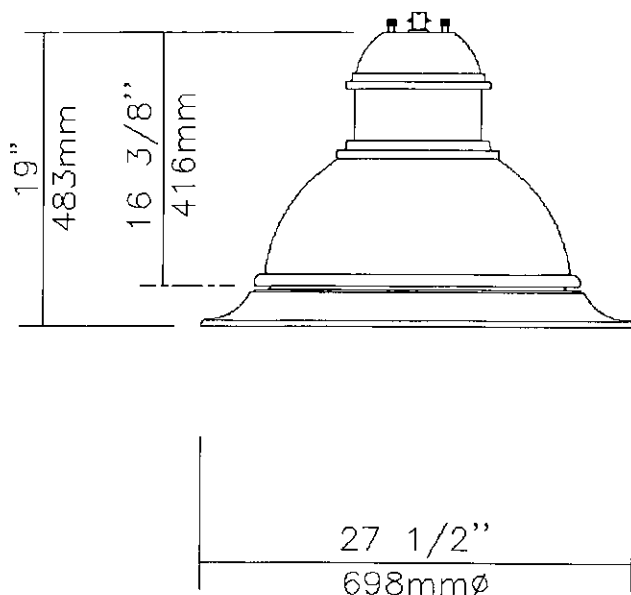
ATTACHMENT B

**SAMPLE TYPE 2, DECORATIVE POLE, BRACKET ARM, LUMINAIRE SHOP
DRAWING**

3/23/22

Approved
[Signature]

LEDGINE



EPA: 1.42 sq ft / weight: 42 lb (19.1 kg)

Note: 3D image may not represent color or option selected.

Logos above include link, click to access.

Qty	2	Luminaire	DMS50-55W48LED5.7K-G3-LE3F-UNV-DMG-BKTX
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Description of Components:

Hood: A die cast A360.1 aluminum dome complete with a cast-in technical ring with latch and hinge. The mechanism shall offer tool-free access to the inside of the luminaire. An embedded memory-retentive gasket shall ensure weatherproofing.

Housing: In a round shape, this housing is made of cast 356 aluminum, c/w a watertight grommet, mechanically assembled to the bracket with four bolts 3/8-16 UNC. This suspension system permits for a full rotation of the luminaire in 90 degree increments.

Light Engine: LEDgine composed of 5 main components: **Heat Sink / Lens / LED Module / Optical System / Driver**
Electrical components are RoHS compliant.

Heat Sink: Heat Sink: Made of die cast A360 aluminum optimising the LEDs efficiency and life, complete with a cast in skirt and technical ring. Product does not use any cooling device with moving parts (only passive cooling device)

Lens: Made of soda-lime clear tempered flat glass lens, mechanically assembled and sealed onto the lower part of the heat sink.

LED Module: Composed of 48 high-performance white LEDs. Color temperature as per ANSI/NEMA bin Cool White, 5700 Kelvin nominal (5665K +/- 355K or 5310K to 6020K), CRI 70 Min. 75 Typical.

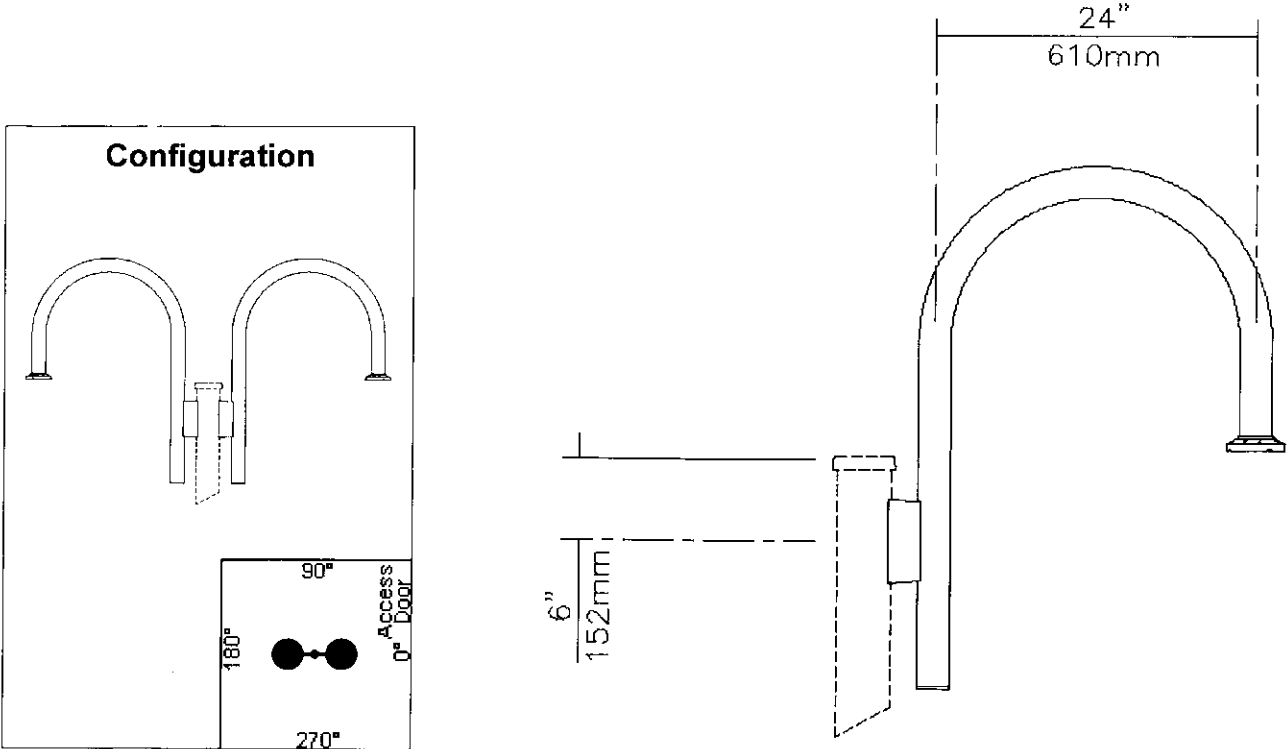
Optical System: (LE3F), IES type III (asymmetrical). Composed of high-performance optical grade PMMA acrylic refractor lenses to achieve desired distribution optimized to get maximum spacing, target lumens and a superior lighting uniformity. Optical system is rated IP66. Performance shall be tested per LM-63, LM-79 and TM-15 (IESNA) certifying its photometric performance. Street side indicated. 0% uplight and U0 per IESNA TM-15.

Driver: High power factor of 90% minimum. Electronic driver, operating range 50/60 Hz. **Auto-adjusting universal voltage input from 120 to 277 VAC rated for both application line to line or line to neutral, Class 1**, THD of 20% max. Maximum ambient operating temperature from -40F(-40C) to 130F(55C) degrees. **Driver comes with dimming compatible 0-10 volts.**

The current supplying the LEDs will be reduced by the driver if the driver experiences internal overheating as a protection to the LEDs and the electrical components. Output is protected from short circuits, voltage overload and current overload. Automatic recovery after correction. Standard built-in driver surge protection of 2.5kV (min).

Driver Options: (DMG), Dimming compatible 0-10 volts. For applicable warranty, certification and operation guide see Lumec dimmable luminaire specification document for unapproved device installed by other. To get document, click on this link: Specification document or go on web site on this address: https://www.signify.com/b-dam/signify/en-us/brands/lumec/Lumec-un-approved-control-device-installed-by-others-7_d.pdf

Surge Protector: Surge protector tested in accordance with ANSI/IEEE C62.45 per ANSI/IEEE C62.41.2 Scenario I Category C High Exposure 10kV/10kA waveforms for Line-Ground, Line-Neutral and Neutral-Ground, and in accordance with U.S. DOE (Department of Energy) MSSLC (Municipal Solid-State Street Lighting Consortium) model specification for LED roadway luminaires electrical immunity requirements for High Test Level 10kV / 10kA.



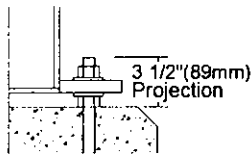
Qty	1	Bracket	IF-2-R5@6-BKTX
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Description of Components:

Arm: Shall be made from 6061-T6 aluminum tubing, 2 3/8in. (60mm) outside diameter, mechanically assembled.

Bracket Properties (Weight and EPA): 18 lbs (8.2 kg), 2.82 ft²

Base & Bolts Information



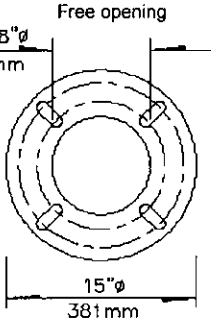
Comes with 4 steel anchor bolts, 1" X 33" + 3" J Type Bolts, 8 nuts and 8 washers. Important: Do not obstruct space between anchor plate and concrete base.

Anchor Plate

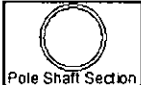
- Bolt Circle: 12 1/2" (318mm)

- Material: Cast Aluminum

- NOTE: Bolt Circle Allowed: 11 1/2" to 13" 292mm to 330mm



Free opening



Pole Shaft Section

Qty	1	Pole	SAM8V-15-BABD18(2)-CAP1-DRI-BKTX
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Description of Components:

Pole Shaft: Shall be made from a 5 9/16" (141mm) round extruded 6061-T6 aluminum tubing, having a 0.250" (6.4mm) wall thickness, welded to the pole base.

Joint Cover: Two-piece round joint cover made from cast 356 aluminum, mechanically fastened with stainless steel screws.

Pole Base: Shall be made from a 8 5/8" (219mm) round extruded 6061-T6 aluminum tubing base having a 0.148" (3.8mm) wall thickness, welded to both the bottom and top of the anchor plate.

Maintenance Opening: The pole shall have a 4 1/2" x 10" (114mm x 254mm) maintenance opening centered 25 1/4" (641mm) from the bottom of the anchor plate, complete with a weatherproof embossed aluminum cover and a copper ground lug.

Base Cover: Two piece round base cover made from cast 356 aluminum, mechanically fastened with stainless steel screws.

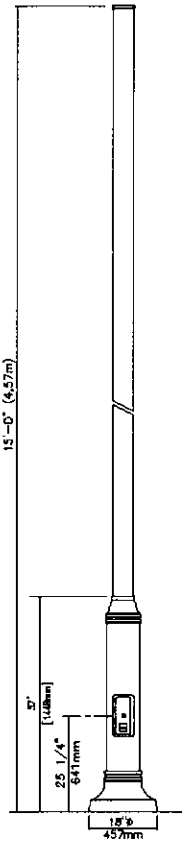
Pole Options: (BA) two-way (180°), upper and lower arms (2), banner arms made of steel tubing, 1 1/16" (27mm) outside diameter, breakaway-type lower arm, mechanically assembled to the pole, complete with a standard cast aluminum decorative ball.

(CAP1) Decorative Flat Pole Cap, Overlap type. (DR) Duplex receptacle, WR Weather Resistant, 120 volts, **complete with an in-use weatherproof aluminum painted cover.** Possibility of padlock (Padlock not included). **15 amp., NEMA 5-15R.**

Note: A tenon will be provided when the luminaire or bracket does not fit directly on pole shaft. Tenon not shown on the drawing.

IMPORTANT: Lumec strongly recommends the installation of the complete lighting assembly with all of its accessories upon the anchoring of the pole. This will ensure that the structural integrity of the product is maintained throughout its lifetime.

Pole Weight: 70 lbs (31.8 kg)



Miscellaneous

Description of Components:

Wiring: Gauge (#14) TEW/AWM 1015 or 1230 wires, 6" (152mm) minimum exceeding top of pole.

Hardware: All exposed screws shall be complete with Ceramic primer-seal basecoat to reduce seizing of the parts and offers a high resistance to corrosion. All seals and sealing devices are made and/or lined with EPDM and/or silicone and/or rubber.

Anchor Bolts: Anchor bolts made of ASTM F1554 grade 55 steel with a minimum yield strength of 55,000 psi. Nuts made of ASTM F1554-99 grade A steel or better. The thread adjustment is ANSI class 2B regardless of the diameter of the bolts. Washers made of ASTM grade F-844 steel or better. All galvanized parts are hot-dip galvanized with minimum requirement the ACNOR G-164 standard.

Finish: Color to be **black textured RAL9005TX (BKTX)** and in accordance with the AAMA 2603 standard. Application of polyester powder coat paint (4 mils/100 microns) with ± 1 mils/24 microns of tolerance. The Thermosetting resins provides a discoloration resistant finish in accordance with the ASTM D2244 standard, as well as luster retention in keeping with the ASTM D523 standard and humidity proof in accordance with the ASTM D2247 standard.

The surface treatment achieves a minimum of 2000 hours for salt spray resistant finish in accordance with testing performed and per ASTM B117 standard.

Pole Information: (R5@6), Bracket to be side mounted on a round pole from 5" min. to 6" (127mm min. to 152mm).

LED products manufacturing standard: The electronic components sensitive to electrostatic discharge (ESD) such as light emitting diodes (LEDs) are assembled in compliance with IEC61340-5-1 and ANSI/ESD S20.20 standards so as to eliminate ESD events that could decrease the useful life of the product.

Quality Control: The manufacturer must provide a written confirmation of its ISO 9001-2008 and ISO 14001-2004 International Quality Standards Certification.

