

*****ATTACHMENTS*****

LEASE AGREEMENT

BETWEEN:

City of Sheboygan

("CITY")

Ellwood H. May Environmental Park Association of Sheboygan County, Inc.

("MPA")

AND

Sheboygan County Young Men's Christian Association, Inc.

("YMCA")

In consideration of CITY leasing certain premises within Ellwood H. May Environmental Park, a city park ("the Property") to YMCA and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, and in consideration of the duty of MPA to provide youth and school education programs at the Property during the school year on behalf of the City, the Parties agree as follows:

Background

CITY owns the Property and has designated it as a public park. It has contracted with MPA to operate the Property, including provision of educational and other programming at the Property on behalf of CITY

YMCA founded and operates Camp Y-Koda ("Y-Koda"), an 80- acre camp just west of Sheboygan Falls. In addition to offering summer camp experiences, Y-Koda provides school programs. Among those programs is a partnership between Y-Koda and MPA that allows Y-Koda to use the Property and the facilities thereon to manage and operate Y-Koda Nature School ("Nature School") at Maywood, and provide school/ homeschool environmental education classes.

Y-Koda is experienced facilitating environmental education and desires to manage and operate Nature School and school/homeschool environmental education classes at Maywood. MPA desires to obtain the benefits of Y-Koda's expertise by offering these programs at Maywood and increasing the use of the park and Maywood Association memberships.

Leased Property

1. CITY agrees to lease any and all necessary space and buildings within its 135-acre Property to YMCA during hours it is open to the public for the purpose of said educational programming. Specific use of the park and buildings upon the Property shall be scheduled by MPA, and shall not conflict with use by other parties who have previously leased portions of the property, including the use of the Environmental Lab and the Program Room within the Ecology Center by the Sheboygan Area School District. MPA agrees that it shall, on an annual basis, enter into a Memorandum of Understanding ("MOU") with YMCA specifically delineating the services it will provide as part of the programming facilitated pursuant to this contract.
2. No animals are allowed to be kept in or about the Property.
3. Subject to the provisions of this Lease, YMCA staff are entitled to park in designated areas on or about the Property.
4. All park rules apply to the use of the Property, including any rules which may be adopted related to the coronavirus pandemic of 2020-21 or to other health and safety issues that may arise.

Term

5. The initial term of the Lease commences at 8:00 a.m. on September 8, 2021 and ends at 5:00 p.m. on ~~June 15~~August 31, 2022.
6. This contract will automatically renew each year for twenty-five (25) additional one-year terms; the final term shall end on ~~June 15~~August 31, 2047. Any party may terminate the lease with six (6) months written notice. Additionally, any party may terminate the automatic renewal of the Lease by providing notice, in writing, to the other parties by no later than May 31 of the year in which the renewed term begins. The parties may, at any time prior to the end of the final term, agree to a new Lease to replace this Lease, or may agree to extend this Lease beyond 2047.

Rent

7. Subject to the provisions of this Lease, the rent for the ~~Classrooms Property (including any classrooms as may be scheduled between YMCA and MPA)~~ is \$10,000 per year, to be paid semiannually pursuant to a schedule agreed to via MOU by MPA and YMCA, but which provides for one payment no later than December 31 and one payment no later than June 15. Payment shall be made to MPA.
8. MPA is authorized to use said funds to perform any and all of its duties under this Lease or pursuant to MOU.
9. Rent is in addition to any compensation to MPA for custodial services, school program compensation, or summer camp compensation. Such compensation shall be determined via MOU.

10. The Parties shall annually discuss the amount of Rent and may agree in writing to an amount different than the amount provided. Should the parties not agree, the City may impose any rent it chooses at its sole discretion via Council resolution to be passed no later than June 1 each year; provided that said amount shall be no greater than the larger of a five-percent (5%) increase from the prior year or a percentage increase equivalent to the annual Consumer Price Index most recently calculated by the United States Bureau of Labor Statistics.

Tenant Improvements

11. YMCA may not make improvements or permanent changes to the Property without authorization from the Director of MPA.

Utilities and Other Charges

12. City and MPA shall provide electricity, water/sewer, internet, telephone, and natural gas (collectively the "utilities") as well as garbage collection and alarm/security systems. YMCA shall not be responsible for the payment of the utilities and other charges in relation to the Property, ~~including electricity, water/sewer, internet, telephone, natural gas, garbage collection and alarm/security system.~~ This paragraph shall not be construed to require the provision of utilities, garbage collection, and alarm/security systems, at a level beyond that provided by City and MPA immediately prior to the effective date of this agreement.

Insurance

13. YMCA is hereby advised and understands that the personal property of YMCA is not insured by the City or MPA for either damage or loss, and neither the City nor MPA assume any liability for any such loss.
14. YMCA agrees that it shall hold harmless the City and its officers, employees, representatives, volunteers, and assigns, and MPA and its officers, employees, representatives, volunteers, and assigns, and shall indemnify and hold harmless all such persons or entities for any claims or losses related to damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the lease. City and MPA shall hold YMCA and its officers, employees, representative, and assigns harmless and shall indemnify and hold harmless all such persons or entities for any and all losses arising out of or resulting from (a) any acts or omissions of City (including its officers, agents, employees or authorized representatives) and MPA (including its officers, agents, employees or authorized representatives), including obligations of or defaults under this Lease and (b) structural defects of the premises.
15. YMCA agrees that it shall furnish and maintain such liability insurance as will protect YMCA, the City, MPA, and all of their officers, employees, representatives, volunteers, and assigns, from all claims for damage to property or bodily injury, including death, which may arise from the operations under the lease or in connection therewith. Such insurance shall provide coverage of not less than two million dollars (\$2,000,000) per occurrence. The policy shall further provide

that it may not be cancelled except upon thirty (30) days written notice served upon both the City and MPA. Failure to provide such insurance shall terminate the Lease.

Governing Law

16. This Lease will be construed in accordance with and exclusively governed by the laws of the State of Wisconsin.

Severability

17. If there is a conflict between any provision of this Lease and the provisions of law, such provisions of the Lease will be amended or deleted as necessary in order to comply with the law. Further, any provisions that are required by law are incorporated into this Lease.
18. The invalidity or unenforceability of any provisions of this Lease will not affect the validity of enforceability of any other provision of this Lease. Such other provisions remain in full force and effect.

Amendment of Lease

19. This Lease may only be amended or modified by a written document executed by the Parties.

Assignment of Lease

20. YMCA shall not assign the Lease, or sublet or grant any concession or license to use the Property or any part of the Property. Any assignment, subletting, concession, or license, whether by operation of law or otherwise, will be void and will, at the City's option, terminate this Lease.

Damage to Property

21. In case the City and or MPA chooses not to rebuild or repair property damage at the Property not caused by the negligence or willful act of the Tenant or the Tenant's employees, students, or visitors, the City may terminate the Lease by giving notice in writing.
22. Property and equipment damage caused by students or staff of the programs facilitated pursuant to this contract will be repaired/replaced at the expense of YMCA.

Maintenance, Care, and Use

23. YMCA will, at its sole expense, keep and maintain the Property and appurtenances in good and sanitary condition and repair during the term of this Lease and any renewal of this Lease. MPA and YMCA may provide for more detailed provisions related to maintenance, care, and use of the Property via MOU.
24. YMCA will not engage in any illegal trade or activity on or about the Property. It shall obtain all required permits, inspections, and license for any activity it conducts.
25. The Parties will comply with standards of health, sanitation, fire, housing and safety as required by law.
26. At the expiration of this Lease, YMCA will quit and surrender the Property in as good a state and condition as they were at the commencement of the Lease, reasonable use and wear and tear excepted.

Address for Notice

27. For any matter relating to this tenancy, YMCA may be contacted at the Property or through the phone number below:
 - a. Name: Sheboygan County Young Men's Christian Association, Inc. Camp Y Koda
 - a-b. Address: 812 Broughton Drive, Sheboygan, WI 53081
 - b-c. Phone: 920/980-2454451-8000
28. For any matter relating to the tenancy, whether during or after this tenancy has been terminated, the City's address for notice is:
 - a. Name: Ellwood H. May Environmental Park Association of Sheboygan County, Inc.
 - b. Address: 3615 Mueller Road, Sheboygan, WI 53083
 - c. Phone: 920/459-3906

General Provisions

29. All monetary amounts stated or referred to in this Lease are based in the United States dollar.
30. Any waiver by the City or MPA of any failure by YMCA to perform or observe the provisions of this Lease will not operate as a waiver of the City's or MPA's rights under this Lease in respect of any subsequent defaults, breaches or non-performance and will not defeat or affect in any way the City's rights or MPA's rights in respect of any subsequent default or breach. Any waiver by the YMCA of any failure by the City or MPA to perform or observe the provisions of this Lease will not operate as a waiver of the YMCA's rights under this Lease in respect of any subsequent defaults, breaches or non-performance and will not defeat or affect in any way the YMCA's rights in respect of any subsequent default or breach.
31. This Lease will extend to and be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns, as the case may be, of each of the Parties. All covenants are to be construed as conditions of the Lease.
32. All sums payable by YMCA to MPA pursuant to any provision of the Lease will be deemed to be additional rent and will be recovered by MPA as rental arrears.
33. Locks may not be added or changed without the prior written agreement of the Parties, which may be pursuant to MOU.
34. YMCA will be charged an additional amount of \$25.00 for each N.S.F. check or checks returned by YMCA's financial institution.
35. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Lease. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.
36. The Lease may be executed in counterparts. Facsimile and emailed signatures are binding and are considered to be original signatures.
37. This Lease constitutes the entire agreement between Parties.
38. Time is of the essence in the Lease.

IN WITNESS WHEREOF YMCA, Ellwood H. May Environmental Park Association of Sheboygan County, Inc., and the City of Sheboygan have duly affixed their signatures on this ___ day of ~~April~~September, 2021.

City of Sheboygan

Sheboygan County YMCA

Ryan Sorenson, Mayor

Donna Wendlandt, CEO

Meredith De Bruin, City Clerk

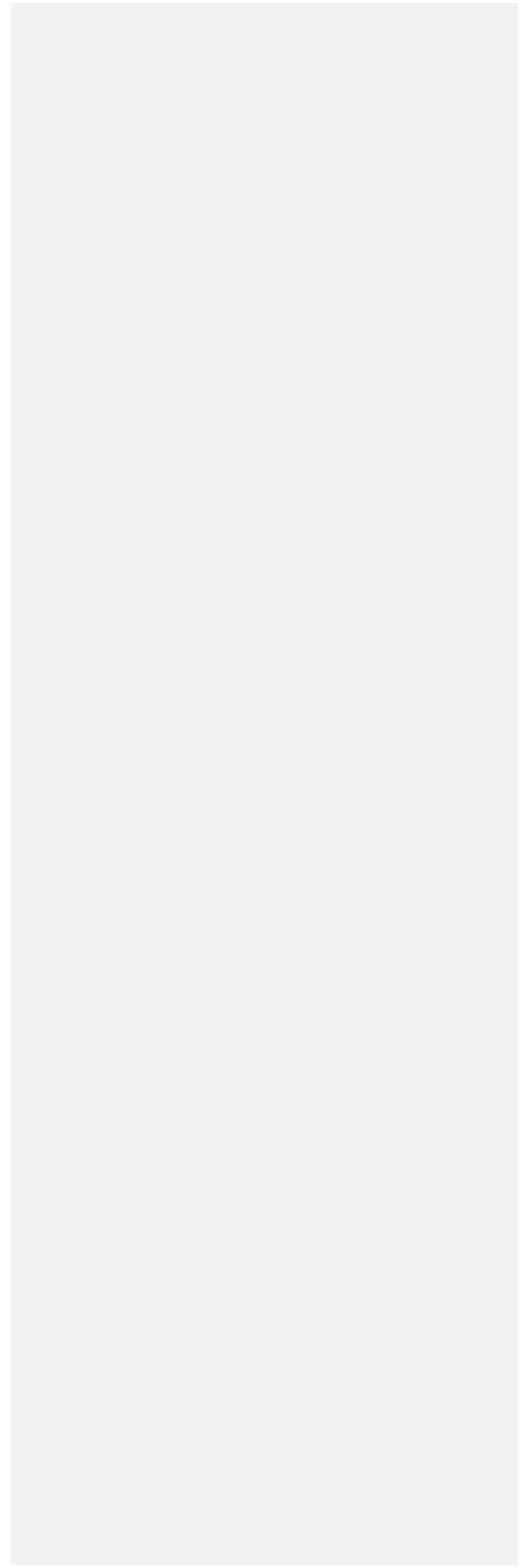
Jeremiah Dentz, Executive Director of Camp Y-Koda

Ellwood H. May Environmental Park Assoc.