Vibration Resistance: The DMS50 meets the **ANSI C136.31, 2010**, American National Standard for Roadway Luminaire Vibration specifications for Bridge/overpass applications. (Tested for 3G over 100 000 cycles)

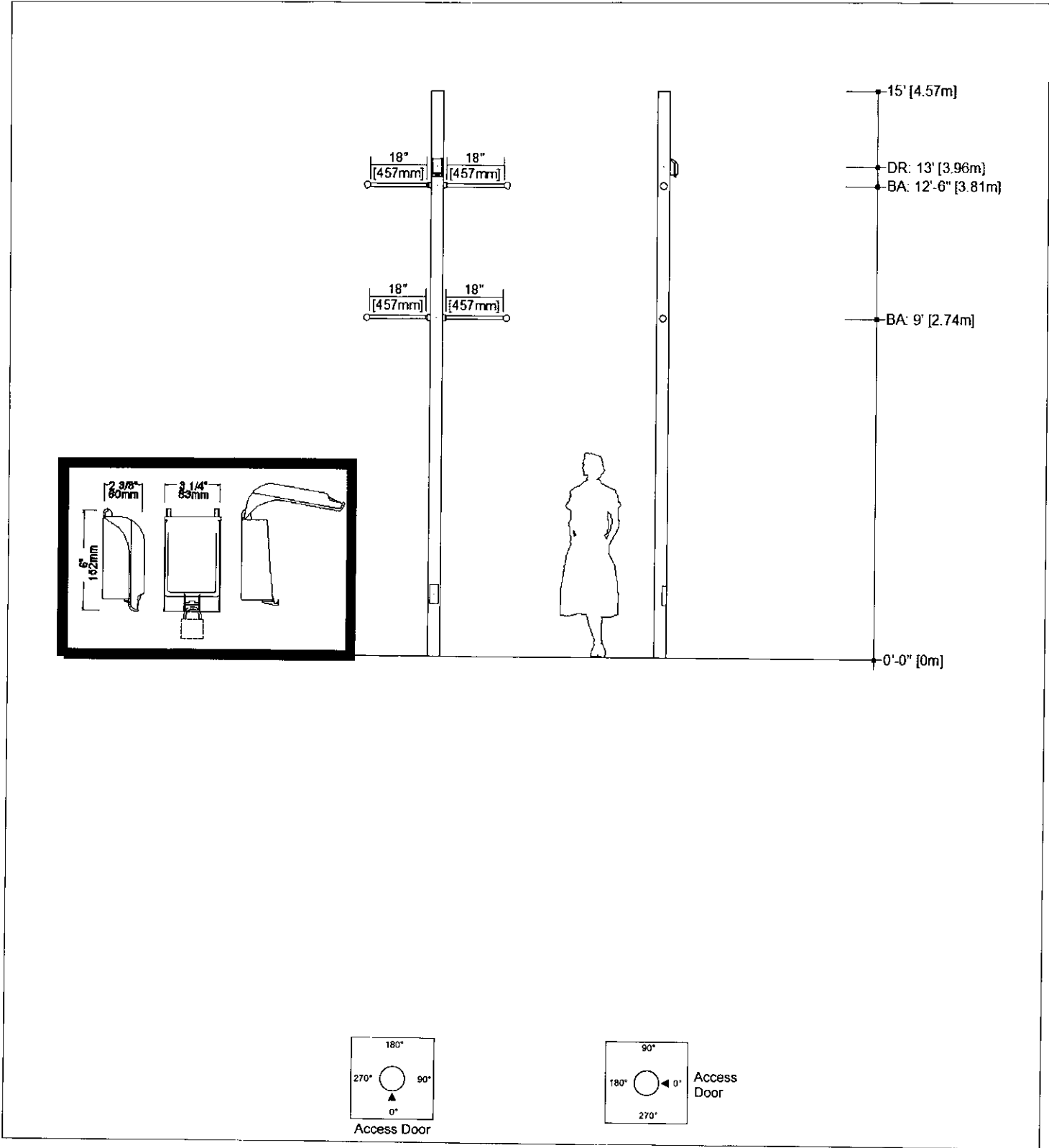
Aluminum poles are not recommended in high vibration environments such as bridge, overpass, top of building, airport, train station, etc.

Mechanical resistance: This design information is intended as a general guideline only. The customer is solely responsible for proper selection of pole, luminaire, accessories and foundation under the given site conditions and intended usage. The addition of any other item to the pole may dramatically impact the wind load on that pole. It is strongly recommended that a qualified professional be consulted to analyze the loads given the user's specific needs to ensure proper selection of the pole, luminaire, accessories, and foundation. Lumec assumes no responsibility for such complete analysis or product selection. Failure to insure proper site analysis, pole selection, loads and installation can result in pole failure, leading to serious injury or property damage.

Web site information details: / [cULus Certification](#) / [CSA Pole Certification](#)

Parametric Options Illustration

(schematic pole shown, for actual pole representation please refer to previous pages)



RD-24-05B 2024 Pedestrian Lighting Purchase
 Bid Results
 April 10, 2024 @ 10:00 A.M.

BIDDER	BID BOND	PRE-QUAL STATEMENT	ADDENDUM 1	BASE BID	RANKING
Rexel, USA, Inc.	X	X	X	\$ 179,961.68	1
Engineer's Estimate				\$ 140,100.00	

STAFF REPORT EXECUTIVE SUMMARY

APPLICANT: City of New Berlin

PROJECT: Resolution to Reallocate CIP Funds

LOCATION: 2024 Pedestrian Lighting Project

REQUEST: Recommendation to the Common Council approval of a Resolution to Reallocate Funds from the Sidewalk Improvements CIP Account to the Lighting & Improvements – National Avenue CIP Account.

D.C.D. RECOMMENDATION: Recommendation to the Common Council approval of a Resolution to Reallocate Funds from the Sidewalk Improvements CIP Account 04251100 63601 C2021 to the Lighting & Improvements – National Avenue CIP Account 04251100 63600 C2021.

1. The City of New Berlin desires to purchase five (5) pedestrian light poles for use as spares by the Department of Public Works as rotational poles as the remove, refinish, and replace existing poles.
2. The 2024 budget request was made with the anticipation purchasing only the light poles needed to construct the 2024 Pedestrian Lighting Project. DCD staff were directed to include the purchase of the additional five replacement poles in the publicly bid purchase contract.
3. The City of New Berlin received one (1) bid on April 10, 2024. Based on this bid, the cost to purchase these five additional poles is \$41,335.33. This request is to reallocate \$43,000 from the Sidewalk Improvements account to the Lighting & Improvements – National Avenue account to accomplish this purchase.
4. Enclosed is Resolution 2024-08 for the transfer of funds.

ATTACHMENT:
Resolution 2024-08

RESOLUTION 2024-08
A RESOLUTION AMENDING THE 2024 CAPITAL PROJECTS BUDGET

WHEREAS, the City of New Berlin desires to purchase five (5) pedestrian light poles for use as spares by the Department of Public Works as rotational poles as they remove, refinish, and replace existing poles, and;

WHEREAS, The City of New Berlin received one (1) bid to furnish these poles on April 10, 2024, and;

WHEREAS, DCD staff requests that \$43,000 be transferred from the 2021 Sidewalk Improvements Account to the 2021 Lighting & Improvements– National & Moorland Account to accomplish this goal, and;

NOW, THEREFORE, BE IT RESOLVED, by the Common Council of the City of New Berlin that the Capital Projects Fund Budget be amended as follows:

TRANSFER FROM

Sidewalk Improvements	04251100 63601 C2021	\$43,000
-----------------------	----------------------	----------

TRANSFER TO

Lighting & Improvements – National & Moorland	04251100 63600 C2021	\$43,000
---	----------------------	----------

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.

RESOLUTION ADOPTED by the New Berlin Common Council this 23rd day of April 2024.

Countersigned:

David Ament, Mayor

Rubina Medina, City Clerk



REQUESTED ACTION STATEMENT

TO: Common Council
Mayor Dave Ament

FROM: Katie Roth, Recreation Manager
Polly Oldenburg, 4th of July Coordinator

RE: Discussion and recommendation to the Common Council for approval of a contract with Chrome Fireworks in the amount of \$40,000 for 4th of July Fireworks as approved by the 4th of July Commission on November 29, 2023.

DATE: 4-8-24

REQUESTED ACTION: Recommend to the Common Council approval of a contract with Chrome Fireworks in the amount of \$40,000 for 4th of July Fireworks.

FISCAL IMPACT: The City has received a donation from Festival Foods in the amount of \$20,000 that will offset the majority of the fireworks expense and received an additional \$5,000 from Educators Credit Union. An additional \$15,000 will be fundraised by the 4th of July commission in an effort to offset the expense of this year's fireworks.

RATIONALE/BACKGROUND: Per the 4th of July Contract Policy, any contract with a face value or aggregate value of \$10,000 or more must be approved by the Common Council. Therefore, the Commission respectfully recommends the Common Council's approval of this agreement with Chrome Fireworks in the amount of \$40,000. This agreement has been reviewed and approved as to its form by the City Attorney, with the note that the City will need to use a permit for the fireworks.



REQUESTED ACTION STATEMENT

TO: Common Council
Mayor Dave Ament

FROM: Katie Roth, Recreation Manager
Polly Oldenburg, 4th of July Coordinator

RE: Discussion and recommendation to the Common Council for approval of a contract with Area Tent for rentals and service from July 3rd through July 5th totaling \$19,763.66, as approved by the 4th of July Commission on January 24th, 2024.

DATE: 4-8-24

REQUESTED ACTION: Recommend to the Common Council approval of a contract with Area Tent in the amount of \$19,763.66 for 4th of July Festival.

FISCAL IMPACT: This expense falls within the budgeted expense for this line item.

RATIONALE/BACKGROUND: Per the 4th of July Contract Policy, any contract with a face value or aggregate value of \$10,000 or more must be approved by the Common Council. Therefore, the Commission respectfully recommends the Common Council's approval of this agreement with Area Tent in the amount of \$19,763.66. Area Rental has provided this rental and service in previous years. This agreement has been reviewed and approved as to its form by the City Attorney

STAFF REPORT

EXECUTIVE SUMMARY

CUSTOMER/PROJECT: City of New Berlin
Complete Roof System Replacement Bid Rejection

LOCATION: Greenridge Pump House – 12400 W. Crawford Dr
Grange Pump House – 12625 W. Grange Ave
Valley View Pump House - 5155 S. Sunny Slope Rd
Well #10 Pump House – 15454 W. Rockridge Rd

REQUEST: To reject the bid from C & K Services as being non-responsive to the bid requirements.

UTILITY MANAGER RECOMMENDATION: Recommend the Common Council to reject the bid from C&K Services, as not meeting the bid requirements listed in the bid forms.

DETAILS IN ATTACHED STAFF REPORT

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

Complete Roof System Replacement Project

DATE STAFF REPORT CREATED: April 16, 2024

CUSTOMER/PROJECT NAME: Complete Roof System Replacement Project

ISSUE/DESCRIPTION OF PROJECT: This project consists of replacing the roofs at the following pump houses: Greenridge, Grange, Valley View #8 and Well # 10.

DATE OF COMPLETENESS DETERMINATION: October 31st, 2024

REQUESTED ACTION: Recommend to the Common Council to reject the bid from C&K Services, as not meeting the bid requirements listed in the bid forms.

FISCAL IMPACT:

SOURCE OF FUNDS:

RATIONAL: Contractor emailed bid into the Utility after the deadline for the Public bid opening, therefore not meeting the bid document requirements.

USE / SITE / ARCHITECTURAL / REVIEW

PROPOSED ARCHITECTURE:

UNIQUE SITE CHARACTERISTICS:

ENVIRONMENTAL IMPACT:

STORMWATER MANAGEMENT/ DRAINAGE:

SANITARY SEWER PROVISION:

WATER USAGE CALCULATION:

TRAFFIC IMPACT:

PREVIOUS ACTION:

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

**Customer Name/Project Name
Address
(Continued)**

CONSISTENCY WITH PREVIOUS ACTION:

FINDINGS:

UTILITY MANAGER RECOMMENDATION: See Executive Summary

ATTACHMENTS:

UTILITY STAFF REPORT EXECUTIVE SUMMARY

CUSTOMER/PROJECT:

Roof Replacement Project

LOCATION:

Greenridge Pump House – 12400 W. Crawford Dr.

Grange Ave. Pump House – 12625 W. Grange Ave.

Valley View Pump House – 5155 S. Sunny Slope Rd.

Well #10 Pump House – 15454 Rockridge Dr.

REQUEST:

Amend the 2024 Water CIP Budget.

UTILITY MANAGER RECOMMENDATION:

Recommend to the Common Council to amend the 2024 Water CIP Budget in the amount of \$28,715.00. The additional funds will be used to offset an increase in contractor labor, materials, and the removal of roof hatches and skylights at two sites as requested by staff, with a total project cost not to exceed \$106,940.00.

DETAILS IN ATTACHED STAFF REPORT

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

ROOF REPLACEMENT PROJECT

DATE STAFF REPORT CREATED: April 15, 2024

CUSTOMER/PROJECT NAME:
Roof Replacement Project

ISSUE/DESCRIPTION OF PROJECT:

Recommend to the Common Council to amend the 2024 Water CIP Budget in the amount of \$28,715.00, to complete the roof replacement at four pump houses.

REQUESTED ACTION:

Amend the 2024 Water CIP Budget

FISCAL IMPACT:

\$28,715.00

SOURCE OF FUNDS:

Water Reserves

RATIONALE:

The need for additional funds for extra work to remove unnecessary roof hatches, skylights and increased material and labor costs.

ATTACHMENTS:



DATE: April 19, 2024

TO: Rubina Medina
City Clerk

FR: Mayor Dave Ament

RE: Mayoral Appointments for the April 19, 2024 Common Council Mtg

Board of Public Works

Ronald Seidl
17631 W Westward Drive
New Berlin, WI 53146
414-690-6979
seidl05@gmail.com
(Re-Appointment)

Expiration Date

4/30/2026

For Office Purposes Only						
T	Em	We	Provo	Lt	Ethc	H
T	I	b	x	r	s	B

Ethics Board

Eugene Kaczowski
13750 W National Ave #2321
New Berlin, WI 53151
414-801-0511
kaz17@sbcglobal.com
(Re-Appointment)

Expiration Date

4/30/2026

For Office Purposes Only						
T	Em	We	Provo	Lt	Ethc	H
T	I	b	x	r	s	B

Plan Commission

Brian Felda
3300 S Wehr Drive
New Berlin, WI 53146
414-840-0685
bjfelda@yahoo.com
(Re-Appointment)

Expiration Date

4/30/2026

For Office Purposes Only						
T	Em	We	Provo	Lt	Ethc	H
T	I	b	x	r	s	B

Plan Commission

Theodore Anderson
12410 W Cleveland Ave
New Berlin, WI 53151
262-312-4921

tvanderson@yahoo.com

(Re-Appointment)

Expiration Date

4/30/2026

For Office Purposes Only						
T T	Em l	We b	Provo x	Lt r	Ethc s	H B

Committee of the Whole MEETING MINUTES



April 9, 2024 - 6:00 PM
Council Chambers
3805 S. Casper Drive

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

MINUTES

1. CALL MEETING TO ORDER

Mayor Ament called the meeting to order at 6:00 PM.

2. ROLL CALL; DECLARATION OF QUORUM; PUBLIC NOTICE

City Clerk Rubina R. Medina took the roll call as follows:

Present: Alderperson Hopkins, Alderperson Maxey, Alderperson Harenda, Alderperson Stribl, Alderperson Kroupa, Alderperson Horbinski, Alderperson La Fever

Staff Present: City Attorney Mark Blum, City Clerk Rubina R. Medina

City Clerk Rubina R. Medina stated there was a quorum, and the meeting was properly noticed.

3. APPROVAL OF MINUTES

A. March 26, 2024, Committee of the Whole Meeting Minutes

MOTION: Motion to approve

VOTE: Motion by: Kroupa
Second by: Horbinski
Motion 7-0

4. UTILITY & FINANCE

A. Discussion and possible recommendation to Common Council approval of April 10, 2024, Water Utility Claims in the amount of \$614,918.49, Sewer Utility Claims in the amount of \$41,019.03, and General City Claims in the amount of \$986,741.04. We Energies EFT of \$84,735.94

MOTION: Motion to approve

VOTE: Motion by: Stribl
Second by: Kroupa
Motion 7-0

5. MISCELLANEOUS

A. New Berlin Food Pantry Presentation

The Director of the New Berlin Food Pantry, Barb Jacob, provided a brief overview to the Common Council and those in attendance. The New Berlin Food Pantry is a 501 (C)(3) nonprofit organization that is entirely run by volunteers. There are no salaries paid, including the director's position. They have over 50 regular volunteers each week. They receive donations from Costco, Target, Sendik's, Kwik Trip, and Pick 'n Save in New Berlin. They are open every Wednesday for donations and to serve those in need.