Formatted: English (United States)

Samantha Lammers, Director

Paul Pickhardt, Board President



CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: A resolution authorizing the appropriate City officials to execute a Lease Agreement between the City of Sheboygan, the Ellwood H. May Environmental Park Association of Sheboygan County, Inc., and the Sheboygan County YMCA.

REPORT PREPARED BY: Joseph L. Kerlin, Superintendent of Parks and Forestry

REPORT DATE: September 9, 2021

MEETING DATE: September 14, 2021

FISCAL SUMMARY:

STATUTORY REFERENCE:

Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS: The City of Sheboygan has worked with the Ellwood H. May Environmental Park Association of Sheboygan County, (“MPA”) and Sheboygan County YMCA since 2016, in an effort to offer nature based education programs in Maywood Park. This lease agreement is a one-year initial term with twenty-five automatically renewing additional terms. MPA agrees that it shall, on an annual basis, enter into a Memorandum of Understanding with YMCA specifically delineating the services it will provide as part of the programming facilitated pursuant to this contract.

STAFF COMMENTS: The new agreement has been reviewed and updated by the City Attorney, Chuck Adams. Past agreements have been beneficial to all parties and they are requesting to enter into a longer-term agreement.

ACTION REQUESTED: Motion to recommend the Common Council adopt Res. No. 53-21-22 authorizing the appropriate City officials to execute a Lease Agreement between the City of Sheboygan, the Ellwood H. May Environmental Park Association of Sheboygan County, Inc., and the Sheboygan County YMCA.

ATTACHMENTS:

- I. Res. No. 53-21-22
- II. Lease Agreement

III

Res. No. 53 - 21 - 22. By Alderpersons Dekker and Perrella.
September 7, 2021.

A RESOLUTION authorizing the appropriate City officials to execute a Lease Agreement between the City of Sheboygan, the Ellwood H. May Environmental Park Association of Sheboygan County, Inc., and the Sheboygan County YMCA.

RESOLVED: That the Mayor and City Clerk are hereby authorized to execute the Lease Agreement, a copy of which is attached hereto and incorporated herein.

fw

Dean Dekker
Grant Perrella

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

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

LEASE AGREEMENT

BETWEEN:

City of Sheboygan

("CITY")

Ellwood H. May Environmental Park Association of Sheboygan County, Inc.

("MPA")

AND

Sheboygan County YMCA

("YMCA")

In consideration of CITY leasing certain premises within Ellwood H. May Environmental Park, a city park ("the Property") to YMCA and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, and in consideration of the duty of MPA to provide youth and school education programs at the Property during the school year on behalf of the City, the Parties agree as follows:

Background

CITY owns the Property and has designated it as a public park. It has contracted with MPA to operate the Property, including provision of educational and other programming at the Property on behalf of CITY

YMCA founded and operates Camp Y-Koda ("Y-Koda"), an 80- acre camp just west of Sheboygan Falls. In addition to offering summer camp experiences, Y-Koda provides school programs. Among those programs is a partnership between Y-Koda and MPA that allows Y-Koda to use the Property and the facilities thereon to manage and operate Y-Koda Nature School ("Nature School") at Maywood, and provide school/ homeschool environmental education classes.

Y-Koda is experienced facilitating environmental education and desires to manage and operate Nature School and school/homeschool environmental education classes at Maywood. MPA desires to obtain the benefits of Y-Koda's expertise by offering these programs at Maywood and increasing the use of the park and Maywood Association memberships.

Leased Property

1. CITY agrees to lease any and all necessary space and buildings within its 135-acre Property to YMCA during hours it is open to the public for the purpose of said educational programming. Specific use of the park and buildings upon the Property shall be scheduled by MPA, and shall not conflict with use by other parties who have previously leased portions of the property,

including the use of the Environmental Lab and the Program Room within the Ecology Center by the Sheboygan Area School District. MPA agrees that it shall, on an annual basis, enter into a Memorandum of Understanding ("MOU") with YMCA specifically delineating the services it will provide as part of the programming facilitated pursuant to this contract.

2. No animals are allowed to be kept in or about the Property.
3. Subject to the provisions of this Lease, YMCA staff are entitled to park in designated areas on or about the Property.
4. All park rules apply to the use of the Property, including any rules which may be adopted related to the coronavirus pandemic of 2020-21 or to other health and safety issues that may arise.

Term

5. The initial term of the Lease commences at 8:00 a.m. on September 8, 2021 and ends at 5:00 p.m. on June 15, 2022.
6. This contract will automatically renew each year for twenty-five (25) additional one-year terms; the final term shall end on June 15, 2047. Any party may terminate the automatic renewal of the Lease by providing notice, in writing, to the other parties by no later than May 31 of the year in which the renewed term begins. The parties may, at any time prior to the end of the final term, agree to a new Lease to replace this Lease, or may agree to extend this Lease beyond 2047.

Rent

7. Subject to the provisions of this Lease, the rent for the Classrooms is \$10,000 per year, to be paid semiannually pursuant to a schedule agreed to via MOU by MPA and YMCA, but which provides for one payment no later than December 31 and one payment no later than June 15. Payment shall be made to MPA.
8. MPA is authorized to use said funds to perform any and all of its duties under this Lease or pursuant to MOU.
9. Rent is in addition to any compensation to MPA for custodial services, school program compensation, or summer camp compensation. Such compensation shall be determined via MOU.
10. The Parties shall annually discuss the amount of Rent and may agree in writing to an amount different than the amount provided. Should the parties not agree, the City may impose any rent it chooses at its sole discretion via Council resolution to be passed no later than June 1 each year; provided that said amount shall be no greater than the larger of a five-percent (5%) increase from the prior year or a percentage increase equivalent to the annual Consumer Price Index most recently calculated by the United States Bureau of Labor Statistics.

Tenant Improvements

11. YMCA may not make improvements or permanent changes to the Property without authorization from the Director of MPA.

Utilities and Other Charges

12. YMCA shall not be responsible for the payment of the utilities and other charges in relation to the Property, including electricity, water/sewer, internet, telephone, natural gas, garbage collection and alarm/security system.

Insurance

13. YMCA is hereby advised and understands that the personal property of YMCA is not insured by the City or MPA for either damage or loss, and neither the City nor MPA assume any liability for any such loss.
14. YMCA agrees that it shall hold harmless the City and its officers, employees, representatives, volunteers, and assigns, and MPA and its officers, employees, representatives, volunteers, and assigns, and shall indemnify and hold harmless all such persons or entities for any claims for damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the lease.
15. YMCA agrees that it shall furnish and maintain such liability insurance as will protect YMCA, the City, MPA, and all of their officers, employees, representatives, volunteers, and assigns, from all claims for damage to property or bodily injury, including death, which may arise from the operations under the lease or in connection therewith. Such insurance shall provide coverage of not less than two million dollars (\$2,000,000) per occurrence. The policy shall further provide that it may not be cancelled except upon thirty (30) days written notice served upon both the City and MPA. Failure to provide such insurance shall terminate the Lease.

Governing Law

16. This Lease will be construed in accordance with and exclusively governed by the laws of the State of Wisconsin.

Severability

17. If there is a conflict between any provision of this Lease and the provisions of law, such provisions of the Lease will be amended or deleted as necessary in order to comply with the law. Further, any provisions that are required by law are incorporated into this Lease.
18. The invalidity or unenforceability of any provisions of this Lease will not affect the validity of enforceability of any other provision of this Lease. Such other provisions remain in full force and effect.

Amendment of Lease

19. This Lease may only be amended or modified by a written document executed by the Parties.

Assignment of Lease

20. YMCA shall not assign the Lease, or sublet or grant any concession or license to use the Property or any part of the Property. Any assignment, subletting, concession, or license, whether by operation of law or otherwise, will be void and will, at the City's option, terminate this Lease.

Damage to Property

21. In case the City and or MPA chooses not to rebuild or repair property damage at the Property not caused by the negligence or willful act of the Tenant or the Tenant's employees, students, or visitors, the City may terminate the Lease by giving notice in writing.
22. Property and equipment damage caused by students or staff of the programs facilitated pursuant to this contract will be repaired/replaced at the expense of YMCA.

Maintenance, Care, and Use

23. YMCA will, at its sole expense, keep and maintain the Property and appurtenances in good and sanitary condition and repair during the term of this Lease and any renewal of this Lease. MPA and YMCA may provide for more detailed provisions related to maintenance, care, and use of the Property via MOU.
24. YMCA will not engage in any illegal trade or activity on or about the Property.
25. The Parties will comply with standards of health, sanitation, fire, housing and safety as required by law.
26. At the expiration of this Lease, YMCA will quit and surrender the Property in as good a state and condition as they were at the commencement of the Lease, reasonable use and wear and tear excepted.

Address for Notice

27. For any matter relating to this tenancy, YMCA may be contacted at the Property or through the phone number below:
 - a. Name: Camp Y-Koda
 - b. Phone: 920/980-2454
28. For any matter relating to the tenancy, whether during or after this tenancy has been terminated, the City's address for notice is:
 - a. Name: Ellwood H. May Environmental Park Association of Sheboygan County, Inc.
 - b. Address: 3615 Mueller Road, Sheboygan, WI 53083
 - c. Phone: 920/459-3906

General Provisions

29. All monetary amounts stated or referred to in this Lease are based in the United States dollar.

30. Any waiver by the City or MPA of any failure by YMCA to perform or observe the provisions of this Lease will not operate as a waiver of the City's or MPA's rights under this Lease in respect of any subsequent defaults, breaches or non-performance and will not defeat or affect in any way the City's rights or MPA's rights in respect of any subsequent default or breach.
31. This Lease will extend to and be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns, as the case may be, of each of the Parties. All covenants are to be construed as conditions of the Lease.
32. All sums payable by YMCA to MPA pursuant to any provision of the Lease will be deemed to be additional rent and will be recovered by MPA as rental arrears.
33. Locks may not be added or changed without the prior written agreement of the Parties, which may be pursuant to MOU.
34. YMCA will be charged an additional amount of \$25.00 for each N.S.F. check or checks returned by YMCA's financial institution.
35. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Lease. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.
36. The Lease may be executed in counterparts. Facsimile and emailed signatures are binding and are considered to be original signatures.
37. This Lease constitutes the entire agreement between Parties.
38. Time is of the essence in the Lease.

IN WITNESS WHEREOF, Sheboygan County YMCA, Ellwood H. May Environmental Park Association of Sheboygan County, Inc., and the City of Sheboygan have duly affixed their signatures on this ____ day of September, 2021.