Currently, they serve 40% adults, 30% children, and 30% seniors. Recipients need to be eligible to receive donations. They must show a picture identification, a utility bill to verify their residence, and proof of monthly

income. They certify recipients annually to ensure they still qualify for services, and they require a photo identification and utility bill every month to ensure they still reside in New Berlin. They have seen a 21% increase in the first few months of 2024. If someone needs help with food but resides outside of New Berlin, they assist once and then refer them to 2-1-1, who will refer them to the food pantry in their community.

Community support is vital to their success; they rely 100% on donations. They can provide Easter baskets at Easter time thanks to the New Berlin Lions Club, backpacks and school supplies to children in need thanks to Holy Apostles, and they can provide turkeys at Thanksgiving and ham at Christmas thanks to the New Berlin Police & Fire Departments. The Boy Scouts, churches, schools, and businesses organize food drives which help tremendously.

Barb reminded the Council about the annual food drive through the postal service on May 11th. To donate, place a bag of non-perishable foods in or by your mailbox, and your postal carrier will collect it and donate it to the food pantry.

The New Berlin Food Pantry has also partnered with the social workers at New Berlin elementary schools to provide classrooms with granola bars. Teachers previously funded these items for children who would come to school without a snack or breakfast. Now, this is funded solely by the New Berlin Food Pantry, made possible by generous donations.

Some individuals and families may only need help for a short period of time, and others, such as seniors on a fixed income, may need help longer. Regardless of how long help is needed, the Food Pantry is able to serve them thanks to the donations received and volunteers who lend a helping hand.

Barb was commended by Mayor Ament and the Common Council for her contributions to the community.

- B.** Discussion and possible recommendation to the Common Council approval of Resolution No. 2024-05, a Resolution to approve the Suburban Critical Incident Team Agreement

MOTION: Motion to approve

VOTE: Motion by: Maxey
Second by: Hopkins
Motion 7-0

- C.** Discussion and possible recommendation to the Common Council approval of Resolution No. 2024-06, a Resolution to approve the Suburban Critical Incident Team Mutual Aid Agreement with Brookfield Fire Department

MOTION: Motion to approve

VOTE: Motion by: Horbinski
Second by: Stribl
Motion 7-0

- D.** Discussion and possible recommendation to the Common Council approval of Resolution No. 2024-07, a Resolution to approve the Suburban Critical Incident Mutual Aid Agreement with Lake Country Fire and Rescue

MOTION: Motion to approve

VOTE: Motion by: Stribl
Second by: Maxey
Motion 7-0

6. ADJOURN

MOTION: Motion to adjourn at 6:08 PM

VOTE: Motion by: Kroupa
Second by: Maxey
Motion 7-0

***Respectfully Submitted,
Rubina R. Medina, New Berlin City Clerk***

New Berlin Fire Department



Mission

Our mission is to provide exceptional services while committed to building a safer community.

Vision

The New Berlin Fire will continuously strive to be a caring, understanding, people first organization committed to excellence in all we do.

New Berlin Fire Department Organizational Chart



Response Overview

- New Berlin Fire/EMS responses - 2021/4960 2022/4951 2023/4594
 - Private vs. Government Insurance (Ground Ambulance Study)

- Health Care Facilities, Assisted Living Facilities & Community Based Residential Facilities
 - Inter-Facility – discontinued due to lack of available units, responsibility to city residents
 - Lift Assist/Facility Responsibilities – fire department and EM collaboration, Assembly Bill 942, emergency power backups to run medical equipment
 - Emergency Calls/Transports – fire department readiness to building a safer community (outcomes dependent on timeliness and resources)

2023 NBFD Goals

- ❑ Work with and assist local high schools with the fire service dual enrollment program
- ❑ Expand education and training opportunities for all department members
- ❑ Create an internal Peer Support Team
- ❑ Expand our ability to conduct fire investigations
- ❑ Update job descriptions
- ❑ Develop a fair and consistent promotional process
- ❑ Look for external funding sources for equipment
- ❑ Increase our community involvement outside of emergency responses
- ❑ Establish department policies and procedures
- ❑ Conduct a department Strength, Weakness, Opportunity, Threat (SWOT) analysis
- ❑ Utilize data to assist in decision making processes
- ❑ Construct a department Standard of Cover document and Strategic Plan

2024 NBFD Goals

- ❑ Work with and assist local high schools with the fire service dual enrollment program
- ❑ Expand education and training opportunities for all department members
- ❑ Expand our ability to conduct fire investigations
- ❑ Look for external funding sources for equipment
- ❑ Increase our community involvement outside of emergency responses
- ❑ Establish department policies and procedures
- ❑ Conduct a department Strength, Weakness, Opportunity, Threat (SWOT) analysis
- ❑ Utilize data to assist in decision making processes
- ❑ Construct a department Standard of Cover document and Strategic Plan
- ❑ Analyze our Insurance Services Office Public Protection Classification for possible reductions to ratings
- ❑ Upgrade three Lieutenant positions to Captains
- ❑ Update department succession plan

Thank you





REQUESTED ACTION STATEMENT

April 19, 2024

TO: Mayor Ament
Common Council

FROM: Rubina R. Medina, City Clerk

ISSUE:

Under the current New Berlin Municipal Code Chapter 125-4, a Class “B” beer, a “Class B” liquor, and a “Class C” wine-only retail licensed premises must generally be closed between the hours of 2:00 a.m. and 6:00 a.m., Monday through Friday, or between 2:30 a.m. and 6:00 a.m., Saturday or Sunday.

On December 7, 2023, Governor Evers signed Wisconsin Act 73, Part 64 (c), “*Notwithstanding s. 125.68 (4) (c) 1., but subject to subds. 2. and 3., during the convention period, the closing hours for premises operating under a “Class B” or “Class C” license issued by a southeast Wisconsin municipality shall be between 4 a.m. and 6 a.m.*”. This Act changes the closing hours during which retailers in a “southeast Wisconsin municipality” must close during a 2024 national political convention in Milwaukee. This is defined as any “city, village, or town, any part of which is located within Kenosha, Racine, Walworth, Rock, Milwaukee, Waukesha, Jefferson, Dane, Ozaukee, Washington, Dodge, Columbia, Sheboygan, or Fond du Lac County.” The Republican National Convention (RNC) is an event in which delegates of the United States Republican Party select the party’s nomination for President and Vice President. This year’s event is hosted by Milwaukee and will take place July 15 – 18, 2024.

The approval of this Act, specifically, from the first day of the RNC until the day after the convention’s last day, the closing hours in a southeast Wisconsin municipality must be between 4:00 a.m. and 6:00 a.m., for any of the following:

- (1) a Class “B” beer, “Class B” liquor, or “Class B” wine-only retail licensed premises; or
- (2) any producer’s full-service retail outlet.

In other words, these businesses can now stay open until 4 am and reopen at 6 am. Act 73, Part 64 (c)(3) also provides that a southeast Wisconsin municipality may “opt-out” of the extended hours through the adoption of an ordinance, “*Notwithstanding s. 125.32 (3) (d), a southeast Wisconsin municipality may, by ordinance adopted after the effective date of this subdivision, opt out of subd. 1. and retain during the convention period the closing hours specified in s. 125.32 (3) (a)*”.

REQUESTED:

Discussion and possible action on whether to allow Class B and Class C establishments in the City of New Berlin to remain open until 4 a.m. during the Republican National Convention (RNC) from July 15th to July 18th, 2024, established by the 2023 Wisconsin Act 73.

Alternatively, the City Council may choose to “opt-out” of the extended hours and maintain existing closing hours by adopting Ordinance No. 2691, as required in Act 73, Part 64 (c)(3).

ATTACHMENTS / SUPPORTING DOCUMENTS:

1. MEMO from New Berlin Police Chief Hingiss
2. Draft of Ordinance No. 2691



NEW BERLIN POLICE DEPARTMENT

Jeffrey Hingiss
Chief of Police

Phone: 262.782.6640
FAX: 262.782.9033

April 19, 2024

Memo to Council
Re: Draft Ordinance 2691

Mayor Ament and Council,

The police department has reviewed Draft Ordinance 2691 and supports opting out of extending bar closing hours in the City of New Berlin during the RNC. Our support for the ordinance is based on experience with alcohol related calls for service during the weekends, certain holidays, or other events. The potential for alcohol related incidents and arrests increase when individuals consume alcohol for extended amounts of time.

Mutual aid requests related to the RNC are still being discussed, but it is likely that some of our staff will be utilized directly for RNC events/traffic and a number of other personnel will be on stand-by. As a result, our staffing will already be dedicated to regular calls for service, pre-determined mutual aid, and any other urgent mutual aid requests. We feel that keeping the bars open later into the night will only add to the anticipated increase in law enforcement related service requests.

Thank you for considering the police department's input.

Respectfully,

Chief Hingiss
New Berlin Police Department
16300 W. National Ave.
New Berlin, WI 53151

ORDINANCE NO. 2691

ORDINANCE OPTING OUT OF THE REDUCED CLOSING HOURS FOR LICENSED PREMISES DURING THE NATIONAL CONVENTION PERIOD 2024

WHEREAS, 2023 Wisconsin Act 73 established reduced closing hours for licensed retail alcohol premises in southeast Wisconsin municipalities during the national political convention taking place in Milwaukee during the summer of 2024; and

WHEREAS, southeast Wisconsin municipalities may, by ordinance adopted after the effective date of 2023 Wisconsin Act 73, opt out of the reduced closing hours during the convention period and retain the closing hours set forth in Chapter 125 of the Wisconsin Statutes; and

WHEREAS, the Common Council has determined that it is in the city's best interest to opt out of the reduced closing hours for licensed premises.

NOW THEREFORE BE IT RESOLVED, the Common Council of the City of New Berlin do hereby ordain as follows:

SECTION I

The City of New Berlin opts out of the closing hours set forth in Section 64 (c)(4) of 2023 Wisconsin Act 73 for Class “B”, “Class B”, and Class “C” alcohol licenses during the period of the national political convention in Milwaukee in 2024 and shall retain the closing hours as established by Chapter 125 of the Wisconsin Statutes.

SECTION II

This ordinance shall take effect and be in full force from and after its adoption.

SECTION III

The sections of this Ordinance shall be considered severable. If any section shall be considered by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the other portions of the Ordinance.

SECTION IV

This Ordinance shall take effect upon passage and publication as approved by law, and the City Clerk shall so amend the Code of Ordinances of the City of New Berlin and shall indicate the date and number of this amending ordinance therein.

PASSED AND ADOPTED by the Common Council this 23rd day of April 2024.

APPROVED:

COUNTERSIGNED:

David Ament, Mayor

Rubina R. Medina, City Clerk



REQUESTED ACTION STATEMENT

TO: Common Council
Mayor Dave Ament

FROM: Gregory Kessler, AICP – Director of Community Development

RE: Requested Action Statement to approve a contract with Trees On The Move for landscape material and installation at the New Berlin Activity and Recreation Center.

DATE: April 23, 2024

REQUESTED ACTION: To approve a contract in the amount of \$87,151.16 with Trees On The Move for landscape material and installation at the New Berlin Activity and Recreation Center.

FISCAL IMPACT: No additional borrowing required, and no CIP funds used.

SOURCE OF FUNDS: Tree Mitigation Fund, account # 26420000-59020

RATIONALE/BACKGROUND: Construction of phase II of the New Berlin Activity and Recreation Center was completed in February of 2024 and the City is now looking to complete the site landscape for the project. The scope of project consists of supplying plant materials and installation and does not include any landscape structures.

The City Attorney has made an initial review of the contract terms and conditions.

**CONTRACT BETWEEN
THE
CITY OF NEW BERLIN
AND
TREES ON THE MOVE
FOR
LANDSCAPE PLANTINGS AND INSTALLATION**

This agreement, entered into this 12 day of APRIL 2024, by and between the City of New Berlin (CITY) and Trees On The Move (CONSULTANT);

WITNESS THAT:

WHEREAS, the CITY proposes the PROJECT described as follows:

*The buildout and renovation of the New Berlin Activity and Recreation Center
Phase 2 located at 15321 W. National Avenue, New Berlin, WI.*

WHEREAS, the CITY wishes to engage the services of a professional landscape consultant to provide project management and installation services as hereinafter set forth; and

WHEREAS, the CONSULTANT represents itself as being capable, experienced and qualified to undertake and perform those certain services, hereinafter set forth, as are required in accomplishing fulfillment of the obligations under the terms and conditions of the contract as an independent entrepreneur and not as an employee of the CITY, and agrees to furnish such services as hereinafter described.

NOW, THEREFORE, the CITY AND CONSULTANT, in consideration of the premises and the mutual promises and understandings hereinafter contained, agree as follows:

SECTION I - RETENTION OF SERVICES

CITY hereby agrees to engage the CONSULTANT and the CONSULTANT hereby agrees to personally perform, as an independent consultant and not as an employee of the CITY, the services hereinafter set forth, all in accordance with the terms and conditions of this CONTRACT. The CONSULTANT agrees time is of the essence and will meet all deadlines and any schedules as herein set forth.

The DIRECTOR OF COMMUNITY DEVELOPMENT shall administer this CONTRACT specifically as related to work performed by the consultant. The DIRECTOR OF COMMUNITY DEVELOPMENT will transmit all instructions, comments, and approvals to the CONSULTANT, and be the recipient of all submittals by the CONSULTANT. The word "CONSULTANT" means a person, or entity, including all employees, sub-consultants and other assigns, whether public or private, that enters into contract with the CITY.

SECTION II - REQUIREMENTS

The CONSULTANT is required to:

- A. perform, do and carry out in a satisfactory, timely, and proper manner, the services delineated in this CONTRACT.
- B. comply with requirements listed with respect to reporting on progress of the services, additional approvals required, and other matters relating to the performance of the services.
- C. comply with time schedules and payment terms.

SECTION III - SCOPE OF SERVICES

A. GENERAL

- (1) The work under this CONTRACT shall consist of performing those phases or portions of the engineering for the Project necessary or incidental to accomplish the Project responsibilities, which are hereinafter specified.
- (2) The CONSULTANT shall furnish all services and labor necessary to conduct and complete the work, and shall furnish all materials, equipment, supplies, and incidentals other than those which are hereinafter designated to be furnished by others.
- (3) The work under this CONTRACT shall at all times be subject to the approval of the DIRECTOR OF COMMUNITY DEVELOPMENT.
- (4) The services under this CONTRACT shall be performed in accordance with generally accepted standards of the profession and the City of New Berlin Infrastructure Standards.
- (5) The CONSULTANT shall from time to time during the progress of the work confer with the DIRECTOR OF COMMUNITY DEVELOPMENT, and shall prepare and present such information as may be pertinent and necessary or as may be requested by the DIRECTOR OF COMMUNITY DEVELOPMENT to enable him to pass judgment on the features of the work. The CONSULTANT shall make such changes, amendments, or revisions in the detail of the work as may be required by the DIRECTOR OF COMMUNITY DEVELOPMENT. The DIRECTOR OF COMMUNITY DEVELOPMENT reserves the right to select the alternative(s) to be pursued and may request additional alternatives be studied, subject to Section XIII - Change, if applicable.
- (6) The CONSULTANT shall do, perform, and carry out all of the tasks and obligations outlined in this CONSULTANT'S Proposal, dated April 5, 2024, March 12, 2024 and September 9, 2022. hereby referenced and incorporated into this CONTRACT as Exhibit A. In the event of a conflict between the provisions of this CONTRACT

and Exhibit A, the provisions of the CONTRACT shall govern. The CONSULTANT shall complete all the work under this CONTRACT without substantial change to the Project Team or the Project Approach as specified in the CONSULTANT's Proposal.