City of Sheboygan

Sheboygan County YMCA

Ryan Sorenson, Mayor

Donna Wendlandt, CEO

Meredith De Bruin, City Clerk

Jeremiah Dentz, Executive Director of Camp Y-Koda

Ellwood H. May Environmental Park Assoc.

Samantha Lammers, Director

Paul Pickhardt, Board President

III

56

Res. No. 54 - 21 - 22. By Alderpersons Dekker and Perrella.
September 7, 2021.

A RESOLUTION authorizing the appropriate City officials to enter into a contract with Wheeler Lumber, LLC for the purchase of a prefabricated bridge to be installed in Evergreen Park.

WHEREAS, the City of Sheboygan has advertised for bids for the purchase of a prefabricated bridge to be installed in Evergreen Park; and

WHEREAS, one bid was received in response to that advertisement; and

WHEREAS, the bid was from Wheeler Lumber, LLC for \$151,550.00; and

WHEREAS, the City Engineer has reviewed the bid and determined that the low bid met all of the specifications.

NOW, THEREFORE, BE IT RESOLVED: That the appropriate City officials are hereby authorized to enter into the attached agreement with Wheeler Lumber, LLC for the purchase of a prefabricated bridge to be installed in Evergreen Park.

BE IT FURTHER RESOLVED: That the appropriate City officials are authorized to draw funds from the following account, upon the agreement being fully executed by all parties, to pay for the purchase pursuant to the terms of the agreement:

Account #26553000-631100 \$151,550.00
(Parks, Forestry & Open Space -
Improvements other than Buildings)

Dean Dekker


Gravo Perrella

PW

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

Dated _____ 20 . _____, City Clerk

Approved _____ 20 . _____, Mayor

PROJECT MANUAL			
	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Agreement
		Section:	00 52 01
		Bid Number:	2458-21

**AGREEMENT BETWEEN BUYER AND SELLER
FOR PROCUREMENT CONTRACT**

THIS AGREEMENT is by and between City of Sheboygan ("Owner") and
 _____ ("Contractor").

Terms used in this Procurement Agreement have the meanings stated in the General Conditions of the Procurement Contract and the Supplementary Conditions of the Procurement Contract.

Buyer and Seller hereby agree as follows:

ARTICLE 1—PROCUREMENT CONTRACT

1.01 *Goods and Special Services*

- A. Seller shall furnish the Goods and Special Services as specified or indicated in the Procurement Contract Documents. The Goods and Special Services are generally described as follows: Prefabricated Pedestrian Bridge

1.02 *The Project*

- A. The Project, of which the Goods and Special Services are a part, is generally described as follows: Evergreen Park Pedestrian Bridge installation on trail construction.

1.03 *Engineer*

- A. Buyer has prepared Procurement Contract Documents. Buyer assumes all duties and responsibilities and has the rights and authority assigned to Engineer in the Procurement Contract Documents in connection with Seller's furnishing of Goods and Special Services.


1.04 *Point of Destination*

- A. The Point of Destination is designated as: Evergreen Park (Area 5) , Sheboygan, WI

ARTICLE 2—PROCUREMENT CONTRACT TIMES

2.01 *Time of the Essence*

- A. All time limits for Milestones, including the submittal of Shop Drawings and Samples, the delivery of Goods, and the furnishing of Special Services as stated in the Procurement Contract Documents, are of the essence of the Procurement Contract.

PROJECT MANUAL			
	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Agreement
		Section:	00 52 01
		Bid Number:	2458-21

2.02 *Schedule of Procurement Contract Times*

- A. The following schedule sets forth the Procurement Contract Times:

Milestone	Date or Days	Notes
Submit Shop Drawings for Approval	4 weeks after Effective Date of Contract	
Deliver acceptable Goods to Point of Destination	14 weeks after approval of shop drawings	Delivery to be coordinated with chosen installation contractor.

2.03 *Shop Drawings and Samples*

- A. *Submittal of Shop Drawings and Samples:* Seller shall submit all Shop Drawings and Samples required by the Procurement Contract Documents to Engineer for its review and approval.
- B. *Engineer's Review:* It is the intent of the parties that Engineer will conduct its review of Shop Drawings and Samples and issue its approval, or a denial accompanied by substantive comments regarding information needed to gain approval, within 14 days after Seller's submittal of such Shop Drawings and Samples, or within such longer period that is needed because of the quantity and quality of such submittals. Resubmittals will be limited whenever possible.


2.04 *Liquidated Damages*

- A. Buyer and Seller recognize that time is of the essence as stated in Paragraph 2.01, and that Buyer will suffer financial and other losses if the Goods are not delivered to the Point of Destination and ready for receipt of delivery by Buyer within the time specified in Paragraph 2.02, plus any extensions thereof allowed in accordance with this Procurement Contract. The parties also recognize that the timely performance of services by others involved in the Project is materially dependent upon Seller's specific compliance with the delivery requirements of Paragraph 2.02. Further, the parties recognize the time, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the loss (whether direct, consequential, or otherwise) suffered by Buyer if complete, acceptable Goods are not delivered on time. Accordingly, instead of requiring any such proof, Buyer and Seller agree that as liquidated damages for delay (but not as a penalty) Seller shall pay Buyer \$295 for each day that expires after the time specified in Paragraph 2.02 for delivery of acceptable Goods.

ARTICLE 3—PROCUREMENT CONTRACT PRICE

3.01 *Procurement Contract Price and Total Price*

- A. The Procurement Contract Price is comprised of the Lump Sum amounts set forth in the following paragraph.
- B. Buyer shall pay Seller a Lump Sum of \$_____ for furnishing the Goods and Special Services (other than any Unit Price Goods and Special Services) in accordance with the Procurement Contract Documents.

PROJECT MANUAL			
	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Agreement
		Section:	00 52 01
		Bid Number:	2458-21

ARTICLE 4—PAYMENT PROCEDURES

4.01 *Submittal and Processing of Applications for Payment*

- A. Seller shall submit Applications for Payment in accordance with Article 13 of the General Conditions and the following paragraphs. Engineer and Buyer will process such Applications for Payment in accordance with said Article 13.

4.02 *Progress Payments; Final Payment*

- A. Seller may submit an Application for Payment requesting the stated percentage of Procurement Contract Price upon attainment of each of the following Payment Line Items:

Payment Line Item (Lump Sum)	Percentage of Lump Sum
1. Receipt of Approval of Shop Drawings and Samples	15
2. Delivery of Goods to Point of Destination in accordance with the Procurement Contract Documents	80
3. Final Payment: Correction of non-conformities, submittal of warranties and other final documentation required by the Procurement Contract Documents.	5
Total Procurement Contract Price (Lump Sum)	100

- B. Buyer shall pay Seller the amount owed under an Application for Payment within 30 days after Engineer's presentation to Buyer of the Application for Payment and Engineer's recommendation.

4.03 *Interest*

- A. All amounts not paid when due will bear interest as the rate of 0 percent per annum.

ARTICLE 5—ASSIGNMENT OF PROCUREMENT CONTRACT


5.01 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Procurement Contract will be binding on another party hereto without the written consent of the party sought to be bound. Specifically, but without limitation, Procurement Contract payments or other money that may become due, and Procurement Contract payments or other money that are due, may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by Laws and Regulations). Unless specifically stated to the contrary in any written consent to such an assignment, such an assignment will not release or discharge the assignor from any duty or responsibility under the Procurement Contract Documents.

ARTICLE 6—PROCUREMENT CONTRACT DOCUMENTS

6.01 *List of Procurement Contract Documents*

- A. The Procurement Contract Documents consist of the following:
 1. This Procurement Agreement.
 2. General Conditions of the Procurement Contract.
 3. Supplementary Conditions of the Procurement Contract.


PROJECT MANUAL			
	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Agreement
		Section:	00 52 01
		Bid Number:	2458-21

4. Procurement Specifications as listed in the table of contents of the project manual (copy of list attached and incorporated by reference).
5. Procurement Drawings as listed in the table of contents of the drawings (copy of list attached and incorporated by reference).
6. Addenda (not attached but incorporated by reference)
 - a. Number {Number} dated {Date}.
 - b. Number {Number} dated {Date}.
 - c. Number {Number} dated {Date}.
7. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
8. The following which may be delivered or issued on or after the Effective Date of the Procurement Contract and are not attached hereto:
 - a. Change Orders;
 - b. Change Directives; and
 - c. Field Orders.
- B. The documents listed in Paragraph 6.01.A are attached to this Procurement Agreement (except as expressly noted otherwise above).
- C. There are no Procurement Contract Documents other than those listed above.
- D. The Procurement Contract Documents may only be amended or supplemented as provided in Paragraph 11.01 of the Procurement General Conditions.

ARTICLE 7—SELLER'S REPRESENTATIONS AND CERTIFICATIONS

7.01 *Seller's Representations*

- A. In order to induce Buyer to enter into this Procurement Agreement, Seller makes the following representations:
 1. Seller has examined and carefully studied the Procurement Contract Documents.
 2. If required by the Instructions to Bidders to visit the Point of Destination and the site where the Goods are to be installed or Special Services will be provided, or if, in Seller's judgment, any observable local or site conditions may affect the delivery, cost, progress, or furnishing of the Goods and Special Services, then Seller has visited the Point of Destination and site where the Goods are to be installed or Special Services will be provided (as applicable) and become familiar with and is satisfied as to the observable local and site conditions that may affect delivery, cost, progress, and furnishing of the Goods and Special Services.
 3. Seller is familiar with and is satisfied as to all Laws and Regulations that may affect the cost, progress, and performance of Seller's obligations under the Procurement Contract.

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4. Seller has carefully studied, considered, and correlated the information known to Seller with respect to the effect of such information on the cost, progress, and performance of Seller's obligations under the Procurement Contract.
5. Seller has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Seller has discovered in the Procurement Contract Documents, and the written resolution (if any) thereof by Engineer is acceptable to Seller.
6. The Procurement Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of Seller's obligations under the Procurement Contract.
7. Seller's entry into this Procurement Contract constitutes an incontrovertible representation by Seller that without exception all prices in the Procurement Agreement are premised upon furnishing the Goods and Special Services as required by the Procurement Contract Documents.

7.02 *Seller's Certifications*

- A. Seller certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Procurement Contract. For the purposes of this Paragraph 7.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Procurement Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Procurement Contract to the detriment of Buyer, (b) to establish bid or contract prices at artificial non-competitive levels, or (c) to deprive Buyer of the benefits of free and open competition;
 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Buyer, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Procurement Contract.


ARTICLE 8—CONFIDENTIALITY

Reserved

ARTICLE 9—MUTUAL WAIVER


9.01 *Mutual Waiver of Consequential Damages*

- A. Buyer and Seller waive against each other, and against the other's officers, directors, members, partners, employees, agents, consultants, and subcontractors, any and all claims for or entitlement to incidental, indirect, or consequential damages arising out of, resulting from, or related to the Procurement Contract. If Buyer (Project Owner) assigns this Procurement Contract to a construction contractor (Contractor/Assignee), then the terms of this Paragraph 9.01.A will be binding upon the Contractor/Assignee with respect to Seller and assignor. The terms of this mutual waiver do not apply to or limit any claim by either Buyer or Seller against the other based on any of the following: (a) contribution or indemnification,

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		Bid Number:	2458-21

(b) liquidated damages, (c) costs, losses, or damages attributable to personal or bodily injury, sickness, disease, or death, or to injury to or destruction of the tangible property of others, (d) intentional or reckless wrongful conduct, or (e) rights conferred by any bond provided by Seller under this Procurement Contract.