B. WORK TASKS

It is understood by the parties to the CONTRACT that the CONSULTANT's scope of services covered under this CONTRACT shall include those engineering and related services contained in the attached Exhibit A, prepared by CONSULTANT.

SECTION IV - SPECIFIC CONDITIONS OF PAYMENT

- A. The CONSULTANT shall be compensated for the services described above on an hourly rate basis for a total fee of \$87,151.16. It is expressly understood by the parties hereto that under no circumstances shall the total CONTRACT Price, including contingencies, exceed the Contract amount of \$87,151.16 except as provided herein.
- B. **PROGRESS PAYMENTS.** The CONSULTANT shall submit invoices to the DIRECTOR OF COMMUNITY DEVELOPMENT for partial payment of fees, from time to time during the progress of the work, but not more frequently than on a monthly basis. Such invoices shall cover payment to the CONSULTANT for work performed by the CONSULTANT on each individual work activity. Invoices shall show hours worked on each activity and the amount of work completed. A brief progress report shall accompany each invoice. The DIRECTOR OF COMMUNITY DEVELOPMENT will examine each such invoice, and if found to be acceptable according to the CONTRACT, payment shall be made. Final payment of the balance due the CONSULTANT for the completed project shall be made upon completion and acceptance of the work performed. The CITY shall pay the CONSULTANT's approved invoices within 30 days after invoice receipt. Where CITY reasonably disputes some portion of the charges contained in the CONSULTANT's bill for services, the CITY shall make prompt payment of that portion of the bill, which is undisputed and shall notify the CONSULTANT in writing of the reason for its dispute.

SECTION V - TIME OF PERFORMANCE

- A. The services to be performed under the terms and conditions of the CONTRACT shall be in force and shall commence upon execution of the CONTRACT by the CONSULTANT and upon written notice from the DIRECTOR OF COMMUNITY DEVELOPMENT to proceed. The work under this contract shall be undertaken and completed in such sequence as to assure its expeditious completion in light of the purposes of this CONTRACT.
- B. It is the intent of the CITY and the CONSULTANT that all of the services required to be performed hereunder by the CONSULTANT **shall be finished by August 2, 2024.**
- C. In addition to all other remedies inuring to the CITY should the CONTRACT not be completed by the time frame specified in accordance with all of its terms, requirements and conditions therein set forth, the CONSULTANT shall continue to be obligated thereafter to

fulfill CONSULTANT's responsibility to complete the scope of services and to execute any necessary amendments to this CONTRACT. Delays in completing the work within the time provided for completion as specified elsewhere in the CONTRACT, for reasons attributable to the CITY, may constitute justification for additional compensation to the extent of documentable increases in costs of labor, services or materials as a result thereof. Failure of the CONSULTANT to submit a formal written request for an extension of time prior to the expiration of the CONTRACT shall constitute a basis for denying any cost adjustments for reasons of such delay.

D. DELAYS

CONSULTANT shall not be liable for delays or failure to perform its Services caused directly or indirectly by circumstances beyond CONSULTANT's control, including but not limited to, acts of God, fire, flood, war, sabotage, accident, labor dispute, shortage, government action including regulatory requirements, changed conditions, delays resulting from actions or inactions of CITY or third parties not under control of CONSULTANT, site inaccessibility or inability of others to obtain materials, labor, equipment, or transportation. Should any of the above occur, then the date for completion of the services shall be adjusted for such delay, provided the CONSULTANT reports the delay to the CITY within a reasonable time of its discovery. The CITY shall determine whether or not the cause of delaying or not completing a duty or obligation is within the control of the CONSULTANT.

SECTION VI - CONDITIONS OF PERFORMANCE AND COMPENSATION

A. PERFORMANCE.

The CONSULTANT agrees that the performance of CONSULTANT's work, services and the results therefrom, pursuant to the terms, conditions and agreements of this CONTRACT, shall conform to such recognized professional standards as are prevalent in this field of endeavor and like services.

B. PLACE OF PERFORMANCE.

The CONSULTANT shall conduct CONSULTANT's services as required under the terms and conditions of this CONTRACT at such place or places as is necessary which will enable the CONSULTANT to fulfill CONSULTANT's obligation under this CONTRACT.

C. COMPENSATION.

CITY agrees to pay, subject to the contingencies herein, and the CONSULTANT agrees to accept for the satisfactory performance of the services under this CONTRACT the maximum fees as indicated in Section IV, inclusive of all expenses. All expenses for travel, meals and lodging are not eligible for compensation under any part of this CONTRACT.

D. ADDITIONAL FRINGE OR EMPLOYEE BENEFITS.

The CONSULTANT shall not receive nor be eligible for any fringe benefits or any other benefits to which CITY salaried employees are entitled to or are receiving.

E. TAXES, SOCIAL SECURITY, INSURANCE & GOVERNMENT REPORTING.

Personal income tax payments, social security contributions, insurance and all other governmental reporting and contributions required as a consequence of the CONSULTANT receiving payment under this CONTRACT shall be the sole responsibility of the CONSULTANT. The CONSULTANT shall be solely responsible to meet CONSULTANT insurance needs as specified below during the terms of this CONTRACT or any extension thereof.

General Liability:

General 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
Watercraft Liability	\$1,000,000

Automobile Liability:

CSL	\$1,000,000
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Excess Liability:

Umbrella Form - Each Occurrence	\$5,000,000
Umbrella Form - Aggregate	\$5,000,000
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

Professional liability:

Aggregate/Occurrence	\$1,000,000
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A Certificate of Insurance shall be provided to the DIRECTOR OF COMMUNITY DEVELOPMENT as evidence thereof naming the CITY as an additional insured and showing the CONSULTANT is covered by the above required types and amount of insurance, providing for a thirty (30) day 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. Additionally insured shall be provided on a primary and noncontributory basis. Coverage shall be provided by the way of a copy of a policy endorsement.

F. SUBCONTRACTING.

The CONSULTANT shall not subcontract for the performance of any of the services herein set forth without prior written approval obtained from the DIRECTOR OF COMMUNITY DEVELOPMENT.

SECTION VII - METHOD OF PAYMENT

The CITY agrees that subsequent to the full and complete performance of this CONTRACT, and satisfactory performance of the services as specified in Section II and Section III, to pay the amount or amounts as herein set forth. The conditions of payment are as follows: Compensation for services required under this CONTRACT shall be contingent upon each activity being reviewed for approval, and being approved for payment by the DIRECTOR OF COMMUNITY DEVELOPMENT, as stipulated in Section IV.

SECTION VIII - INDEMNIFICATION

The CONSULTANT shall indemnify and hold harmless the CITY and its agents and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the construction work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the CONSULTANT, a Sub-consultant and anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph. To the extent the CITY is separately entitled to coverage, defense, and/or indemnification from a Contractor and/or its insurer for the same losses or expenses, this clause shall not apply, it being understood that the Contractor's obligation is primary.

SECTION IX - REGULATIONS

The CONSULTANT agrees to comply with all of the requirements of all federal, state and local laws as well as codes, specifications and requirements related to the performance of the work under this CONTRACT.

SECTION X - FINAL SETTLEMENT

The CONSULTANT shall notify the City in writing when the CONSULTANT has determined that the Services under this CONTRACT have been completed. Upon the CITY's subsequent determination that the Services have been satisfactorily completed, the CITY will provide written notification to the CONSULTANT acknowledging formal acceptance of the completed Services. Unless the CONTRACT has been terminated prior to the completion of the Services, the CONTRACT shall not be considered terminated upon completion and acceptance of the Services, or upon final payment therefore, but shall be considered to be in full force and effect for the purposes of requiring the CONSULTANT to make revisions or corrections in the Services as are necessary to correct errors or omissions made by the CONSULTANT in the Services, or for the purposes of having the CONSULTANT make revisions in the Services at the request of the CITY as "Extra Services". The CONTRACT shall be considered terminated when the construction of the project has progressed sufficiently to make it manifest that the construction can be completed without further revisions in the services, or the CONSULTANT is released prior to such time by written notice from

the CITY, or if more than three (3) years have elapsed following formal written notification of final acceptance of the services by the CITY.

SECTION XI - TERMINATION OF CONTRACT FOR CAUSE

If, through any cause, the CONSULTANT shall fail to fulfill in timely and proper manner his obligations under this CONTRACT, or if the CONSULTANT shall violate any of the covenants, agreements or stipulations of the CONTRACT, the CITY shall thereupon have the right to terminate this CONTRACT by giving written notice to the CONSULTANT of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, upon payment of any amounts properly due the CONSULTANT, all finished or unfinished public improvements become the property of the CITY. Notwithstanding the above, the CONSULTANT shall not be relieved of liability to the CITY for damages sustained by the CITY, and CITY may withhold any payments to the CONSULTANT for the purpose of set off until such time as the exact amount of damages due to the CITY from the CONSULTANT is determined. If through no fault of the CONSULTANT, the CITY shall fail to fulfill in a timely and proper manner, its obligations under this CONTRACT, or if the CITY shall violate any of the covenants, agreements or stipulations of the CONTRACT, the CONSULTANT shall thereupon have the right to terminate this CONTRACT by giving written notice to the CITY of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination.

SECTION XII - TERMINATION FOR CONVENIENCE OF THE CITY

The CITY may terminate this CONTRACT at any time for any reason by giving at least ten (10) days notice in writing from the CITY to the CONSULTANT. If the Contract is terminated by the CITY as provided herein, the CONSULTANT will be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed bear to the total services of the CONSULTANT covered by this CONTRACT, less payments for such services as were previously made plus all reimbursed expenses payable under this CONTRACT. If this CONTRACT is terminated due to the fault of the CONSULTANT, Section X thereof, relative to termination, shall apply.

SECTION XIII - CHANGES

The CITY may, from time to time, request changes in the scope of services of the CONSULTANT to be performed hereunder. Such changes, including any increase or decrease in the amount of CONSULTANT's compensation which are mutually agreed upon by and between the CITY and the CONSULTANT, shall be incorporated in written amendments to the CONTRACT. Further, if in the CONSULTANT's opinion, said changes involve work not included in the terms or scope of services of this CONTRACT, the CONSULTANT must notify the CITY in writing if it is believed that extra compensation or additional time allowance is warranted. Such notification shall include the justification for extra compensation and the estimated amount of additional fee requested. The CITY shall review the CONSULTANT's submittal and, if acceptable, will approve a change order as an amendment to this CONTRACT. Work under a change order shall not proceed until so authorized by the CITY. Such change orders shall include appropriate time extensions when warranted.

SECTION XIV - PERSONNEL

- A. The CONSULTANT represents that he has or will secure at his own expense all personnel required in performing the services under this CONTRACT. Such personnel shall not be employees of or have any contractual relationship with the CITY.
- B. All of the services required hereunder will be performed by the CONSULTANT or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.
- C. None of the work or services covered by this CONTRACT shall be subcontracted without the prior written approval of the CITY. All additional work or services that are subcontracted shall be specified by written contract or agreement and shall be subject to each provision of this CONTRACT. The CONSULTANT shall be as fully responsible to the CITY for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

SECTION XV - ASSIGNABILITY

The CONSULTANT shall not assign any interest in this CONTRACT and shall not transfer any interest in same (whether by assignment, notation or any other manner), without the prior written consent of the CITY. Provided, however, that claims for money due or to become due the CONSULTANT from the CITY under the CONTRACT may be assigned to a bank, trust company or other financial institution without such approval. Notices of any such assignment or transfer shall be furnished promptly to the CITY.

SECTION XVI - RECORDS

- A. ESTABLISHMENT AND MAINTENANCE OF RECORDS.
Records shall be maintained in accordance with requirements prescribed by the CITY with respect to all matters covered by this CONTRACT. Except as otherwise authorized, such records shall be maintained for a period of three (3) years after receipt of the final payment under this CONTRACT.
- B. DOCUMENTATION OF COSTS.
Record of all costs shall be maintained by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of other accounting documents pertaining in whole or in part to this CONTRACT and shall be clearly identified and readily accessible.

SECTION XVII - REPORTS AND INFORMATION

At such times and in such forms as CITY may require, there shall be furnished to CITY, at the CITY's expense, copies of such statements, records, reports, data and information as the CITY may request pertaining to matters covered by this CONTRACT.

SECTION XVIII - AUDITS AND INSPECTIONS

At any time during normal business hours and as often as the CITY, or if federal or state grants or aids are involved, as the appropriate federal or state agency, may deem necessary, there shall be made available to the CITY or such agency for examination, all of the CONSULTANT's records with respect to all matters covered by this CONTRACT and will permit the CITY or such agency and/or representative of the Comptroller General of the United States to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payroll, records of personnel, condition of employment and other data relating to all matters covered by this CONTRACT.

SECTION XIX - CONFLICT OF INTEREST

- A. Interest in CONTRACT. No officer, employee or agent of the CITY who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this CONTRACT pertains, shall have any personal interest, direct or indirect, in this CONTRACT.
- B. Interest of Other Local Public Officials. No member of the governing body of the locality and no other public official of such locality who exercises any functions or responsibilities in the review or approval of the carrying out of this CONTRACT, shall have any personal interest, direct or indirect, in this CONTRACT.
- C. Interest of CONSULTANT and Employees. The CONSULTANT covenants that no person described in Sections XIX. A. and B. above who presently exercises any functions or responsibilities in connection with the CONTRACT has any personal financial interest, direct or indirect, in this CONTRACT. The CONSULTANT further covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services hereunder. The CONSULTANT further covenants that in the performance of this CONTRACT no person having any conflicting interest shall be employed.

SECTION XX - DISCRIMINATION PROHIBITED

- A. In all hiring or employment made possible by or resulting from this CONTRACT there will not be any discrimination against any employee or applicant for employment because of race, color, sex orientation, religion, sex or national origin, and affirmative action will be taken to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sexual orientation, gender or national origin. This requirement shall apply to but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. There shall be posted in conspicuous places available to employees and applicants for employment, notices required or to be provided by federal or state agencies involved, setting forth the provisions of the clause. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard of race, color, religion, sex orientation, sex or national origin.

- B. No person in the United States shall, on the grounds of race, color, religion, sexual orientation, gender or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this CONTRACT. The CITY and each employer will comply with all requirements imposed by or pursuant to the regulations of the appropriate federal agency effectuating Title VI of the Civil Rights Act of 1964.
- C. The CONSULTANT will cause the foregoing provisions of this section to be inserted in all subcontracts, if any, for any work covered by this CONTRACT so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw material.

SECTION XXI - OWNERSHIP OF DOCUMENTS

Upon completion or termination of this CONTRACT, all PROJECT CONTRACT documents shall be delivered to and become the property of the CITY. These record drawings and reports, etc., may be used without restriction by the CITY for any public purpose. Any such use or reuse of these documents outside the scope of the PROJECT shall be without compensation or liability to the CONSULTANT.