(CONTINUED ON NEXT PAGE)

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		Bid Number:	2458-21

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

OWNER:
City of Sheboygan

CONTRACTOR:
{Contractor} _____

By: _____
(signature)
Name,
Title: Ryan Sorenson, Mayor

By: _____
(signature)
Name,
Title: _____
(printed)

Date: _____

Date: _____

Attest:

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

By: _____
(signature)
Name,
Title: Meredith DeBruin, City Clerk

Address for giving notices:

Date: _____

Signatures authorized pursuant to Res. ___-21-22.

Address for giving notices:
City of Sheboygan - Engineering Division
2026 New Jersey Avenue
Sheboygan, WI 53081

Approved as to form and Execution:

By: _____
(signature)
Name, Charles C. Adams, City Attorney
Title:
Date: _____

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 PROCUREMENT CONTRACT

Prepared By



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STANDARD GENERAL CONDITIONS OF THE PROCUREMENT CONTRACT

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ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Whenever used in the Procurement Bidding Requirements or Procurement Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated, which are applicable to the singular or plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Procurement 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 Procurement Contract Documents.
 2. *Application for Payment*—The document prepared by Seller, in a form acceptable to Buyer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Procurement Contract Documents.
 3. *Bid*—An offer or proposal of a prospective Seller submitted on the prescribed form setting forth the prices for the Goods and Special Services to be provided.
 4. *Bidder*—An individual or entity that, as a prospective Seller, submits a Bid to Buyer.
 5. *Buyer*—The individual or entity purchasing the Goods and Special Services.
 6. *Change Directive*—A written directive from Buyer to Seller issued on or after the Effective Date of the Procurement Contract, ordering an addition, deletion, or revision in the Goods and Special Services.
 7. *Change Order*—A document which is signed by Seller and Buyer and authorizes an addition, deletion, or revision to the Procurement Contract Documents or an adjustment in the Procurement Contract Price or the Procurement Contract Times, issued on or after the Effective Date of the Procurement Contract. Change Orders may be the result of mutual agreement by Buyer and Seller, or of resolution of a Claim.
 8. *Claim*—A demand or assertion by Buyer or Seller seeking an adjustment of Procurement Contract Price or Procurement Contract Times, or both, or other relief with respect to the terms of the Procurement Contract. A demand for money or services by a third party is not a Claim.
 9. *Contractor/Assignee*—A construction contractor with which Project Owner enters into a construction contract, and to which Project Owner, as initial Buyer, assigns this Procurement Contract.
 10. *Effective Date of the Procurement Contract*—The date indicated in the Procurement Agreement on which the Procurement Contract becomes effective.
 11. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.

12. *Electronic Means*—Electronic mail (e-mail), upload/download from a secure Project website, or other communications methods that allow: the transmission or communication of Electronic Documents; the documentation of transmissions, including sending and receipt; printing of the transmitted Electronic Document by the recipient; the storage and archiving of the Electronic Document by sender and recipient; and the use by recipient of the Electronic Document for purposes permitted by this Procurement Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
13. *Engineer*—The individual or entity designated as such in the Procurement Agreement.
14. *Field Order*—A written order issued by Engineer which requires minor changes in the Goods or Special Services, but which does not involve a change in the Procurement Contract Price or Procurement Contract Times.
15. *Goods*—The tangible and movable personal property that is described in the Procurement Contract Documents, regardless of whether the property is to be later attached to realty.
16. *Goods and Special Services*—The full scope of materials, equipment, other items, and services to be furnished by Seller, including Goods, as defined herein, and Special Services, if any, as defined herein. This term refers to both the Goods and the Special Services, or to either the Goods or the Special Services, and to any portion of the Goods or the Special Services, as the context requires.
17. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
18. *Milestone*—A principal event specified in the Procurement Contract that Seller must attain by the date or within the number of days indicated, including but not limited to the delivery of the Goods and the furnishing of Special Services.
19. *Notice of Award*—The written notice, by Buyer to a Bidder, of Buyer’s acceptance of the Bid.
20. *Point of Destination*—The specific address of the location where delivery of the Goods will be made, as stated in the Procurement Agreement.
21. *Procurement Agreement*—The written instrument, executed by Buyer and Seller, that sets forth the Procurement Contract Price and Procurement Contract Times, identifies the parties and the Engineer, and designates the specific items that are Procurement Contract Documents.
22. *Procurement Bidding Documents*—The Procurement Bidding Requirements and the proposed Procurement Contract Documents (including all Addenda).
23. *Procurement Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and Bid Form with any supplements.
24. *Procurement Contract*—The entire and integrated written agreement between Buyer and Seller concerning the Goods and Special Services.

25. *Procurement Contract Documents*—Those items so designated in the Procurement Agreement, and which together comprise the Procurement Contract. Shop Drawings and other Seller submittals are not Procurement Contract Documents, even if accepted, reviewed, or approved by Engineer or Buyer.
26. *Procurement Contract Price*—The money that Buyer has agreed to pay Seller for furnishing the Goods and Special Services in accordance with the Procurement Contract Documents.
27. *Procurement Contract Times*—The times stated in the Procurement Agreement by which the Goods must be delivered, Special Services must be furnished, and other Milestones must be attained.
28. *Procurement Drawings*—That part of the Procurement Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Goods and Special Services to be furnished by Seller. Shop Drawings and other Seller submittals are not Procurement Drawings as so defined.
29. *Procurement Specifications*—That part of the Procurement Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the furnishing of the Goods and Special Services, and certain administrative requirements and procedural matters applicable thereto.
30. *Project*—The total undertaking to be accomplished for Project Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Goods and Special Services are a part.
31. *Project Owner*—The entity that has retained (or will retain) engineers, contractors, and others for the planning, study, design, construction, testing, commissioning, and start-up of facilities and improvements. As of the Effective Date of the Procurement Contract, the Project Owner is the Buyer.
32. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Goods and Special Services and which establish the standards by which such portion of the Goods and Special Services will be judged.
33. *Schedule of Submittals*—A schedule, prepared and maintained by Seller, of required Submittals and the time requirements for Engineer's review of the Submittals.
34. *Seller*—The individual or entity furnishing the Goods and Special Services.
35. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Seller and submitted by Seller to illustrate some portion of the Goods and Special Services. Shop Drawings, whether approved or not, are not Procurement Drawings and are not Procurement Contract Documents.
36. *Special Services*—Services to be performed by Seller (or its agents or subcontractors) in association with the Goods to be furnished by Seller, as required by the Procurement Contract Documents.
37. *Submittal*—A written or graphic document, prepared by or for Seller, which the Procurement Contract Documents require Seller to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals

may include Shop Drawings and Samples; schedules; product data; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or site quality-control testing and inspections; warranties and certifications; suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; record documents; and other such documents required by the Procurement Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Procurement Contract Documents. Change proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

38. *Successful Bidder*—The Bidder whose Bid the Buyer accepts, and to which Buyer makes an award of the Procurement Contract.
39. *Supplementary Conditions*—The part of the Procurement Contract that amends or supplements these General Conditions.
40. *Unit Price Goods and Special Services*—Goods and Special Services to be paid for on the basis of unit prices (if any).

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B and 1.02.C are not defined, but have the indicated meanings when used in the Bidding Requirements or Procurement Contract Documents.
- B. *Intent of Certain Terms or Adjectives*
 1. The Procurement 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 Goods and Special Services. It is intended that such exercise of professional judgment, action, or determination will be commercially reasonable and will be solely to evaluate, in general, the Goods and Special Services for compliance with the requirements of and information in the Procurement Contract Documents and conformance with the design concept of the completed Project as a functioning whole, as shown or indicated in the Procurement Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective will not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing of Goods or Special Services or any duty or authority to undertake responsibility contrary to any other provision of the Procurement Contract Documents.
 2. The word “non-conforming” when modifying the words “Goods and Special Services,” “Goods,” or “Special Services,” refers to Goods and Special Services that are unsatisfactory, faulty, or deficient in that they:
 - a. do not conform to or comply with the requirements of the Procurement Contract Documents;
 - b. do not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Procurement Contract Documents; or

- c. in the case of Special Services, have not been completed.
 - 3. The word "receipt" when referring to the Goods, means the physical taking and possession by the Buyer under the conditions specified in Paragraph 9.02.B.2.
 - 4. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.
 - 5. The word "furnish," when used in connection with the Goods and Special Services means to supply and deliver said Goods to the Point of Destination (or some other specified location) and to perform said Special Services fully, all in accordance with the Procurement Contract Documents.
- C. *Procurement Contract Price or Procurement Contract Times:* References to a change in "Procurement Contract Price or Procurement Contract Times" or "Procurement Contract Times or Procurement Contract Price" or similar, indicate that such change applies to (1) Procurement Contract Price, (2) Procurement Contract Times, or (3) both Procurement Contract Price and Procurement Contract Times, as warranted, even if the term "or both" is not expressed.
- D. Unless stated otherwise in the Procurement Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Procurement Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. When Seller delivers the executed counterparts of the Procurement Agreement to Buyer, the Seller also shall deliver to Buyer the performance bond and payment bond (if the Procurement Contract requires Seller to furnish such bonds).
- B. *Evidence of Seller's Insurance:* When Seller delivers the signed counterparts of the Procurement Agreement to Buyer, the Seller also shall deliver to Buyer, with copies to each additional insured (as identified in the Procurement Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Seller in accordance with Article 5. Evidence of insurance to be obtained at a later date, such as insurance relating to transit or storage of the Goods, will be provided to Buyer at the time of such insurance is obtained.
- C. *Evidence of Buyer's Insurance:* After receipt of the signed counterparts of the Procurement Agreement and all required bonds and insurance documentation, Buyer shall promptly deliver to Seller, with copies to each additional insured (as identified in the Procurement Contract), certificates and other evidence of insurance (if any) required to be provided by Buyer.

2.02 *Copies of Documents*

- A. Buyer shall furnish to Seller four printed copies of the Procurement Contract (including one fully executed counterpart of the Procurement Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

2.03 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Procurement Contract, the Buyer, Seller, and Engineer may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Procurement Contract does not establish protocols for Electronic Means, then Buyer, Seller, and Engineer shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

2.04 *Preliminary Schedules*

- A. Within 15 days after the Effective Date of the Procurement Contract, Seller shall submit to Buyer and Engineer for timely review:
 - 1. a progress schedule of activities, consistent with the Procurement Contract Times, including at a minimum, Shop Drawing and Sample submittals, tests, and deliveries as required by the Procurement Contract Documents.
 - a. The progress schedule will be acceptable to Buyer and Engineer if it provides an orderly progression of the Submittals, tests, and deliveries to completion within the specified Milestones of the Procurement Contract Times.
 - b. Such acceptance will not impose on Buyer or Engineer responsibility for the progress schedule, for sequencing, scheduling, or progress of Seller's performance of its obligations under the Procurement Contract, nor interfere with or relieve Seller from Seller's full responsibility therefor.
 - c. Such acceptance will not be deemed as an acknowledgment of the reasonableness and attainability of the schedule.
 - 2. a preliminary schedule of Submittals.
- B. No progress payment will be made to Seller until an acceptable progress schedule and acceptable schedule of Submittals are submitted to Buyer and Engineer (and other conditions applicable to progress payments are met).

2.05 *Preliminary Conference*

- A. Within 20 days after the Procurement Contract Times start to run, a conference attended by Seller, Buyer, Engineer and others as appropriate will be held to establish a working understanding among the parties as to the Goods and Special Services and to discuss the schedules referred to in Paragraph 2.04.A, procedures for handling Shop Drawings and other Submittals, processing Applications for Payment, and maintaining required records.

2.06 *Safety*

- A. Buyer and Seller shall comply with all applicable Laws and Regulations relating to the safety of persons or property, and to the protection of persons or property from damage, injury, or loss.