SECTION XXII ESTIMATES

The estimates of cost and material quantities for each project provided herein are to be prepared by the CONSULTANT through the exercise of their experience and judgement in applying presently available information. It is recognized that the CONSULTANT has no control over cost of construction, Contractor's labor, equipment and materials, or over competitive bidding procedures and market conditions of material quantities.

SECTION XXIII DATA

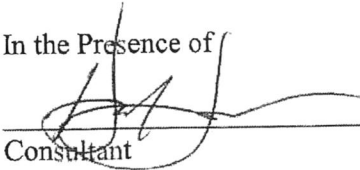
The CITY shall make available to the CONSULTANT all applicable existing technical data in the CITY's possession at the CITY HALL including maps, surveys, borings, and other information required by the ENGINEERS and relating to their work.

SECTION XXIV ACCURACY OF INFORMATION

The CONSULTANT shall indicate to the CITY the information needed for rendering services hereunder, as well as likely sources of this information, with such sources to include but not be limited to the CITY. The CONSULTANT and the CITY recognizes that it is impossible to assure the sufficiency or accuracy of information provided by responsible parties such as Diggers Hotline.

IN WITNESS WHEREOF, The parties hereto have had these presents duly executed in their respective names by their respective officers as of the date and year first above written.

In the Presence of



Consultant

Estimator
Title

4/12/2024
Date

CITY OF NEW BERLIN

Mayor

Date

This is to certify that provisions have been made to pay the expenses that will accrue under the Contract.

Treasurer/Comptroller

Date

Clerk

Date

Approved as to form this _____ day of _____, 20____.

City Attorney

Date



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/12/2024

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

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

PRODUCER R & R Insurance Services, Inc P.O. Box 1610 Waukesha WI 53187-1610	CONTACT NAME: Theresa Bednar PHONE (A/C, No, Ext): (262) 574-7000 FAX (A/C, No): (262) 574-7080 E-MAIL: Theresa.Bednar@rrins.com ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A: Donegal Mutual Insurance Company INSURER B: Atlantic States Insurance Company INSURER C: Underwriters at Lloyds INSURER D: INSURER E: INSURER F:
INSURED Trees on the Move Inc 5611 S Calhoun Road New Berlin WI 53151	NAIC # 13692B 22586B

COVERAGES

CERTIFICATE NUMBER: 23-24 MASTER 24-25 Prof

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ Blkt AI w/completed ops ☒ Blkt PNC Blkt Waiver GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:	X	Y	CPP9200470 CG2033 (10/01) CGD90/27 (0419) CGD0908 (05/19) CG20/01 (0413)	6/15/2023	6/15/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ ALL OWNED AUTOS ☒ HIRED AUTOS ☒ Blkt Addtl Insd	X	Y	CA 9200470 AU102 (05/91) CAD0904 (07/16) CA0449 (11/16)	6/15/2023	6/15/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 0			CWA9200470 CUD9039 (07/16) Blkt Waiver CUD9038 (01/14) PNC	6/15/2023	6/15/2024	EACH OCCURRENCE \$ 6,000,000 AGGREGATE \$ 6,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	1000006476	6/15/2023	6/15/2024	☒ PER STATUTE E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
C	Professional & Pollution			EL00-98-0007-2024	2/15/2024	2/15/2025	Per claim / Aggregate \$1M/\$2M
A	Leased or Rented Equipment			CPP9200470	06/15/2023	06/15/2024	Limit \$100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Project: New Rec Center. The City of New Berlin, its officers, elected and appointed employees, agents and volunteers are Additional Insureds for General Liability on a primary and non-contributory basis and Auto Liability per forms listed above when required by a written contract. Waivers of Subrogation apply in favor of the Additional Insureds for General Liability and Auto Liability when required by a written contract. Umbrella is excess over the underlying General Liability, Auto Liability, and Employers' Liability limits. A 30-Day Notice of Cancellation applies in favor of City of New Berlin for reasons other than non-payment.

CERTIFICATE HOLDER

CANCELLATION

City of New Berlin 3805 S Casper Drive New Berlin, WI 53151	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Scott Shaver/TB833
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Additional Named Insureds

Other Named Insureds

MCJ2G Properties, LLC

Limited Liability Company, Additional Named Insured

Premier Commercial Landscapes LLC

Limited Liability Company, Additional Named Insured

Premier Landscapes and Design, Inc.

Corporation, Additional Named Insured

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS -
COMPLETED OPERATIONS
AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. Section II - Who Is An Insured** is amended to include as an insured any person or organization if you are required under a written contract or agreement to provide insurance such as is afforded under this policy. Such person or organization is an additional insured only with respect to liability arising out of "your work" performed for that insured and included in the "products-completed operations hazard".
- B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

2. Exclusions

This insurance does not apply to:

- a.** "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
- (1)** The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
 - (2)** Supervisory, inspection, architectural or engineering activities.
- b.** "Bodily injury" or "property damage" occurring prior to the date the written contract or agreement was executed and in effect.

POLICY NUMBER:

COMMERCIAL AUTO
AU-102 Ed. 05/91 Rev.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIER COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective:	Countersigned By:
Named Insured:	(Authorized Representative)

SCHEDULE

Name of Person(s) or Organization(s):

Any person with whom or any organization with which you have agreed in writing to list as additional insured on the auto policy.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

Each person or organization shown in the Schedule is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in **Section II** of the Coverage Form.

POLICY NUMBER: CA9200470
July 11, 2023 (WF)

POLICY NUMBER:

COMMERCIAL AUTO
CAD 09 04 07 16

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**SILVER SERIES PLUS
BUSINESS AUTO COVERAGE ENHANCEMENT ENDORSEMENT**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

SCHEDULE*

<u>Coverage</u>	<u>Limit(s) of Insurance</u>	<u>Page</u>
Airbag Accidental Discharge Coverage	Included in applicable Limit of Insurance	4
Audio, Visual And Data Electronic Equipment Coverage	Included in applicable Limit of Insurance	5
Auto Loan/Lease Gap Coverage	Included in applicable Limit of Insurance	4
Blanket Waiver Of Subrogation	Included in applicable Limit of Insurance	5
Broad Form Named Insured And Newly Acquired Or Formed Organizations Coverage	Included in applicable Limit of Insurance	2
Broadened Loss Of Use Expenses		3
Loss Of Use Expenses Per Day	\$65	
Loss Of Use Expenses Maximum	\$750	
Broadened Towing And Labor Costs Coverage - All Vehicle Types		2
Broadened Towing And Labor Costs Each Disablement	\$75	
Broadened Towing And Labor Costs Aggregate Limit	\$600	
Broadened Transportation Expenses Coverage Extension - All Vehicle Types		3
Broadened Transportation Expenses Increased Limit Per Day	\$60	
Broadened Transportation Expenses Maximum Limit	\$1,800	
Glass Repair Deductible Waiver	Included in applicable Limit of Insurance	5
Hired Auto Physical Damage Coverage - Any One Accident Or Loss	\$50,000	3
Knowledge Of An Accident, Claim, Suit Or Loss	Included in applicable Limit of Insurance	5
Worldwide Hired Auto Coverage	Included in applicable Limit of Insurance	6
Parked Auto Collision Deductible	Included in applicable Limit of Insurance	5
Personal Effects Coverage	\$400	4
Rental Reimbursement Coverage	\$600	4
Supplementary Payments Increased Limits		2
Supplementary Payments - Bail Bonds Increased Limit	\$3,000	
Supplementary Payments - Loss of Earnings Increased Limit	\$300 per day	
Unintentional Failure To Disclose Hazards	Included in applicable Limit of Insurance	6

* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

The following Coverages apply only if they are shown in the Schedule above. Each of the Coverages is subject to the limit of insurance associated with such Coverage in the Schedule.

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The following provisions apply only with respect to the insurance provided by the Business Auto Coverage Form.

I. BROAD FORM NAMED INSURED AND NEWLY ACQUIRED OR FORMED ORGANIZATIONS COVERAGE

The following provisions are added to subparagraph 1. **Who Is An Insured** under paragraph A. **Coverage** as found in **SECTION II - LIABILITY COVERAGE**:

- d. Any organization, or any subsidiary of such organization, which is a legally incorporated entity of which you own a financial interest of more than 50 percent of the voting stock on the effective date of this endorsement with respect to any covered "auto". However, this paragraph A.1.d. does not apply to "accident" or "loss" with respect to which an "insured" under this policy is also an "insured" under another policy, or would be an "insured" under such other policy but for its termination or upon the exhaustion of its limits of insurance, unless such other policy was written to apply specifically in excess of this policy.
- e. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as an insured if there is no other similar insurance available to that organization. However:
 - (1) Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - (2) Coverage under this provision does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you acquired or formed the organization.

All provisions, exclusions and conditions applicable to you, except those pertaining to notice of cancellation or refusal to renew, as provided in this policy, including any endorsement attached to and made a part of this policy, apply with respect to the insurance provided to such newly acquired or formed organizations.

II. SUPPLEMENTARY PAYMENTS INCREASED LIMITS

- A. Subparagraph a.(2) under paragraph 2. **Coverage Extensions** as found in paragraph A. **Coverage (SECTION II - LIABILITY COVERAGE)** is deleted and replaced by the following:

- (2) Up to the limit of insurance shown in the Schedule above for Supplementary Payments - Bail Bonds Increased Limit for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

- B. Subparagraph a.(4) under paragraph 2. **Coverage Extensions** as found in paragraph A. **Coverage (SECTION II - LIABILITY COVERAGE)** is deleted and replaced by the following:

- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to the limit of insurance shown in the Schedule above for Supplementary Payments - Loss of Earnings Increased Limit, because of time off from work.

III. BROADENED TOWING AND LABOR COSTS COVERAGE - ALL VEHICLE TYPES

Subparagraph 2. **Towing** under paragraph A. **Coverage** as found in **SECTION III - PHYSICAL DAMAGE COVERAGE** is deleted and replaced by the following:

2. Towing And Labor Costs

We will pay up to the limit of insurance shown in the Schedule above for Broadened Towing And Labor Costs Each Disablement for towing and labor costs incurred each time a covered "auto" is disabled. However, the labor must be performed at the place of disablement.

With respect to disablement of covered "autos" other than of the private passenger type, the most we will pay for the total of all towing and labor costs during the policy period shown in the Declarations is the limit of insurance shown in the Schedule above for Broadened Towing And Labor Costs Aggregate Limit.

IV. BROADENED TRANSPORTATION EXPENSES COVERAGE EXTENSION - ALL VEHICLE TYPES

Subparagraph **a. Transportation Expenses** under paragraph **4. Coverage Extensions** as found in paragraph **A. Coverage (SECTION III - PHYSICAL DAMAGE COVERAGE)** is deleted and replaced by the following:

a. Transportation Expenses

We will pay per day up to the limit of insurance shown in the Schedule above for Broadened Transportation Expenses Increased Limits Per Day, subject to the maximum limit of insurance shown in the Schedule above for Broadened Transportation Expenses Maximum Limit, for temporary transportation expense incurred by you because of the total theft of a covered "auto". We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

V. BROADENED LOSS OF USE EXPENSES COVERAGE EXTENSION

Subparagraph **b. Loss Of Use Expenses** under paragraph **4. Coverage Extensions** as found in paragraph **A. Coverage (SECTION III - PHYSICAL DAMAGE COVERAGE)** is deleted and replaced by the following:

b. Loss Of Use Expenses

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver, under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";
- (2) Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or
- (3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is the limit of insurance shown in the Schedule above for Loss Of Use Expenses Per Day, subject to the maximum limit of insurance shown in the Schedule above for Loss Of Use Expenses Maximum Limit.

VI. The following is added to paragraph **A. COVERAGE (SECTION III - PHYSICAL DAMAGE COVERAGE)**:

5. Hired Auto Physical Damage

If hired "autos" are covered "autos" for Liability Coverage under this policy and if Physical Damage Comprehensive Coverage, Physical Damage Specified Causes Of Loss Coverage, or Physical Damage Collision Coverage is provided under this policy for any "auto" you own, then such Physical Damage Coverages are extended to apply to "autos" you hire without a driver, subject to the following provisions:

- a. The most we will pay for any "accident" or "loss" under this Hired Auto Physical Damage Coverage is the lesser of:
 - (1) The limit of insurance shown in the Schedule above for Hired Auto Physical Damage Coverage - Any One Accident Or Loss;
 - (2) The actual cash value, including an adjustment for depreciation and physical condition in the event of a total "loss"; or
 - (3) The cost of repairing or replacing the damaged or stolen hired "auto" with other property of like kind and quality, minus a \$500 deductible. No deductible applies to "loss" caused by fire or lightning.
- b. Subject to the limit of insurance and deductible provisions provided in paragraph **5.a.** above, we will provide coverage equal to the broadest Physical Damage Coverage applicable to any covered "auto" shown in the Declarations.
- c. This Hired Auto Physical Damage Coverage does not apply to any "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households.
- d. This Hired Auto Physical Damage Coverage is excess over all other collectible insurance.

6. Rental Reimbursement Expenses

We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of "loss", other than total theft, to a covered "auto". We will pay rental reimbursement expenses only for those covered "autos":

- a. For which you carry either Comprehensive or Specified Causes of Loss Coverage if the "loss" arises from such coverage; or
- b. For which you carry either Collision Coverage if the "loss" arises from such coverage.

We will pay only for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, when the covered "auto" is repaired or replaced or we pay for its "loss". This coverage does not apply while there are spare or reserve "autos" available to you for your operations. The most we will pay for rental reimbursement expenses under this Coverage Extension because of "loss" to a covered "auto" is the limit of insurance shown in the Schedule above for Rental Reimbursement Coverage. No deductibles apply to this coverage.

If the Rental Reimbursement Coverage endorsement is also attached to and made a part of this policy, then the coverage provided under this Rental Reimbursement Expenses Coverage Extension will be excess over the insurance provided by the Rental Reimbursement Coverage endorsement.

7. Personal Effects Coverage

We will pay up to the limit of insurance shown in the Schedule above for Personal Effects Coverage for loss to wearing apparel and other personal effects which are:

- a. Owned by an "insured"; and
- b. In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this coverage.

The insurance provided by this Personal Effects Coverage provision is excess over any other collectible insurance covering such property.

8. Auto Loan/Lease Gap Coverage

In the event of a total "loss" to a covered "auto" shown on the Declarations in the Schedule Of Covered Autos You Own, we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

- a. The amount paid under the Physical Damage Coverage Section of the policy; and
- b. Any:
 - (1) Overdue lease/loan payments at the time of the "loss";
 - (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage.
 - (3) Security deposits not returned by the lessor;
 - (4) Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
 - (5) Carry-over balances from previous loans or leases.

We will pay the unpaid amount due on the lease or loan only for those covered "autos":

- a. For which you carry either Comprehensive or Specified Causes of Loss Coverage if the "loss" arises from such coverage; or
- b. For which you carry either Collision Coverage if the "loss" arises from such coverage.