- B. When Seller's personnel, or the personnel of any subcontractor to Seller, are present at the Point of Destination or any work area or site controlled by Buyer, the Seller shall be responsible for the compliance by such personnel with any applicable requirements of Buyer's safety programs that are made known to Seller.
- C. If Buyer or its representatives visit the Seller's manufacturing or storage facilities, for testing, inspection, or other purposes, Seller shall inform Buyer in advance of any safety preparations, standards, or programs with which Buyer and its representatives must comply.

ARTICLE 3—PROCUREMENT CONTRACT DOCUMENTS

3.01 *Intent*

- A. The Procurement Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Procurement Contract Documents or from prevailing custom or trade usage as being required to produce or furnish the indicated Goods and Special Services will be provided, whether or not specifically called for, at no additional cost to Buyer.
- C. Unless otherwise stated in the Procurement Contract Documents, if there is a discrepancy between the electronic or digital versions of the Procurement Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version will govern.
- D. The Procurement Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Procurement Contract Documents, as provided in Paragraph 3.04.
- F. Any provision or part of the Procurement Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Buyer and Seller.

3.02 *Reference Standards*

- A. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws and Regulations, whether such reference be specific or by implication, means the standard, specification, manual, code, or Laws and Regulations in effect at the time of opening of Bids (or on the Effective Date of the Procurement Agreement if there were no Bids), except as may be otherwise specifically stated in the Procurement Contract Documents.
- B. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a supplier, will be effective to change the duties or responsibilities of Buyer, Seller, or Engineer from those set forth in the part of the Procurement Contract Documents prepared by or for Engineer. No such provision or instruction will be effective to assign to Buyer or Engineer any duty or authority to supervise or direct the performance of Seller's obligations, or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Procurement Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Seller's Review of Procurement Contract Documents:* If, before or during the performance of Seller's obligations, Seller discovers any conflict, error, ambiguity, or discrepancy within the Procurement Contract Documents, or between the Procurement Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any supplier to Seller, then Seller shall promptly report it to Engineer (or if the Procurement Contract is assigned, then directly to Contractor/Assignee) in writing. Seller shall not proceed with the Goods and Special Services affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer (or if the Procurement Contract is assigned, then by Contractor/Assignee) or by an amendment or supplement to the Procurement Contract Documents issued pursuant to Article 11.
2. Seller shall not be liable to Buyer or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Procurement Contract Documents unless Seller had actual knowledge thereof.

B. *Resolving Discrepancies:* Except as may be otherwise specifically stated in the Procurement Contract Documents, the provisions of the Procurement Contract Documents will take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Procurement Contract Documents and:

1. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Procurement Contract Documents); or
2. the provisions of any Laws or Regulations applicable to the furnishing of the Goods and Special Services (unless such an interpretation of the provisions of the Procurement Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Procurement Drawings and Procurement Specifications*

- #### A.
- During the performance of Seller's obligations and until final payment, Seller and Buyer shall submit to the Engineer all matters in question concerning the requirements of the Procurement Drawings and Procurement Specifications (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Goods and Special Services, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Procurement Drawings and Procurement Specifications, and judge of the acceptability of the Goods and Special Services thereunder.
1. After assignment (if any) Seller shall submit such matters directly to Contractor/Assignee for response or administration, and the Procurement Contract provisions in Paragraphs 3.04.B and C will not apply.
- #### B.
- Engineer will issue with reasonable promptness a written clarification, interpretation, or decision on the issue submitted, and if necessary, initiate an amendment or supplement to the Procurement Drawings or Procurement Specifications. Engineer's written clarification, interpretation, or decision will be consistent with the overall intent of the Procurement Contract Documents, and will be final and binding on Seller and Buyer. If either Buyer or Seller believes that a written clarification or interpretation justifies an adjustment in the

Procurement Contract Price or Procurement Contract Times, either may make a Claim for such adjustment as provided in Article 12.

- C. If a submitted matter in question concerns terms and conditions of the Procurement Contract Documents that do not involve (1) the performance or acceptability of the Goods and Services, (2) the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Buyer and Seller that Engineer is unable to provide a decision or interpretation.

3.05 *Reuse of Documents*

- A. Seller and its subcontractors and suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Procurement Drawings, Procurement 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 reuse any such Procurement Drawings, Procurement Specifications, other documents, or copies thereof, on extensions of the Project or any other project, without written consent of Buyer and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Procurement Contract Documents, reuse any such Procurement Contract Documents for any purpose without Buyer's express written consent, or violate any copyrights pertaining to such Procurement Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Procurement Contract. Nothing herein precludes Seller from retaining copies of the Procurement Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND SCHEDULE

4.01 *Commencement of Procurement Contract Times*

- A. The Procurement Contract Times will commence to run on the Effective Date of the Procurement Contract.

4.02 *Continuing Performance*

- A. Seller shall adhere to the progress schedule established in accordance with Paragraph 2.04.A., as duly adjusted, and the Goods will be delivered and the Special Services furnished within the Procurement Contract Times.
- B. Seller shall carry on furnishing of the Goods and Special Services and adhere to the progress schedule during all disputes or disagreements with Buyer. No furnishing of Goods and Special Services will be delayed or postponed pending resolution of any disputes or disagreements, except as expressly permitted herein, or as Buyer and Seller may otherwise agree in writing.

4.03 *Adjustments to Progress Schedule*

- A. The progress schedule established in accordance with Paragraph 2.04 may be adjusted from time to time as provided below.

1. Seller shall submit to Buyer for acceptance (to the extent indicated in Paragraph 2.04) proposed adjustments in the progress schedule that will not result in changing the Procurement Contract Times. Such adjustments will comply with any applicable provisions of the Procurement Specifications.
2. Proposed adjustments in the progress schedule that will change the Procurement Contract Times must be submitted in accordance with the requirements of Article 11. Adjustments in Procurement Contract Times may only be made by a Change Order.

4.04 *Delays*

- A. If Buyer, Engineer, or anyone for whom Buyer is responsible, delays, disrupts, or interferes with Seller's performance or progress, then Seller shall be entitled to an equitable adjustment in Procurement Contract Price or Procurement Contract Times.
- B. Seller shall not be entitled to an adjustment in Procurement Contract Price or Procurement Contract Times for delay, disruption, or interference caused by or within the control of Seller or anyone for whom Seller is responsible.
- C. If Seller's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Buyer, Seller, and those for which they are responsible, then Seller shall be entitled to an equitable adjustment in Procurement Contract Times. Such an adjustment will be Seller's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Procurement Contract Times under this paragraph include but are not limited to the following:
 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. abnormal weather conditions;
 3. inspection delays by governmental authorities, and custom delays;
 4. international shipping delays;
 5. acts or failures to act of third-party entities; and
 6. acts of war or terrorism.
- D. *Adjustments of Procurement Contract Times or Procurement Contract Price—General Provisions:* Seller's entitlement to an adjustment of Procurement Contract Times or Procurement Contract Price is limited as follows:
 1. Seller's entitlement to an adjustment of the Procurement Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of Seller's obligations, as of the time of the delay, disruption, or interference.
 2. Seller shall not be entitled to an adjustment in Procurement Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Seller. Such a concurrent delay by Seller does not preclude an adjustment of Procurement Contract Times to which Seller is otherwise entitled.

3. Adjustments of Procurement Contract Times or Procurement Contract Price are subject to the provisions of Articles 11 and 12.
- E. Each Seller request seeking a delay-related increase in Procurement Contract Times or Procurement Contract Price must be supplemented by supporting data that sets forth in detail the following: (1) the circumstances that form the basis for the requested adjustment; (2) the date upon which each cause of delay, disruption, or interference began to affect Seller's progress; (3) the date upon which each cause of delay, disruption, or interference ceased to affect Seller's progress; (4) the number of days' increase in Procurement Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and (5) the impact on Procurement Contract Price. Seller shall also furnish such additional supporting documentation as Buyer or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion.

ARTICLE 5—BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Seller shall furnish a performance bond and a payment bond, each in an amount at least equal to the Procurement Contract Price, as security for the faithful performance and payment of Seller's obligations under the Procurement Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 9.04, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Procurement Contract.
- B. Seller shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Procurement Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Buyer prior to execution of the Procurement Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. Seller shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Seller is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Seller shall promptly notify Buyer 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 bond and surety requirements of this Procurement Contract.

- F. If Seller has failed to obtain a required bond, Buyer may exercise Buyer's termination rights under Article 14.
- G. Upon request to Buyer from any subcontractor, supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of Seller's obligations, Buyer shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Seller from any subcontractor, supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of Seller's obligations, Seller shall provide a copy of the payment bond to such person or entity.

5.02 *Insurance*

- A. Seller shall provide insurance of the types and coverages and in the amounts stipulated in the Supplementary Conditions.
- B. Failure of Buyer to demand certificates of insurance or other evidence of Seller's full compliance with these insurance requirements or failure of Buyer to identify a deficiency in compliance from the evidence provided will not be construed as a waiver of Seller's obligation to maintain such insurance.
- C. Upon assignment of this Procurement Contract, Seller shall name the Contractor/Assignee as an additional insured and comply with the written request of Contractor/Assignee to provide evidence of insurance.
- D. Buyer does not represent that insurance coverage and limits established in this Procurement Contract necessarily will be adequate to protect Seller.
- E. The insurance and insurance limits required herein will not be deemed as a limitation on Seller's liability under the indemnities and other rights granted to Buyer in the Procurement Contract.

5.03 *Surety or Insurance Companies*

- A. All bonds and insurance required by the Procurement Contract Documents to be purchased and maintained by Buyer or Seller 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 must also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

ARTICLE 6—LICENSES AND FEES

6.01 *Intellectual Property and License Fees*

- A. Except to the extent stated elsewhere in the Procurement Contract Documents, Seller is not transferring any patent rights, copyrights, or other intellectual property rights for the Goods delivered.
- B. To the extent Seller is manufacturing to Buyer's design, Buyer retains all patent rights, copyrights, and other intellectual property rights in such design.
- C. If an invention, design, process, product, or device is specified in the Procurement Contract Documents for incorporation in the Goods or for the performance of Special Services, and if, to the actual knowledge of Buyer or Engineer, its use is subject to patent rights, copyrights,

or other intellectual property rights calling for the payment of a license fee or royalty to others, then the existence of such rights and payment obligations will be disclosed to Seller in the Procurement Contract Documents.

- D. Seller shall pay all license fees and royalties and assume all costs incident to the use or the furnishing of the Goods, unless specified otherwise by the Procurement Contract Documents.

6.02 *Seller's Infringement*

- A. Subject to Paragraph 6.01, to the fullest extent permitted by Laws and Regulations, Seller shall indemnify and hold harmless Buyer, Engineer, and their officers, directors, members, partners, employees, agents, consultants, contractors, and subcontractors, from and against all claims, costs, losses, damages, and judgments (including but not limited to all reasonable 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 or alleged infringement of any patent, copyright, or other intellectual property right by any of the Goods as delivered or Special Services as performed.
- B. Buyer will promptly notify Seller in writing of any claim, suit, or threat of suit by a third party for any infringement or alleged infringement of any patent, copyright, or other intellectual property right with respect to the Goods as delivered or Special Services as performed.
- C. Seller shall promptly defend or settle the claim or suit. Seller shall have control over such claim or suit, bear all expenses, and satisfy any adverse judgment.
 - 1. If Seller fails to defend such suit or claim after written notice by Buyer, Seller will be bound, in any subsequent suit or claim against Seller by Buyer, by any factual determination in the prior suit or claim.
 - 2. If Buyer fails to provide Seller the opportunity to defend such suit or claim, Buyer shall be barred from any remedy against Seller for such suit or claim.
- D. If a determination is made that Seller has infringed upon the intellectual property rights of another, Seller may, at Seller's own expense, obtain the necessary licenses for Buyer's benefit, or replace the Goods and provide related design and construction, consistent with the requirements of the Procurement Contract Documents, to avoid the infringement.

6.03 *Buyer's Infringement*

- A. Subject to Paragraph 6.01, and to the fullest extent permitted by Laws and Regulations, Buyer shall be responsible to Seller for any infringement or alleged infringement of any patent, copyright, or other intellectual property right caused by Seller's compliance with the Procurement Drawings or Procurement Specifications, and will reimburse Seller for any license fee or royalties paid by Seller to others if such payment resulted from any invention, design, process, product, or device specified to be furnished or performed in the Procurement Drawings or Procurement Specifications, but not identified as being subject to payment of such license fee or royalty.
- B. Seller will promptly notify Buyer in writing of any claim, suit, or threat of suit by a third party for intellectual property infringement arising from Seller's compliance with the Procurement Drawings or Procurement Specifications.

- C. Buyer shall defend or settle the claim or suit. Buyer shall have control over such claim or suit, bear all expenses, and satisfy any adverse judgment.
 - 1. If Buyer fails to defend such suit or claim after written notice by Seller, Buyer will be bound, in any subsequent suit or claim against Buyer by Seller, by any factual determination in the prior suit or claim.
 - 2. If Seller fails to provide Buyer the opportunity to defend such suit or claim, Seller shall be barred from any remedy against Buyer for such suit or claim.

ARTICLE 7—SELLER’S RESPONSIBILITIES

7.01 *Performance of Obligations*

- A. Seller shall be solely responsible for the means, methods, techniques, sequences, and procedures necessary to perform its obligations in accordance with the Procurement Contract Documents.
- B. Seller shall supervise, inspect, and direct the furnishing of the Goods and Special Services competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform its obligations in accordance with the Procurement Contract Documents.
- C. Seller shall coordinate the provision of Special Services to avoid or limit interference or disruption of other activities at the location where the Special Services are to occur, including but not limited to ongoing facility operations and construction activities.

7.02 *Labor, Materials and Equipment*

- A. Seller shall provide competent, qualified and trained personnel in all aspects of its performance of the Procurement Contract.
- B. All Goods, and all equipment and material incorporated into the Goods, must be as specified, and unless specified otherwise in the Procurement Contract Documents, must be:
 - 1. new, and of good quality;
 - 2. protected, assembled, connected, cleaned, and conditioned in accordance with the original manufacturer’s instructions; and
 - 3. shop-assembled to the greatest extent practicable.

7.03 *Laws and Regulations*

- A. Seller shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of its obligations in accordance with the Procurement Contract Documents. Except where otherwise expressly required by such Laws and Regulations, neither Buyer nor Engineer shall be responsible for monitoring Seller’s compliance with any Laws or Regulations.
- B. If Seller furnishes Goods and Special Services knowing or having reason to know that such furnishing is contrary to Laws or Regulations, Seller 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 performance. It will not be Seller’s responsibility to make certain

that the Procurement Specifications and Procurement Drawings are in accordance with Laws and Regulations, but this provision will not relieve Seller of Seller'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 Procurement Contract if there were no Bids) that have a direct effect on the cost or time of Seller's performance will be the subject of an adjustment in Procurement Contract Price or Procurement Contract Times. If Buyer and Seller 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 Article 12.

7.04 "Or Equals"

- A. Whenever an item of material or equipment to be incorporated into the Goods is specified or described in the Procurement Contract Documents by using the names of one or more proprietary items or specific suppliers or manufacturers, 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 is permitted, other items of material or equipment or material or equipment of other suppliers or manufacturers may be submitted to Buyer for Engineer's review.
 - 1. If in Engineer's sole discretion, such an item of material or equipment proposed by Seller 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.
 - 2. For the purposes of this paragraph, a proposed item of material or equipment may be considered functionally equal to an item so named only if in the exercise of reasonable judgment, Engineer determines that: 1) it is at least equal in quality, durability, appearance, strength, and design characteristics; 2) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole; 3) it has an acceptable record of performance and availability of responsive service; and (4) Seller certifies that if approved: a) there will be no increase in any cost, including capital, installation or operating costs, to Buyer; and b) the proposed item will conform substantially to the detailed requirements of the item named in the Procurement Contract Documents.
- B. *Engineer's Evaluation*: Engineer will be allowed a reasonable time within which to evaluate each proposal or Submittal made pursuant to Paragraph 7.04.A. Engineer will be the sole judge of whether to accept or reject such a proposal or Submittal. No "or equal" will be ordered, manufactured or utilized until Engineer's review is complete, which will be evidenced by an approved Shop Drawing. Engineer will advise Buyer and Seller in writing of any negative determination. Notwithstanding Engineer's approval of an "or-equal" item, Seller shall remain obligated to comply with the requirements of the Procurement Contract Documents.
- C. *Special Guarantee*: Buyer may require Seller to furnish at Seller's expense a special performance guarantee or other surety with respect to any such proposed "or-equal."
- D. *Data*: Seller shall provide all data in support of any such proposed "or equal" at Seller's expense.

7.05 *Taxes*

- A. Seller shall pay all taxes and duties arising out of the sale of the Goods and the performance of Special Services. All taxes and duties are included in the Procurement Contract Price, except as noted in the Supplementary Conditions.

7.06 *Submittals*

A. *Shop Drawing and Sample Requirements*

- 1. Before submitting a Shop Drawing or Sample, Seller shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Procurement Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal; and
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of Seller's obligations.
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
- 2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Seller has satisfied its obligations under the Procurement Contract Documents with respect to Seller's review of that Submittal, and that Seller approves the Submittal.
- 3. With each Shop Drawing or Sample, Seller shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Procurement Contract Documents. This notice will be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

- B. *Submittal Procedures for Shop Drawings and Samples:* Seller shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.

1. *Shop Drawings*

- a. Seller shall submit the number of copies required in the Procurement Specifications.
- b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Seller proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.06.C.

2. *Samples*

- a. Seller shall submit the number of Samples required in the Procurement Specifications.

- b. Seller shall clearly identify each Sample as to material, supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.06.C.
 3. Where a Shop Drawing or Sample is required by the Procurement Contract Documents or the Schedule of Submittals, any related work performed by Seller prior to Engineer's review and approval of the pertinent Submittal will be at the sole expense and responsibility of Seller.
- C. *Engineer's Review of Shop Drawings and Samples*
 1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Goods, comply with the requirements of the Procurement Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Procurement Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, manufacturing, fabrication, installation, or shipping, or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Seller from responsibility for any variation from the requirements of the Procurement Contract Documents unless Seller has complied with the requirements of Paragraph 7.06.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Procurement Contract Documents in a Field Order or other appropriate Procurement Contract modification.
 5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Seller from responsibility for complying with the requirements of Paragraphs 7.06.A and B.
 6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Procurement Contract Documents, will not, under any circumstances, change the Procurement Contract Times or Procurement Contract Price, unless such changes are included in a Change Order.
 7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing or Sample will result in such item becoming a Procurement Contract Document.
 8. Seller shall furnish Goods that comply with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.06.C.4.
- D. *Resubmittal Procedures for Shop Drawings and Samples*
 1. Seller 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. Seller shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.

2. Seller shall furnish required Shop Drawing and Sample Submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Seller shall be responsible for Engineer's charges to Buyer for such time. Buyer may impose a set-off against payments due Seller to secure reimbursement for such charges.
3. If Seller requests a change of a previously approved Shop Drawing or Sample, Seller shall be responsible for Engineer's charges to Buyer for its review time, and Buyer may impose a set-off against payments due Seller to secure reimbursement for such charges, unless the need for such change is beyond the control of Seller.

E. *Submittals Other than Shop Drawings and Samples*

1. The following provisions apply to all Submittals other than Shop Drawings and Samples:
 - a. Seller shall submit all such Submittals to the Engineer in accordance with the schedule of Submittals and pursuant to the applicable terms of the Procurement Contract Documents.
 - b. Engineer will provide timely review of all such Submittals in accordance with the schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the schedule of Submittals will be deemed accepted.
 - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Procurement Contract Documents as to general form and content of the Submittal.
 - d. If any such Submittal is not accepted, Seller shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.04 and 2.05.

7.07 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, Seller shall indemnify and hold harmless Buyer, Engineer, Project Owner, and any assignee of Buyer, including Contractor/Assignee, and their officers, directors, members, partners, employees, agents, consultants, contractors, 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 the performance of Seller's obligations under the Procurement Contract, 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 Goods themselves), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Seller, or any individual or entity directly or indirectly employed by Seller or anyone for whose acts Seller may be liable.

- B. In any and all claims against Buyer, Engineer, Project Owner, or any assignee of Buyer, including Contractor/Assignee, or their officers, directors, members, partners, employees, agents, consultants, contractors, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Seller, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to furnish any of the Goods and Special Services, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.07.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Seller or any such subcontractor, supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.08 *Concerning Subcontractors and Suppliers*

- A. Seller may retain subcontractors and suppliers for the performance of parts of the furnishing of the Goods and Special Services. The Seller's retention of a subcontractor or supplier will not relieve Seller's obligation to Buyer to perform and complete the furnishing the Goods and Special Services in accordance with the Procurement Contract Documents.

ARTICLE 8—SHIPPING AND DELIVERY

8.01 *Shipping*

- A. Seller shall select the carrier and bear all costs of packaging, transportation, insurance, special handling, and all other costs associated with shipment and delivery.

8.02 *Delivery*

- A. Seller shall deliver the Goods free on board (FOB) to the Point of Destination, freight prepaid, in accordance with the Procurement Contract Times set forth in the Procurement Agreement, or other date agreed to by Buyer and Seller.
- B. At least 10 days before shipment, Seller shall provide written notice to Buyer of the manner of shipment and the anticipated delivery date. The notice must also include any instructions concerning special equipment or services required at the Point of Destination to unload and care for the Goods. Seller shall also require the carrier to give Buyer at least 24 hours' notice by telephone prior to the anticipated time of delivery.
- C. Buyer will be responsible and bear all costs for unloading the Goods from carrier.
- D. Buyer will assure that adequate facilities are available to receive delivery of the Goods at the time established for delivery, or on another date agreed to by Buyer and Seller.
- E. No partial deliveries will be allowed, unless permitted or required by the Procurement Contract Documents or agreed to in writing by Buyer.
- F. Provisions governing inspection on delivery are set forth in Paragraph 9.02.

8.03 *Risk of Loss*

- A. Risk of loss and insurable interests transfer from Seller to Buyer upon Buyer's receipt of the Goods.
- B. Notwithstanding the provisions of Paragraph 8.03.A, if Buyer rejects the Goods as non-conforming, the risk of loss on such Goods will remain with Seller until Seller corrects the non-conformity or Buyer accepts the Goods. If rejected Goods remain at the Point of

Destination pending modification and acceptance, then Seller shall be responsible for arranging adequate protection and maintenance of the Goods at Seller's expense.