VII. AIRBAG ACCIDENTAL DISCHARGE COVERAGE

The following is added to subparagraph 3. under paragraph B. Exclusions as found in SECTION III - PHYSICAL DAMAGE COVERAGE:

The exclusion for "loss" caused by or resulting from mechanical breakdown, as described in paragraph B.3.a. above, does not apply with respect to the accidental discharge of an airbag in a covered "auto" if the airbag is repaired or replaced in a manner acceptable to us. No deductible will apply to such "loss".

VIII. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT COVERAGE

Subparagraph a. under the exception to paragraphs 4.c. and 4.d. as found in paragraph B. **Exclusions** as contained in **SECTION III - PHYSICAL DAMAGE COVERAGE** is deleted and replaced by the following:

Exclusions 4.c. and 4.d. do not apply to:

- a. Equipment, that receives or transmits audio, visual or data signals, and accessories used with such equipment, except tapes, records or discs, provided such equipment is permanently installed in the covered "auto" at the time of the "loss" or the equipment is removable from a housing unit which is permanently installed in the covered "auto" at the time of the "loss", and such equipment is designed to be solely operated by use of the power from the "auto's" electrical system, in or upon the covered "auto".

IX. GLASS REPAIR DEDUCTIBLE WAIVER

The following is added to paragraph D. **Deductible** as found in **SECTION III - PHYSICAL DAMAGE COVERAGE**:

However, no deductible applies to glass damage if the glass is repaired in a manner acceptable to us instead of replaced.

X. PARKED AUTO COLLISION DEDUCTIBLE

A. The following is added to paragraph D. **Deductible** as found in **SECTION III - PHYSICAL DAMAGE COVERAGE**:

However, in the event of "loss" caused by collision to a covered "auto" while such "auto" is in the care, custody or control of an "insured" and legally parked, the Collision Coverage deductible amount that will be applied to the "loss" will be \$100, regardless of any deductible amount shown in the Declarations as applicable to such covered "auto".

This Parked Auto Collision Deductible provision does not apply to the "loss" if:

1. The covered "auto" is occupied at the time of the "loss"; or
2. The covered "auto" is in the care, custody or control of any person or organization engaged in the business of selling, servicing, repairing or parking "autos".

- B. If the Exclusions section of any Uninsured Motorists Coverage endorsement or Underinsured Motorists endorsement attached to and made a part of this policy includes a provision excluding a stated dollar amount from the total amount of "property damage" as the result of any one "accident", such stated dollar amount is revised to be \$100.

XI. KNOWLEDGE OF AN ACCIDENT, CLAIM, SUIT OR LOSS

The following provisions are added to subparagraph 2. **Duties In The Event Of Accident, Claim, Suit Or Loss** under paragraph A. **Loss Conditions** as found in **SECTION IV - BUSINESS AUTO CONDITIONS**:

- d. Knowledge of an "accident", claim, "suit" or "loss" by an agent, servant or "employee" of an "insured" (other than an officer or insurance manager if you are a corporation, a partner if you are a partnership, or a manager if you are a limited liability company) does not imply knowledge of the "insured" unless the "insured" has received notice from the agent, servant or "employee".
- e. Failure by an agent, servant or "employee" of an "insured" (other than an officer or insurance manager if you are a corporation, a partner if you are a partnership, or a manager if you are a limited liability company) to notify us of an "accident", claim, "suit" or "loss" will not jeopardize your coverage.

XII. BLANKET WAIVER OF SUBROGATION

The following is added to paragraph A. **Loss Conditions 5. Transfer Of Rights Of Recovery Against Others To Us** as found in **SECTION IV - BUSINESS AUTO CONDITIONS**:

With respect to the insurance provided under **SECTION II - LIABILITY COVERAGE** only, we waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury" or "property damage" caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto" if such ownership, maintenance or use of a covered "auto" is related to work or ongoing operations performed by you or on your behalf. This provision is also subject to the following:

- A. The work or ongoing operations performed by you or on your behalf have not yet been completed or abandoned and are being performed away from premises you own or rent;
- B. You are required under a written contract to waive your rights to recover from that person or organization; and
- C. The written contract was executed and in effect before any "accident", injury, loss or demand that would give rise to a claim under this Business Auto Policy.

Under paragraph A. above, your work will be deemed completed at the earliest of when all the work called for in your contract has been completed, when all of the work to be done at a job site has been completed if your contract calls for work at more than one job site, or when that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project. Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

XIII. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

The following provision is added to paragraph A. **Loss Conditions** as found in **SECTION IV - BUSINESS AUTO CONDITIONS**:

6. Unintentional Failure To Disclose Hazards

We will not deny coverage under this policy because of an unintentional failure to disclose all exposures or hazards existing on the effective date of the Business Auto Policy or because of an unintentional error or omission in any of the information provided by you and relied upon by us in the issuance of this policy. However:

- a. You must report the undisclosed exposure or hazard, or unintentional error or omission, to us as soon as practicable after its discovery;
- b. This provision does not affect our right to collect any additional premium associated with such unintentional failure or our right to cancel or non-renew this policy.

XIV. WORLDWIDE HIRED AUTO COVERAGE

Subparagraph e.(1) under paragraph B. **General Conditions 7. Policy Period, Coverage Territory** as found in **SECTION IV - BUSINESS AUTO CONDITIONS** is deleted and replaced by the following:

- (1) A covered "auto" is leased, hired, rented or borrowed without a driver for a period of 30 days or less; and

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PRIMARY AND NONCONTRIBUTORY -
OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and

- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS - AUTOMATIC STATUS WHEN
REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. Section II - Who Is An Insured** is amended to include as an insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability arising out of your ongoing operations performed for that insured. A person's or organization's status as an insured under this endorsement ends when your operations for that insured are completed.
- B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:
- 2. Exclusions**
- This insurance does not apply to:
- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
 - (2) Supervisory, inspection, architectural or engineering activities.
 - b. "Bodily injury" or "property damage" occurring after:
 - (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
 - (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

POLICY NUMBER: CPP9200470
April 4, 2024 (WF)
POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CGD 09 08 05 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTORS SILVER SERIES
GENERAL LIABILITY COVERAGE ENHANCEMENT ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SCHEDULE*

<u>Coverage</u>	<u>Limit(s) of Insurance</u>	<u>Page</u>
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* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

April 4, 2024 (WF)

The following Coverages apply only if they are shown in the Schedule above. Each of the Coverages is subject to the limit of insurance associated with such Coverage in the Schedule.

I. NON-OWNED WATERCRAFT COVERAGE

A. Subparagraph **g.(2)** under paragraph 2. **Exclusions** as found in **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY (SECTION I - COVERAGES)** is deleted and replaced by the following:

(2) A watercraft you do not own that is:

- (a) Less than 51 feet long; and
- (b) Not being used to carry persons or property for a charge;

B. With respect to **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** only, the following provision is added to **SECTION II - WHO IS AN INSURED**:

4. Any person is an insured with respect to a watercraft you do not own that is less than 51 feet long and is not being used to carry persons or property for a charge, while using such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft.

However, no person or organization is an insured:

- a. With respect to "bodily injury" to a co-"employee" of the person operating the watercraft;
- b. With respect to "property damage" to property owned by, rented to, loaned to, occupied by, or otherwise in the care, custody or control of, you or the employer of any person who is insured under this provision; or
- c. If other insurance of any kind is available to that person or organization for this liability, unless such insurance was written to apply specifically in excess of this policy.

II. BROADENED DAMAGE TO PREMISES RENTED TO YOU COVERAGE

The following provisions apply only if a Limit of Insurance is shown in the Declarations for Damage To Premises Rented To You. If no Limit of Insurance is shown in the Declarations for Damage To Premises Rented To You, or if Damage To Premises Rented To You is shown as excluded, the following provisions do not apply.

A. Subparagraph **j. Damage To Property** under paragraph 2. Exclusions as found in **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY (SECTION I - COVERAGES)** is deleted and replaced by the following:

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

- B. The last subparagraph under paragraph 2. **Exclusions** as found in **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY (SECTION I - COVERAGES)** is deleted and replaced by the following:

Exclusions c. through e. and g. through n. do not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner. Exclusion f. does not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III - Limits Of Insurance and as provided under the Broadened Damage To Premises Rented To You Coverage.

- C. Subject to the Each Occurrence Limit Shown in the Declarations, the Limit of Insurance shown in the Schedule above for Broadened Damage To Premises Rented To You Coverage is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you or temporarily occupied by you with permission of the owner. The Limit of Insurance for Broadened Damage To Premises Rented To You Coverage shown in the Schedule above is in addition to any Limit of Insurance shown in the Declarations for Damage To Premises Rented To You.

III. ELECTRONIC DATA LIABILITY

- A. Subparagraph p. **Electronic Data** under paragraph 2. **Exclusions** as found in **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY (SECTION I - COVERAGES)** is deleted and replaced by the following:

p. **Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability**

Damages arising out of:

- (1) Any access to, or disclosure or theft of, any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, an individual's name, social security number, driver's license number, state identification number, credit card information, debit card information, account number, account histories, passwords, health information, medical information, or any other type of nonpublic information; or

- (2) The loss of, loss of use of, damage to, corruption of, inability to access, inability to transmit or receive, or inability to manipulate "electronic data" that does not result from physical injury to tangible property.

This exclusion applies even if damages are claimed for notification costs, monitoring expenses, forensic or investigation expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

- B. The following paragraph is added to **SECTION III - LIMITS OF INSURANCE**:

Subject to 5. above, the Electronic Data Liability Limit shown in the Schedule above is the most we will pay under **COVERAGE A** for "property damage" because of all loss of "electronic data" arising out of any one "occurrence".

- C. With respect to the insurance provided by this endorsement, the definition of "Property Damage" in the Definitions Section is replaced by the following:

17. "Property damage" means:

- Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;
- Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it; or
- Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate "electronic data", resulting from physical injury to tangible property. All such loss of "electronic data" shall be deemed to occur at the time of the "occurrence" that caused it.

"Property damage" does not include any loss, cost or expense to correct any defective, faulty or incorrect work performed by you or by any contractors or subcontractors working directly or indirectly on your behalf.

For the purposes of this insurance, "electronic data" is not tangible property.

- D. With respect to the insurance provided by this endorsement, the following Definition is added to **SECTION V - DEFINITIONS**:

"Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

IV. SUPPLEMENTARY PAYMENTS - COVERAGES A AND B INCREASED LIMITS

- A. Subparagraph **b.** under paragraph **1.** as found in **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B (SECTION I - COVERAGES)** is deleted and replaced by the following:
- b. Up to the Limit of Insurance shown in the Schedule above for Supplementary Payments - Coverages A and B - Bail Bonds Increased Limit for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- B. Subparagraph **d.** under paragraph **1.** as found in **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B (SECTION I - COVERAGES)** is deleted and replaced by the following:
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit". Expenses paid under this provision includes actual loss of earnings, up to the Limit of Insurance shown in the Schedule above for Supplementary Payments - Coverages A and B - Loss of Earnings Increased Limit, because of time off from work.

V. BROAD FORM NAMED INSURED COVERAGE

With respect to **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** and **COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**, the following provision is added to paragraph **1.** as found in **SECTION II - WHO IS AN INSURED**:

- f. An organization other than a partnership, joint venture or limited liability company, your legally incorporated subsidiaries are insureds if you own a financial interest of more than 50 percent of the voting stock on the effective date of this endorsement.

However, coverage under this provision does not apply to "bodily injury", "property damage", or "personal and advertising injury" with respect to which an insured under this policy, including any endorsement attached to and made a part of this policy, is also an insured under another policy, or would be an insured under such policy but for its termination or the exhaustion of the applicable limits of insurance, unless such policy was written to apply specifically in excess of this policy.

VI. INCIDENTAL MALPRACTICE LIABILITY - NURSE, EMT OR PARAMEDIC COVERAGE

Paragraph **2.a.(1)(d)** as found in **SECTION II - WHO IS AN INSURED** is deleted and replaced by the following:

- (d) Arising out of his or her providing or failing to provide professional health care services. This paragraph **2.a.(1)(d)** does not apply to a nurse, emergency medical technician (EMT) or paramedic employed by you.

VII. BROADENED NEWLY FORMED OR ACQUIRED ORGANIZATIONS COVERAGE

Paragraph **3.a.** as found in **SECTION II - WHO IS AN INSURED** is deleted and replaced by the following:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

VIII. BROADENED WHO IS AN INSURED

The following is added to **SECTION II - WHO IS AN INSURED**:

The following is an additional insured:

- A. 1. Any person or organization from whom you lease equipment when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an insured only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization. A person's or organization's status as an insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

However, such person or organization is not an insured with respect to any "occurrence" which takes place after the equipment lease expires.

2. Any person or organization (referred to below as vendor) with whom you agree in a written contract or agreement to provide insurance such as is afforded under this policy, but only with respect to "bodily injury" or "property damage" caused, in whole or in part, by "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

(a) The insurance afforded the vendor does not apply to:

- (1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (2) Any express warranty unauthorized by you;
- (3) Any physical or chemical change in the product made intentionally by the vendor;
- (4) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- (5) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- (6) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (7) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor.

(8) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (i) The exceptions contained in Subparagraphs (4) or (6) above; or
- (ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(b) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

3. Any person or organization but only with respect to their liability for "bodily injury" or "property damage" caused, in whole or in part, by your ongoing operations due to:

- (a) Their financial control of you; or
- (b) Premises they own, maintain or control while you lease or occupy these premises.

However, the insurance afforded to such person or organization does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

4. Any person or organization but only with respect to liability for "bodily injury" or "property damage" as co-owner of a Described Premises shown in the declarations.
5. Any person or organization but only with respect to liability for "bodily injury" or "property damage" as grantor of a franchise or license to you.

6. Any person or organization but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by your ongoing operations on that part of the land leased to you and shown in the Schedule. However, the insurance afforded to such person or organization does not apply to:
 - (a) Any "occurrence" which takes place after you cease to lease that land;
 - (b) Structural alterations, new construction or demolition operations performed by or for that person or organization.
 7. Any person or organization but only with respect to liability for "bodily injury" or "property damage" as a mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of a Described Premises shown in the declarations. However, the insurance afforded to such person or organization does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.
 8. Any person or organization but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by your ongoing operations performed in that part of the premises leased to you and shown as a Described Premises in the declarations. However, the insurance afforded to such person or organization does not apply to:
 - (a) Any "occurrence" which takes place after you cease to be a tenant in that premises.
 - (b) Structural alterations, new construction or demolition operations performed by or for that person or organization.
 9. Any state or political subdivision, but only with respect to liability for "bodily injury" or "property damage". This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent, or control and to which this insurance applies:
 - (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - (b) The construction, erection, or removal of elevators; or
 - (c) The ownership, maintenance, or use of any elevators covered by this insurance.
- B. The insurance afforded to such person or organization described in paragraph A. above only applies to the extent permitted by law.
 - C. The insurance afforded to such person or organization described in paragraph A. above will not be broader than:
 1. The coverage you have agreed to provide in the written contract or agreement; or
 2. The coverage provided by this endorsement.
 - D. A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you ends.
 - E. The insurance provided to such person or organization described in paragraph A. above does not apply to "bodily injury" or "property damage" occurring:
 1. Prior to the date the written contract or agreement was executed and in effect;
 2. After your contract or agreement with such additional insured ends; or
 3. After the requirement in the written contract or agreement to add such person or organization as an additional insured on your policy ends.
 - F. The insurance afforded to any additional insured is excess over any other valid and collectible insurance, whether primary, excess, contingent or on any other basis, unless you have agreed in a written contract or agreement for this insurance to apply on either a:
 1. Primary and non-contributory basis; or
 2. Contributory basis.
- IX. MEDICAL EXPENSE INCREASED LIMIT**
- The following provision applies only if a Limit of Insurance is shown in the Declarations for Medical Expense. If no Limit of Insurance is shown in the Declarations for Medical Expense, or if Medical Expense is shown as excluded, the following provision does not apply.
- Subject to the Each Occurrence Limit Shown in the Declarations, the Limit of Insurance shown in the Schedule above for Medical Expense Increased Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person. The Limit of Insurance for Medical Expense Increased Limit shown in the Schedule above is in addition to any Limit of Insurance shown in the Declarations for Medical Expense.