ARTICLE 9—BUYER'S RIGHTS

9.01 *Seller's Warranties and Guarantees*

- A. Seller warrants and guarantees to Buyer that the title to the Goods conveyed will be proper, its transfer rightful, and free from any security interest, lien, or other encumbrance. Seller shall defend, indemnify, and hold Buyer harmless against any liens, claims, or demands contesting or affecting title of the Goods conveyed.
- B. Seller warrants and guarantees to Buyer that all Goods and Special Services will conform with the Procurement Contract Documents, and with the standards established by any Samples approved by Engineer. Engineer shall be entitled to rely on Seller's warranty and guarantee. If the Procurement Contract Documents do not otherwise specify the characteristics or the quality of the Goods, the Goods must comply with the requirements of Paragraph 7.02.B.
- C. Seller's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, improper modification, improper maintenance, or improper operation by persons other than Seller;
 2. excessive corrosion or chemical attack, unless corrosive or chemically-damaging conditions were disclosed by Buyer in the Procurement Contract Documents and the Procurement Contract Documents required the Goods to withstand such conditions;
 3. use in a manner contrary to Seller's written instructions for installation, operation, and maintenance; or
 4. normal wear and tear under normal usage.
- D. Seller's obligation to furnish the Goods and Special Services in accordance with the Procurement Contract Documents will be absolute. None of the following will constitute an acceptance of Goods and Special Services that are non-conforming, or a release of Seller's obligation to furnish the Goods and Special Services in accordance with the Procurement Contract Documents:
 1. observations by Buyer, Engineer, or Project Owner;
 2. recommendation by Engineer or payment by Buyer of any progress or final payment;
 3. use of the Goods by Buyer or Project Owner;
 4. any acceptance by Buyer, Engineer, or Project Owner, or any failure to do so;
 5. the end of the correction period established in Paragraph 9.04;
 6. the issuance of a notice of acceptance;
 7. any inspection, test or approval by others; or
 8. any correction of non-conforming Goods and Special Services by Buyer or Project Owner.
- E. Buyer shall promptly notify Seller of any breach of Seller's warranties or guarantees.

9.02 *Inspections and Testing*

A. *General Provisions*

1. The Procurement Contract Documents specify required inspections and tests. Buyer shall have the right to perform, or cause to be performed, reasonable inspections and require reasonable tests of the Goods at Seller's facility, and at the Point of Destination. Seller shall allow Buyer a reasonable time to perform such inspections or tests.
2. Seller shall reimburse Buyer for all expenses, except for travel, lodging, and subsistence expenses of Buyer's and Engineer's representatives, for inspections and tests specified in the Procurement Contract Documents. If as the result of any such specified testing the Goods are determined to be non-conforming, then Seller shall also bear the travel, lodging, and subsistence expenses of Buyer's and Engineer's representatives, and all expenses of re-inspection or retesting.
3. Buyer shall bear all expenses of inspections and tests that are not specified in the Procurement Contract Documents (other than any re-inspection or retesting resulting from a determination of non-conformity, as set forth in Paragraph 9.03); provided, however, that if as the result of any such non-specified inspections or testing the Goods are determined to be non-conforming, then Seller shall bear all expenses of such inspections and testing, and of any necessary re-inspection and retesting.
4. Seller shall provide Buyer timely written notice of the readiness of the Goods for all inspections, tests, or approvals which the Procurement Contract Documents specify are to be observed by Buyer prior to shipment.
5. Buyer will give Seller timely notice of all specified tests, inspections, and approvals of the Goods which are to be conducted at the Point of Destination, and a representative of Seller will attend such tests, inspections, and approvals.
6. If, on the basis of inspections or testing, the Goods appear to be conforming, Buyer will give Seller prompt notice thereof. If on the basis of inspections or testing, the Goods appear to be non-conforming, Buyer will give Seller prompt notice thereof and will advise Seller of the remedy Buyer elects under the provisions of Paragraph 9.03.
7. Neither payments made by Buyer to Seller prior to any tests or inspections, nor any tests or inspections, will constitute acceptance of non-conforming Goods, or prejudice Buyer's rights under the Procurement Contract.

B. *Visual Inspection on Delivery*

1. Buyer will visually inspect the Goods upon delivery solely for purposes of identifying the Goods, general verification of quantities, and observation of apparent condition. Such visual inspection will not be construed as final or as receipt of any Goods and Special Services that, as a result of subsequent inspections and tests, are determined to be non-conforming.
2. If, on the basis of the visual inspection specified in Paragraph 9.02.B.1, the Goods appear to comply with the requirements of the Procurement Contract Documents as to quantities and condition, then within 10 days of delivery Buyer shall issue to Seller Buyer's acknowledgment of the receipt of Goods.

C. *Final Inspection*

1. After all of the Goods have been incorporated into the Project, tested in accordance with such testing requirements as are specified, and are functioning as required, and Seller has performed and completed all Special Services, Buyer will make a final inspection.
2. If, on the basis of the final inspection, Buyer determines that the Goods and Special Services are conforming, Buyer's notice thereof will constitute Buyer's acceptance of the Goods and Special Services, subject to any limitations stated in the notice.
3. If, on the basis of the final inspection, the Goods and Special Services are non-conforming, Buyer will identify the non-conformity in writing.

9.03 *Non-Conforming Goods and Special Services*

- A. If, on the basis of inspections and testing prior to delivery, the Goods and Special Services are found to be non-conforming, or if at any time after Buyer has acknowledged receipt of delivery and before the expiration of the correction period described in Paragraph 9.04, Buyer determines that the Goods and Special Services are non-conforming, then Seller shall promptly, without cost to Buyer and in response to written instructions from Buyer, either correct such non-conforming Goods and Special Services, or, if Goods are rejected by Buyer, remove and replace the non-conforming Goods with conforming Goods, including all work required for reinstallation.
- B. *Buyer's Rejection of Non-Conforming Goods*
1. If Buyer elects to reject the Goods in whole or in part, Buyer's notice to Seller will describe in sufficient detail the non-conforming aspect of the Goods. If Goods have been delivered to Buyer, Seller shall promptly, and within the Procurement Contract Times, remove and replace the rejected Goods.
 2. Seller shall bear all costs, losses and damages attributable to the removal, replacement, reinspection, and retesting of the non-conforming Goods.
 3. Upon rejection of the Goods, Buyer retains a security interest in the Goods to the extent of any payments made and expenses incurred in their testing and inspection.
- C. *Buyer's Rejection of Non-Conforming Special Services*
1. If at any time Buyer elects to reject the Special Services in whole or in part, Buyer's notice to Seller will describe in sufficient detail the non-conforming aspect of the Special Services.
 2. Seller shall promptly provide conforming Special Services acceptable to Buyer.
 3. If Seller fails to provide conforming Special Services, Buyer may remove the Special Services from the scope of the Procurement Contract, and equitably reduce the Procurement Contract Price.
- D. *Remedying Non-Conforming Goods:* If Buyer elects to permit the Seller to modify the Goods to correct the non-conformance, then Seller shall promptly provide a schedule for such modifications and shall make the Goods conforming within a reasonable time.
- E. *Buyer's Acceptance of Non-Conforming Goods:* Instead of requiring correction or removal and replacement of non-conforming Goods discovered either before or after final payment,

Buyer may accept the non-conforming Goods. Seller shall bear all reasonable costs, losses, and damages attributable to Buyer's evaluation of and determination to accept such non-conforming Goods.

- F. *Seller Obligations*: Seller shall pay all claims, costs, losses, and damages, including but not limited to all fees and charges for re-inspection, retesting and for any engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs arising out of or relating to the non-conforming Goods and Special Services. Seller's obligations will include the costs of the correction or removal and replacement of the non-conforming Goods and the replacement of property of Buyer and others destroyed by the correction or removal and replacement of the non-conforming Goods, and obtaining conforming Special Services from others.
- G. *Buyer's Rejection of Conforming Goods*: If Buyer asserts that Goods and Special Services are non-conforming and such Goods and Special Services are determined to be conforming, or if Buyer rejects as non-conforming Goods and Special Services that are later determined to be conforming, then Seller shall be entitled to reimbursement from Buyer of costs incurred by Seller in inspecting, testing, correcting, removing, or replacing the conforming Goods and Special Services, including but not limited to fees and charges of engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs associated with the incorrect assertion of non-conformance or rejection of conforming Goods and Special Services.

9.04 *Correction Period*

- A. Seller's responsibility for correcting all non-conformities in the Goods and Special Services will extend for a period of one year after the acceptance of the Goods and Special Services in accordance with Paragraph 9.02.C.2.
- B. Where non-conforming Goods and Services (and damage to other work resulting therefrom) have been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Goods and Services will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- C. Seller's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph may not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 10—ENGINEER'S STATUS

10.01 *Engineer's Role Defined*

- A. Engineer will be Buyer's representative until assignment (if any) of the Procurement Contract.
- B. The duties and responsibilities and the limitations of authority of Engineer prior to assignment, if any, of the Procurement Contract, are set forth in the Procurement Contract Documents.
- C. Engineer's responsibilities, if any, after an assignment (if any) of the Procurement Contract, are set forth in the Procurement Agreement.

10.02 *Duties and Responsibilities; Authority; Limitations*

- A. As set forth in Article 3, Engineer will be the initial interpreter of the Procurement Contract Documents and judge of the acceptability of the Goods and Special Services, and will issue clarifications, interpretations, and decisions regarding such issues.
- B. Acting on behalf of Buyer under the provisions of Article 9, Engineer has the authority to disapprove or reject Goods and Special Services that Engineer believes to be non-conforming. Engineer also has the authority to require special inspection or testing of the Goods or Special Services as provided in Paragraph 9.02, whether or not the Goods are fabricated or installed, or the Special Services are completed.
- C. Engineer may authorize minor deviations or variations in the Procurement Contract Documents by: 1) written approval of specific variations set forth in Shop Drawings when Seller has duly noted such variations as required in Paragraph 7.06.A.3, or 2) a Field Order.
- D. As set forth in Article 12, Engineer will review Claims, and render decisions on Claims.
- E. In rendering any interpretations, clarifications, reviews, decisions, disapprovals, acceptances, rejections, authorizations, and judgments, Engineer will not show partiality to Buyer or Seller. Engineer will not be liable to Buyer, Seller, or others in connection with any interpretations, clarifications, reviews, decisions, disapprovals, acceptances, rejections, authorizations, or judgments conducted or rendered by Engineer in good faith.
- F. Engineer will not supervise, direct, control, or have authority over or be responsible for the means, methods, techniques, sequences, or procedures used by Seller to perform its obligations under this Procurement Contract, or the safety precautions and programs incident thereto, or for any failure of Seller to comply with Laws and Regulations applicable to the performance of its obligations. Engineer will not be responsible for Seller's failure to furnish the Goods and Special Services in accordance with the Procurement Contract Documents.

ARTICLE 11—CHANGES

11.01 *Amending and Supplementing the Procurement Contract*

- A. The Procurement Contract may be amended or supplemented by a Change Order, a Change Directive, or a Field Order.
- B. If an amendment or supplement to the Procurement Contract includes a change in the Procurement Contract Price or the Procurement Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Procurement Contract that involve (1) the conformance or acceptability of the Goods and Special Services, (2) the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Buyer and Seller may amend other terms and conditions of the Procurement Contract without the recommendation of the Engineer.

11.02 *Change Orders*

- A. Buyer and Seller shall execute appropriate Change Orders covering:
 - 1. Changes in Procurement Contract Price or Procurement Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Goods and Special Services furnished in accordance with a Change Directive;
 - 2. Changes in Procurement Contract Price resulting from a Buyer set-off, unless Seller has duly contested such set-off;
 - 3. Changes in the Goods and Special Services which are: (a) ordered by Buyer pursuant to Paragraph 11.05, (b) required because of Buyer's acceptance of non-conforming Goods and Services under Paragraph 9.03 or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Goods and Special Services involves the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise) or other engineering or technical matters; and
 - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Change Directive; Article 12, Claims; and similar provisions.
- B. If Buyer or Seller refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Change Directives*

- A. A Change Directive will not change the Procurement Contract Price or the Procurement Contract Times but is evidence that the parties expect that the modification ordered or documented by a Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Change Directive's effect, if any, on the Procurement Contract Price and Procurement Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Procurement Contract Documents governing adjustments, expressly including Paragraph 11.08 regarding change of Procurement Contract Price.
- B. If Buyer has issued a Change Directive and Buyer or Seller believes that an adjustment in Procurement Contract Times or Procurement Contract Price is necessary, then such party shall submit a Claim seeking such an adjustment no later than 30 days after the completion of the Goods and Services set out in the Change Directive.