X. AMENDMENT OF GENERAL AGGREGATE LIMIT OF INSURANCE - PER PROJECT AND PER LOCATION

- A.** With respect to **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** and **COVERAGE C. MEDICAL PAYMENTS** only, the following provision is added to **SECTION III - LIMITS OF INSURANCE**:

The General Aggregate as described in paragraph 2. under **SECTION III - LIMITS OF INSURANCE** applies separately to each of your projects away from premises owned by or rented to you and separately to each of your "locations" owned by or rented to you. However:

1. This Amendment of General Aggregate Limit of Insurance - Per Project and Per Location provision does not apply if a single "occurrence" under Coverage **A**, or a single accident under Coverage **C**, can be attributed to multiple projects or "locations". The General Aggregate Limit of Insurance shown in the Declarations will apply to the sum of all damages under Coverage **A** arising out of such "occurrence" and all medical expenses under Coverage **C** arising out of such accident;
2. This Amendment of General Aggregate Limit of Insurance - Per Project and Per Location does not apply to damages under Coverage **B**. The General Aggregate Limit of Insurance shown in the Declarations continues to apply to the sum of all damages under Coverage **B**, regardless of the number of projects or "locations";

- B.** With respect to the insurance provided by this endorsement, the following Definition is added to **SECTION V - DEFINITIONS**:

"Locations" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

XI. KNOWLEDGE OF AN OCCURRENCE, OFFENSE, CLAIM OR SUIT

Subparagraphs **a.** and **b.** under paragraph 2. **Duties In The Event Of Occurrence, Offense, Claim Or Suit** as found in **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** are deleted and replaced by the following:

- a.** You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;

- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

This Condition only applies when the "occurrence", offense, claim or "suit" is known to you (if you are an individual), to a partner (if you are a partnership), a manager (if you are a limited liability company), or an officer or insurance manager of a corporation (if you are a corporation). Knowledge of an "occurrence", offense, claim or "suit" by an agent, servant or "employee" of an insured (other than a partner, manager, officer, or insurance manager) does not imply knowledge by the insured unless the insured has received notice from the agent, servant or "employee".

- b.** If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable. Failure by an agent, servant or "employee" of an insured (other than a partner, manager, officer, or insurance manager) to notify us of an "occurrence", offense, claim or "suit" will not jeopardize your coverage.

XII. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY

The following is added to the paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** as found in **SECTION IV - COMMERCIAL LIABILITY CONDITIONS**:

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of "your work" included in the "products-completed operations hazard" or your ongoing operations, subject to the following:

- a.** You are required under a written contract to waive your rights to recover from that person or organization; and
- b.** The written contract was executed and in effect before any injury or damage that would give rise to a claim under this Commercial General Liability Coverage Part.

This waiver does not apply to any person who is an engineer or architect, or to any organization with respect to an engineer or architect employed by such organization, unless agreed to in writing by us.

XIII. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

The following Condition is added to **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**:

10. Unintentional Failure To Disclose Hazards

Any unintentional error or omission in the description of, or failure to completely describe, any premises or operations intended to be covered by this Coverage Part will not invalidate or affect coverage for those premises or operations. Such unintentional error or omission must be reported to us as soon as practicable after its discovery.

This Condition does not affect our right to collect any additional premium associated with such unintentional error or omission or our right to cancel or non-renew this policy.

XIV. CONTRACTUAL LIABILITY - RAILROADS

Subparagraph **f.(1)** under the definition of "insured contract" as found in **SECTION V - DEFINITIONS** or as found in endorsement CG 24 26 AMENDMENT OF INSURED CONTRACT DEFINITION is deleted.

XV. MOBILE EQUIPMENT REDEFINED

Subparagraph **f.(1)** under the definition of "mobile equipment" as found in **SECTION V - DEFINITIONS** is deleted and replaced by the following:

- (1)** Equipment with a gross vehicle weight of 1000 pounds or more and designed primarily for:
 - (a)** Snow removal;
 - (b)** Road maintenance, but not construction or resurfacing; or
 - (c)** Street cleaning.

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.



5611 South Calhoun Road, New Berlin, WI 53151
 Ph: 262-679-5200 Fax: 262-679-5215

CONTRACT

Date	Contract #
3/12/2024	24-125
Sales Rep	Ziggy

JOB LOCATION:

City of New Berlin
 3805 S Casper Dr
 New Berlin, WI 53151

New Berlin Activity and Recreation Center
 15321 W National Ave
 New Berlin, WI 53151

Contact Phone #

Terms	Project	
Qty	Description	
	East of service drive plant bed:	
1	Site Layout & Supervision / Mobilization / Administration	
1	Ulmus 'New Horizon' Elm 3" BB	
3	Amelanchier x grandiflora 'Autumn Brilliance' Serviceberry MS 7' BB	
1	Betula Nigra 'Heritage' River Birch 3" BB	
3	Picea omorika 'Serbian' Spruce 7' BB	
3	Viburnum prunifolium 'Blackhaw' 5' BB	
12	Shredded hardwood bark mulch installed in shrub beds 3" depth per CY	
225	Mechanical Cut Edging installed per LF	
1,250	Turf Prep to include rock removal and hand raking per SF	
1,250	Advanced Landscape Seed Blend Mix per SF	
1,250	Single-Netted Straw matting erosion control per SF	
Subtotal		\$7,318.70
Sales Tax (5.0%)		
Total		\$7,318.70

Date _____

Signed & Accepted by _____



CONTRACT

5611 South Calhoun Road, New Berlin, WI 53151

Ph: 262-679-5200 Fax: 262-679-5215

Date	Contract #
9/12/2022	22-342
Sales Rep	TJ

JOB LOCATION:

City of New Berlin
3805 S. Casper Dr.
New Berlin, WI 53151

City Of New Berlin
Activity and Recreation Center
15321 W National Ave

Contact Phone #

Terms		Project	CC 2048 - New Berlin City Ctr	
Qty	Description			
	Site Supervision / Site Layout			
1	REMOVAL: Removal of existing plant material around Monument Sign			
	B&B TREES:			
2	Gleditsia triacanthos 'Shademaster' Honeylocust 2.5" BB			
2	Ulmus 'New Harmony' Elm 2.5" BB			
1	Acer x freemanii Autumn Blaze Maple 2.5" BB			
	SPADE TREES:			
3	Gleditsia triacanthos 'Skyline' Honeylocust 5" Spade			
	PERENNIALS:			
10	Juniperus chinensis 'Gold Coast' Juniper 18" cont			
	SOFTSCAPES:			
6	Shredded hardwood bark mulch installed in shrub beds 3" depth per 6 CY			
70	Spade Cut Edging 3" depth installed per LF			
		Website	Subtotal	\$11,997.90
			Sales Tax (5.0%)	\$0.00
			Total	\$11,997.90

Date _____

Signed & Accepted by _____

General Information		Financial Data		Operational Data		Performance Data		Compliance Data	
Category	Item	Value	Unit	Value	Unit	Value	Unit	Value	Unit
Company Overview	Company Name	ABC Corporation		Company Address	123 Main St, Suite 500			Company Phone	(555) 123-4567
	Company Type	Public		Company Industry	Technology			Company Website	www.abc.com
	Company Size	100-500		Company Revenue	\$10M			Company Employees	250
	Company Status	Active		Company Fiscal Year	2023			Company Tax ID	12-34567890
Financial Data	Revenue	\$10M		Profit	\$2M			Net Income	\$1.5M
	Expenses	\$8M		Operating Costs	\$7M			Capital Expenditure	\$0.5M
	Assets	\$15M		Liabilities	\$5M			Equity	\$10M
	Debt	\$3M		Interest Expense	\$0.2M			Dividend Payout	\$0.1M
Operational Data	Production Volume	100,000		Quality Score	95%			Customer Satisfaction	4.5/5
	Production Cost	\$0.1M		Production Efficiency	85%			Production Cycle Time	24 hours
	Production Location	USA		Production Equipment	Modern			Production Safety Incidents	0
	Production Capacity	150,000		Production Flexibility	High			Production Innovation Score	3.8/5
Performance Data	Market Share	15%		Competitive Advantage	Strong			Brand Recognition	High
	Customer Retention	80%		Employee Retention	75%			Product Innovation	Medium
	Operational Efficiency	85%		Financial Performance	Good			Environmental Impact	Low
	Regulatory Compliance	100%		Industry Reputation	Positive			Corporate Social Responsibility	Active
Compliance Data	Regulatory Framework	GDPR, CCPA		Compliance Status	Compliant			Audit Results	Pass
	Regulatory Updates	Annual		Regulatory Risks	Low			Regulatory Training	Completed
	Regulatory Reporting	Quarterly		Regulatory Penalties	None			Regulatory Consultation	Available
	Regulatory Monitoring	Continuous		Regulatory Feedback	Positive			Regulatory Innovation	Active

[illegible]

Airtech		Scientific name		Common name	Working die
Quantity	Code	1	2		1-Loc - Cool
1		Cochlearia glauca	Swedish Turnip	Swedish Turnip	4 1/2" tall
2	b	Trorhiz (b) Trolla	Trorhiz	Trorhiz	4 1/2" tall
2	c	Astragalus	Astragalus	Astragalus	4 1/2" tall
3	d	Malvastrum	Malvastrum	Malvastrum	4 1/2" tall

1. **IDENTIFY OF SCIENCE.** Optimal design of tests of scientific systems is to be carried out with a sufficiently granular database material. This will require the use of the least dependent on the data.
2. **IDENTIFY OF SCIENCE.** Optimal design of tests of scientific systems is to be carried out with a sufficiently granular database material. This will require the use of the least dependent on the data.
3. **IDENTIFY OF SCIENCE.** Optimal design of tests of scientific systems is to be carried out with a sufficiently granular database material. This will require the use of the least dependent on the data.
4. **IDENTIFY OF SCIENCE.** Optimal design of tests of scientific systems is to be carried out with a sufficiently granular database material. This will require the use of the least dependent on the data.
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7. **IDENTIFY OF SCIENCE.** Optimal design of tests of scientific systems is to be carried out with a sufficiently granular database material. This will require the use of the least dependent on the data.
8. **IDENTIFY OF SCIENCE.** Optimal design of tests of scientific systems is to be carried out with a sufficiently granular database material. This will require the use of the least dependent on the data.
9. **IDENTIFY OF SCIENCE.** Optimal design of tests of scientific systems is to be carried out with a sufficiently granular database material. This will require the use of the least dependent on the data.
10. **IDENTIFY OF SCIENCE.** Optimal design of tests of scientific systems is to be carried out with a sufficiently granular database material. This will require the use of the least dependent on the data.

CHANGING PAY SCHEDULES MAY BE RELATED TO AN INCREASE IN THE NUMBER OF DAYS OFF AND IN THE NUMBER OF HOURS WORKED

STUDY AREA

STUDY AREA

THE GATOR SHOW REUNITE THE WATER IS BAG.

Figure 1: A schematic diagram of a branching structure, likely a dendritic tree, showing a central trunk branching into several smaller branches. The diagram is labeled with 'C' and 'D' at the top and bottom, and 'A' and 'B' on the left and right sides. The branches are color-coded: the central trunk is blue, the left branches are green, and the right branches are red. The diagram is oriented vertically, with the top of the trunk at the bottom of the image.

PERMANENT CATERING FOODS

NO STRAIN INCREASED OCCASIONAL DRUGS
OR EFFORT IN INCLUDING THEM THAT ENJOY

PLANT GROWTH

HEIGHT IN CM

WEEKS

0 10 20 30 40 50 60 70 80 90 100

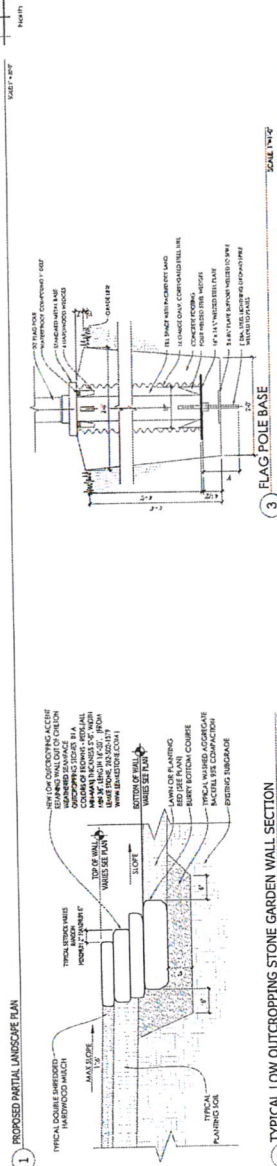
0 1 2 3 4 5 6 7 8 9 10

Cretaceous and Tertiary

Cretaceous and Tertiary

Type	Color	Takeoff	Qty	UOM
		Washed Stone Mulch	1153.05	SQFT
		Seeded Lawn	1570.01	SQFT
		Tree Rings	7	EA
		Grey Slate Stone Chips - 3/4"	211.36	SQFT
		Aluminum Edging	117.07	LF
		Washed Stone Mulch	1193.29	SQFT

Type	Color	Takeoff	Qty	UOM
	Washed Stone Mulch		1133.05	SQFT
	Seeded Lawn		1570.01	SQFT
	Tree Rings		7	EA
	Grey Slate Stone Chips - 3/4"		211.36	SQFT
	Aluminum Edging		117.07	LF
	Washed Stone Mulch		1193.29	SQFT





5611 South Calhoun Road, New Berlin, WI 53151
Ph: 262-679-5200 Fax: 262-679-5215

Proposal

Date	Proposal #
4/5/2024	23-402

Job Location

City of New Berlin
3805 S Casper Dr
New Berlin, WI 53151
Attn: Dan Hogan
262.797.2445

New Berlin Activity and Recreation Center
15321 W National Ave
New Berlin, WI 53151

						Customer Phone
Terms	Net 30	Sales Rep	Dan L	Completion Date		262-797-2445 x 2249
Qty	Description					
	Proposal valid for 30 days					
1	Sheet(s) LSP1.2, LSP1.3 dated 6/22/22					
	BASE BID					
1	Site Layout & Supervision / Mobilization / Administration					
	REMOVAL:					
1	Removal of existing plant material around monument sign					
	LSP1.2					
	BROADLEAF DECIDUOUS TREES					
5	Carpinus betulus "Lucas" Columnar European Hornbeam 2.5" BB					
1	Liriodendron tulipifera Tuliptree 2.5" BB					
3	Malus 'Marilee' Crabapple 1.5" BB					
	CONIFER EVERGREEN TREES					
4	Juniperus J.N. Select Blue 'Star Power' 5' BB					
4	Juniperus virginiana 'Taylor' Redcedar 8' BB					
	BROADLEAF DECIDUOUS SHRUBS					
37	Diervilla rivularis Kodiak Red Bush Honeysuckle 18" cont					
3	Hydrangea paniculata 'Bobo' Hydrangea 18" cont					
10	Rosa 'Apricot Drift' Groundcover Rose 18" cont					
	CONIFER EVERGREEN SHRUB					
4	Juniperus x pfizeriana 'MonSan' Sea of Gold Juniper 18" BB					
						Subtotal
						Sales Tax (5.0%)
						Total



5611 South Calhoun Road, New Berlin, WI 53151
Ph: 262-679-5200 Fax: 262-679-5215

Proposal

Date	Proposal #
4/5/2024	23-402

Job Location

City of New Berlin
3805 S Casper Dr
New Berlin, WI 53151
Attn: Dan Hogan
262.797.2445

New Berlin Activity and Recreation Center
15321 W National Ave
New Berlin, WI 53151

Customer Phone

262-797-2445 x 2249

Terms	Net 30	Sales Rep	Dan L	Completion Date	
					Qty
					Description
					PERENNIAL GRASS
					5 Helictotrichon sempervirens 'Sapphire Fountain Blue' Oat Grass #1 cont
					11 Sporobolus heterolepsis 'Tara' Dwarf Prairie Dropseed Grass #1 cont
					PERENNIALS
					10 Hemerocallis x Nosferatu Trophytaker Daylily 4.5" cont
					17 Hemerocallis 'Stella de Oro' Daylily #1 cont
					8 Perovskia atriplicifolia 'Little Spire' Russian Sage #1 cont
					LSP1.3
					BROADLEAF DECIDUOUS TREES
					1 Acer miyabei 'Morton' State Street Maple 4" BB
					4 Carpinus betulus "Lucas" Columnar European Hornbeam 2.5" BB
					1 Cercidiphyllum japonicum Katsura Tree 2.5" BB (Largest Available 2")
					5 Ginkgo biloba 'Princeton Sentry' Maidenhair Tree 4" BB (Largest available 2.5" BB)
					1 Liriodendron tulipifera Tuliptree 2.5" BB
					2 Nyssa sylvatica 'Wildfire' Black Gum Tree 2.5" BB
					2 Gleditsia triacanthos 'Shademaster' Honeylocust 2.5" BB
					2 Ulmus americana 'New Harmony' Elm 2.5" BB
					1 Acer x freemanii Autumn Blaze Maple 2.5" BB
					CONIFER EVERGREEN TREES
					1 Juniperus scopulorum 'Gray Gleam' Juniper 10' BB
					1 Juniperus virginiana 'Taylor' Redcedar 10' BB (Largest Available 8')
					1 Picea omorika 'Serbian' Spruce 10' BB (Largest Available 6')
					BROADLEAF DECIDUOUS SHRUBS
					Subtotal
					Sales Tax (5.0%)
					Total



5611 South Calhoun Road, New Berlin, WI 53151
Ph: 262-679-5200 Fax: 262-679-5215

Proposal

Date	Proposal #
4/5/2024	23-402

Job Location

City of New Berlin
3805 S Casper Dr
New Berlin, WI 53151
Attn: Dan Hogan
262.797.2445

New Berlin Activity and Recreation Center
15321 W National Ave
New Berlin, WI 53151

						Customer Phone
Terms	Net 30	Sales Rep	Dan L	Completion Date		262-797-2445 x 2249
Qty	Description					
5	Hydrangea paniculata 'Bobo' Hydrangea 18" cont					
4	Physocarpus opulifolius 'Mindia' Coppertina Ninebark 18" cont					
27	Spirea japonica 'Double Play Candy Corn' Spirea 18" cont					
	CONIFER EVERGREEN SHRUBS					
9	Juniperus x pfizeriana 'MonSan' Sea of Gold Juniper 18" BB					
12	Thuja occidentalis 'Mr. Bowling Ball' Globe Arborvitae 18" cont					
	PERENNIAL GRASS					
26	Panicum virgatum 'Northwind' Switch Grass #1 cont					
25	Sporobolus heterolepis 'Tara' Dwarf Prairie Dropseed Grass #1 cont					
	PERENNIALS					
13	Hemerocallis x Nosferatu Trophytaker Daylily 4.5" cont					
56	Hemerocallis 'Stella de Oro' daylilly 4.5" cont					
24	Perovskia atriplicifolia 'Little Spire' Russian Sage #1 cont					
10	Juniperus chinensis 'Gold Coast' Juniper 18" cont					
	PARKING ISLANDS					
2	Acer rubrum 'Red Sunset' Maple 2.5" BB					
2	Celtis occidentalis Common Hackberry 2.5" BB					
2	Ulmus 'Morton' Accolade Elm 2.5" BB					
32	Rhus aromatica 'Gro-Low' Fragrant Sumac 18" cont					
30	Panicum virgatum 'Northwind' Switch Grass #1 cont					
	SPADE TREES:					
3	Gleditsia triacanthos var. inermis 'Skycole' Skyline Thornless Honeylocust 5" Spade					
						Subtotal
						Sales Tax (5.0%)
						Total



5611 South Calhoun Road, New Berlin, WI 53151
Ph: 262-679-5200 Fax: 262-679-5215

Proposal

Date	Proposal #
4/5/2024	23-402

Job Location

City of New Berlin
3805 S Casper Dr
New Berlin, WI 53151
Attn: Dan Hogan
262.797.2445

New Berlin Activity and Recreation Center
15321 W National Ave
New Berlin, WI 53151

						Customer Phone
Terms	Net 30	Sales Rep	Dan L	Completion Date		262-797-2445 x 2249
Qty	Description					
	SOFTSCAPE					
12	Screened Topsoil 0.1' average depth / Installed per CY					
6,888	Turf Prep to include rock removal and hand raking per SF					
3,588	Shrub Bed Prep to include Amendments and Starter Fertilizer per SF					
6,888	Single-Netted Straw matting erosion control per SF					
3,553	Weed Barrier per SF					
6,888	Advanced Landscape Seed Blend Mix per SF					
3	3/4" Grey Slate Chips / Supplied					
6	Slate Chips / Installed					
372	Curv-Rite Aluminum Bed Edging installed per LF					
13	Furnish & Install Gator Bags					
3	(13) Tree Rings: Shredded hardwood bark mulch installed per CY					
	HARDSCAPE					
60	Washed stone base / Supplied per Ton					
100	Washed stone / Installed					
1	Watering of plants during the course of landscape construction					
1	One (1) year warranty is included with this proposal. Warranty does not include damage caused by rodents, animal foraging, insects, mechanical damage, drought, frost, frost cracking, lightning, improper care, improper watering, natural disaster, or other Acts of God. Damage resulting from any of these causes that is not a defect is excluded from our warranty.					
1	MAINTENANCE:...(0) days maintenance is included with this proposal which includes grass cutting and bed weeding only. Does NOT include irrigation, temporary or permanent, of turf or beds.					
	WATERING:					
						Subtotal
						Sales Tax (5.0%)
						Total



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Qty	Description					
	- After initial plant installation and watering, the GC and/or Owner will bear the responsibility to continue to water outside any permanent irrigation system or specified and agreed upon temporary irrigation. LATE SEASON / WINTER CONDITIONS: - Evergreen Trees / Shrubs planted between November 15th and April 30th will not be warrantied as Winter Conditions impact their survival rate - TOTM will not warranty perennials installed after October 15th as they may not have time to root themselves to survive the winter season. - Plant selections for installation may need substitutions based upon the availability at nurseries late in the season. - If requested, TOTM will provide plant protection from winter salt damage with gypsum application as an additional charge. - Turf seeded between October 1st and November 15th will not be warrantied as there is a potential for a killing frost to immature grass. Seeding after November 15th will be a dormant seeding. - Any installations may incur additional winter condition charges from November 15th thru April 1st. EXCLUSIONS: - Annuals to be planted by owner. - Planters furnished and installed by owner. - Outcropping wall is existing, not included. - Tree grates are by owner. - Plants are quoted on locally sourced availability, substitutions may be required. - Trees on the Move Standard Insurance Coverage / Limits are included. - If matting is installed, staples that hold the matting in place must be removed by others. - Any topsoil, unless specifically listed above as included. - If topsoil needs to be cleaned, the cost will be charged on a T&M basis. - Final rough grade to be +/-1" of final finish grade.					
						Subtotal
						Sales Tax (5.0%)
						Total



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Terms	Net 30	Sales Rep	Dan L	Completion Date	
Qty	Description				
	- Any maintenance, unless specifically listed above as included. - Any irrigation (temporary or permanent), unless specifically listed above as included. - Any tree staking. If required, ADD \$95.00 plus tax per tree to base bid. - Any A.M. Leonard 4-inch diameter tree bark protection. If required, ADD \$52.00 plus tax per tree to base bid. - Any Gator bagging. If required, ADD \$45.00 plus tax per tree to base bid. - Any edging material, unless specifically listed above as included. - Any prevailing or union wages, unless specifically listed above as included. - Any Engineering drawings for any retaining walls. - Any private line location services required will be an additional cost and billed to client plus 10% service fee. Otherwise, GC and/or Owner will bear responsibility/liability of damage. - Any Additional Insured Endorsement requirements will be an additional cost. - Any silt fence removal. - Any erosion control or site preparation work. - Any other item not listed above as included. Note: Base bid includes plant watering during the landscaping process. Upon project turnover watering shall be owner's responsibility. TOTM does offer this service on a Time and Material basis. Please contact us to discuss available options. Note: Site Excavator shall turn over for Landscaping within 0.1' of finish grade, topsoil required to achieve shall be furnished by site excavator. All topsoil required to complete landscaping shall be utilized from owner's stockpile at no cost to TOTM.				
Subtotal					\$67,834.56
Sales Tax (5.0%)					
Total					\$67,834.56

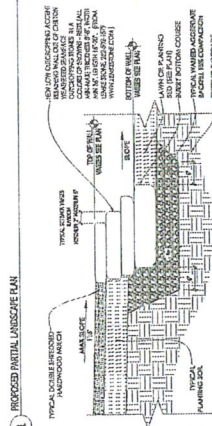
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Sheet Title: PROPOSED PARTIAL LANDSCAPE PLAN AND PLANT MATERIAL TABLE

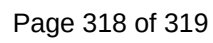
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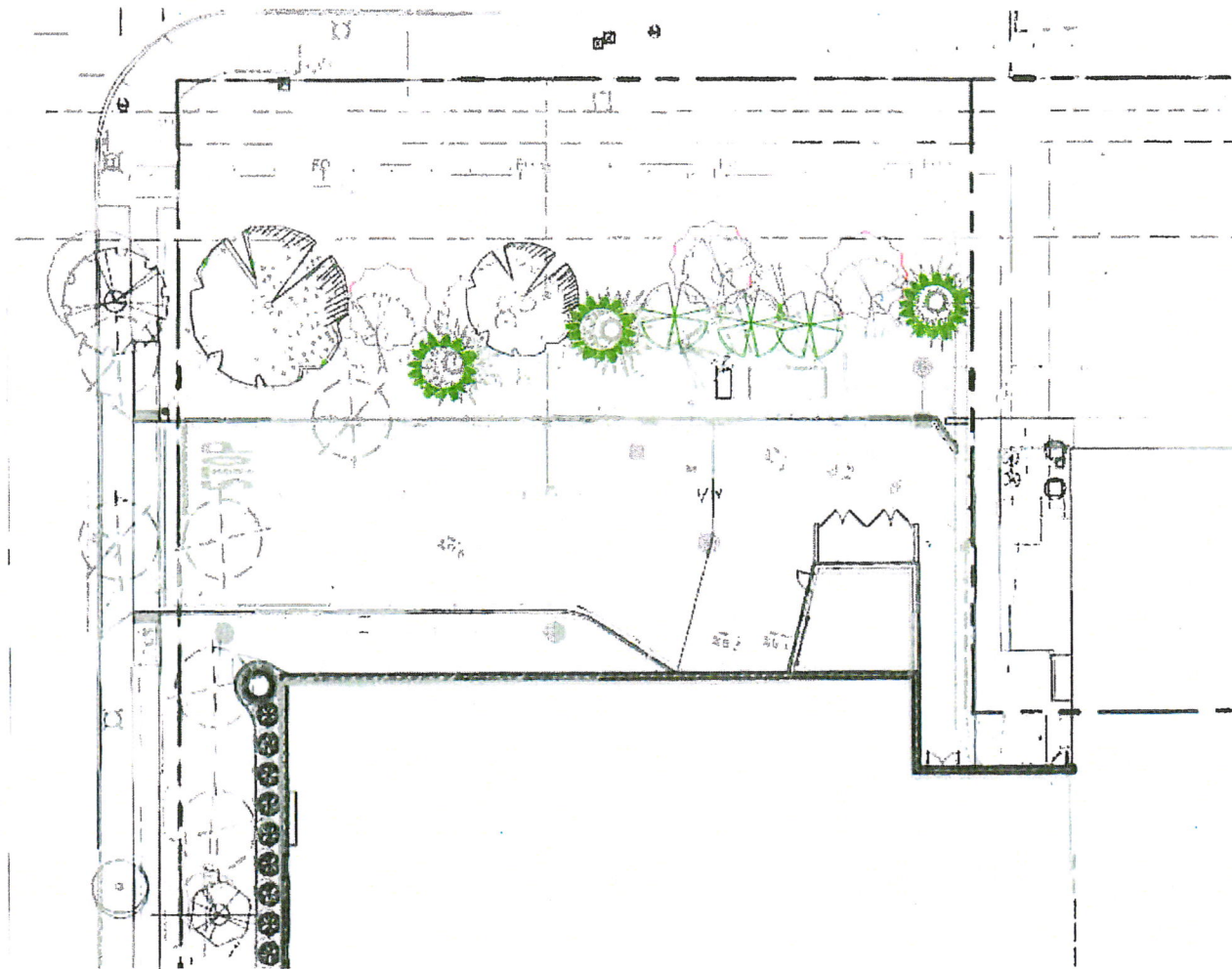
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CALL HOME



TYPICAL LOW OUTCROPPING STONE GARDEN WALL SECTION





LEGEND		
	COMMON NAME	QTY
+	SHRUB, DECIDUOUS	
+	VIBURNUM, DOUBLETILE	3
+	TREE, DECIDUOUS	
+	AMELANCHIER, AUTUMN BRILLIANCE	3
+	BIRCH, HERITAGE RIVER	1
+	ELM, HOMESTEAD	
+	TREE, EVERGREEN	
+	SPRUCE, SERBIAN	3