11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Goods and Services if the changes do not involve an adjustment in the Procurement Contract Price or the Procurement Contract Times and are compatible with the design concept as indicated by the Procurement Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Buyer and also on Seller, which shall perform the Goods and Special Services involved promptly.
- B. If Seller believes that a Field Order justifies an adjustment in the Procurement Contract Price or Procurement Contract Times, then before proceeding with the Goods and Special Services at issue, Seller shall submit a Claim as provided herein.

11.05 *Buyer-Authorized Changes in the Goods and Special Services*

- A. Without invalidating the Procurement Contract and without notice to any surety, Buyer may, at any time or from time to time, order additions, deletions, or revisions in the Goods and Special Services. Changes involving the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Goods and Special Services may be accomplished by a Change Order, if Buyer and Seller have agreed as to the effect, if any, of the changes on Procurement Contract Times or Procurement Contract Price; or by a Change Directive. Upon receipt of any such document, Seller shall promptly proceed with the Goods and Special Services involved; or, in the case of a deletion in the Goods and Special Services, promptly cease activities with respect to such deletion. Added or revised Goods and Special Services must be performed under the applicable conditions of the Procurement Contract Documents.

11.06 *Buyer's Contingency Allowance*

- A. The Buyer's Contingency Allowance, if any such is set forth in the Procurement Agreement, is for the sole use of Buyer to cover unanticipated costs.
- B. If Buyer exercises its unilateral right to use all or a portion of the Buyer's Contingency Allowance, Buyer will issue a written directive that documents the costs to which the allowance is applied, Seller's entitlement to compensation, and the consequent reduction in such allowance.
- C. Prior to final payment, the Total Price, as set forth in the Procurement Agreement, will be duly adjusted to account for any unused portion of the Buyer's Contingency Allowance.
- D. The Procurement Agreement, Article 5, addresses the impact on Buyer's Contingency Allowance of an assignment of the Procurement Contract.

11.07 *Unauthorized Changes in the Goods and Special Services*

- A. Seller shall not be entitled to an increase in the Procurement Contract Price or an extension of the Procurement Contract Times with respect to any work performed that is not required by the Procurement Contract Documents, as amended, modified, or supplemented.

11.08 *Change of Procurement Contract Price*

- A. The Procurement Contract Price may only be changed by a Change Order. Any Claim for an adjustment of Procurement Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Procurement Contract Price will be determined as follows:
 - 1. For changes in Unit Price Goods and Special Services, by application of the unit prices to the quantities of the items involved;
 - 2. To the extent the cost of the change is not covered by unit prices, then by a mutually agreed lump sum; or
 - 3. To the extent the cost of the change is not covered by unit prices and the parties do not reach mutual agreement to a lump sum, then on the basis of documented costs plus a Seller's fee for overhead and profit of 15%.

11.09 *Change of Procurement Contract Times*

- A. The Procurement Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Procurement Contract Times must comply with the provisions of Article 12.

11.10 *Notification to Surety*

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

ARTICLE 12—CLAIMS, DISPUTES, AND DISPUTE RESOLUTION

12.01 *Claims*

- A. The parties agree to endeavor to avoid or resolve Claims through direct, good faith discussions and negotiations whenever practicable. Such discussions and negotiations should at the outset address whether the parties mutually agree to suspend the Claims process, including the time periods established in this Paragraph 12.01; if so, a written record of such mutual agreement should be made and jointly executed.
- B. Claimant shall deliver to Engineer and the other party to the Procurement Contract written notice of each Claim within 15 days after the occurrence of the event giving rise to the Claim.
- C. Claimant shall deliver written supporting data to Engineer and the other party within 45 days after such occurrence unless Engineer allows an additional period of time.
- D. Engineer will review each such Claim and render a decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.
- E. If Engineer does not render a formal written decision on a Claim within the time stated in Paragraph 12.01.D., Engineer shall be deemed to have issued a decision denying the Claim in its entirety 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.
- F. The rendering of a decision by Engineer pursuant to this Paragraph 12.01 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment) will be a condition precedent to any exercise by Buyer or Seller of such rights or remedies as either may otherwise have under the Procurement Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter. If the exercise of such rights or remedies will imminently be time-barred, a party may take actions necessary to preserve such rights and remedies notwithstanding the lack of the condition precedent referred to in this paragraph.
- G. If a submitted matter in question concerns terms and conditions of the Procurement Contract Documents that do not involve (1) the performance or acceptability of Goods and Special Services under the Procurement Contract Documents, (2) the design (as set forth in the Procurement Drawings, Procurement Specifications, Addenda, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Buyer and Seller that Engineer is unable to provide a decision or interpretation. If Buyer and Seller

are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Paragraph 12.02.

- H. Engineer's written decision on such Claim or a decision denying the Claim in its entirety that is deemed to have been issued pursuant to Paragraph 12.01, will be final and binding upon Buyer and Seller 30 days after it is issued unless within 30 days of issuance Buyer or Seller appeals Engineer's decision by initiating the mediation of such Claim in accordance with the dispute resolution procedures set forth in Paragraph 12.02.
- I. If Article 12 has been amended to delete the mediation requirement, then Buyer or Seller may appeal Engineer's decision within 30 days of issuance by following the alternative dispute resolution process set forth in Article 12, as amended; or if no such alternative dispute resolution process has been set forth, Buyer or Seller may appeal Engineer's decision by 1) delivering to the other party within 30 days of the date of such decision a written notice of intent to submit the Claim to a court of competent jurisdiction, and 2) within 60 days after the date of such decision instituting a formal proceeding in a court of competent jurisdiction.
- J. No Claim for an adjustment in Procurement Contract Price or Procurement Contract Times will be valid if not submitted in accordance with Article 12.
- K. The effect on Claims of an assignment of the Procurement Contract by Buyer to a Contractor/Assignee is addressed in the Procurement Agreement, Article 5.

12.02 *Dispute Resolution Method*

- A. Either Buyer or Seller may initiate the mediation of (1) any Claim decided in writing by Engineer under Paragraph 12.01 before such decision becomes final and binding, or (2) any other dispute between the parties, including but not limited to any dispute arising after final inspection of the Goods and Services. 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 Procurement Contract. The request for mediation must be submitted in writing to the American Arbitration Association and the other party to the Procurement Contract. Timely submission of the request will stay Engineer's decision from becoming final and binding.
- B. Mediation is a condition precedent to seeking final dispute resolution under Paragraph 12.01.C. Buyer and Seller shall participate in the mediation process in good faith. The process must be concluded within 60 days of filing of the request. The date of termination of the mediation will be determined by application of the mediation rules referenced above.
- C. If the mediation process does not result in resolution of the dispute, then Engineer's written Claim decision under Paragraph 12.01.D or a Claim denial pursuant to Paragraph 12.01.E becomes final and binding, or if applicable such other dispute is deemed resolved in favor of respondent, unless, within 30 days after termination of the mediation, Buyer or Seller:
 - 1. elects in writing to invoke any final dispute resolution process provided for in the Supplementary Conditions, or
 - 2. agrees with the other party to submit the Claim or dispute to another final dispute resolution process, or
 - 3. if no final dispute resolution process has been provided for in the Supplementary Conditions, delivers to the other party written notice of the intent to submit the Claim

or dispute to a court of competent jurisdiction, and within 60 days of the termination of the mediation institutes such formal proceeding.

ARTICLE 13—PAYMENT

13.01 *Applications for Progress Payments*

- A. Seller shall submit to Buyer for Engineer's review Applications for Payment filled out and signed by Seller and accompanied by such supporting documentation as is required by the Procurement Contract Documents and also as Buyer or Engineer may reasonably require.
- B. The timing and amounts of progress payments will be as stipulated in the Procurement Agreement.
- C. Any Application for Payment that is based in whole or in part on the delivery of Goods must be accompanied by a bill of sale, invoice, or other documentation reasonably satisfactory to Buyer warranting that Buyer has rightfully received good title to the Goods from Seller and that, upon payment, the Goods will be free and clear of all liens. Such documentation will include releases and waivers from all parties with viable lien rights.
- D. Buyer shall notify Seller promptly of any deficiency in the required documentation.

13.02 *Review of Applications for Progress Payments*

A. *Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Buyer, or return the Application to Seller indicating in writing Engineer's reasons for refusing to recommend payment.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Buyer, based on Engineer's observations of Seller's progress, 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 Goods and Special Services or other obligations of Seller have progressed to the point indicated;
 - b. the quality of the Goods and Special Services or other obligations of Seller are generally in accordance with the Procurement Contract Documents; and
 - c. the conditions precedent to Seller being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Seller's progress.
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 Goods and Special Services or other obligations of Seller have been exhaustive, extended to every aspect of the Goods and Special Services or other obligations of Seller in progress, or involved detailed inspections of the Goods and Special Services or other

- obligations of Seller beyond the responsibilities specifically assigned to Engineer in the Procurement Contract; or
- b. there may not be other matters or issues between the parties that might entitle Seller to be paid additionally by Buyer, or entitle Buyer to withhold payment to Seller.
4. Neither Engineer's review of Seller's progress 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 Seller's performance or furnishing of Goods and Special Services or other obligations of Seller; or
 - b. for the means, methods, techniques, sequences, or procedures of construction, manufacturing, fabrication, installation, or shipping, or the safety precautions and programs incident thereto; or
 - c. for Seller's failure to comply with Laws and Regulations applicable to Seller's performance under the Procurement Contract; or
 - d. to make any examination to ascertain how or for what purposes Seller has used the money paid for the Procurement Contract Price; or
 - e. to determine that title to any of the Goods or component parts have passed to Buyer 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 Buyer stated in Paragraph 13.02.A.2.
 6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Buyer from loss because:
 - a. the Goods and Services are non-conforming, requiring correction or replacement;
 - b. the Procurement Contract Price has been reduced by Change Orders;
 - c. Buyer has been required to correct non-conforming Goods and Special Services in accordance with Paragraph 9.03.C, or has accepted non-conforming Goods and Special Services pursuant to Paragraph 9.03.E; or
 - d. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Seller and therefore justify termination for cause under the Procurement Contract Documents.

13.03 *Basis and Amount of Progress Payments*

- A. The basis and amounts of the progress payments will be as provided in the Procurement Agreement, subject to the provisions of this Article 13 regarding reductions in payment.

13.04 *Suspension of or Reduction in Payment*

- A. Buyer may temporarily cease making progress payments, or reduce the amount of a progress payment, even though recommended for payment by Engineer, under the following circumstances:

1. Buyer has reasonable grounds to conclude that Seller will not furnish the Goods or the Special Services in accordance with the Procurement Contract Documents, and
 2. Buyer has requested in writing assurances from Seller that the Goods and Special Services will be delivered or furnished in accordance with the Procurement Contract Documents, and Seller has failed to provide adequate assurances within ten days of Buyer's written request.
 3. In addition to any reductions in payment (set-offs) recommended by Engineer, Buyer is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Buyer based on Seller's conduct in the performance or furnishing of the Goods and Special Services, or has incurred costs, losses, or damages resulting from Seller's conduct in the performance or furnishing of the Goods and Special Services, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Seller has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Point of Destination or the worksite;
 - c. Seller has failed to provide and maintain required bonds or insurance;
 - d. Buyer has incurred extra charges or engineering costs related to Submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - e. the Goods and Special Services are non-conforming, requiring correction or replacement;
 - f. Buyer has been required to correct non-conforming Goods and Special Services, in accordance with Paragraph 9.03.C, or has accepted non-conforming Goods and Special Services pursuant to Paragraph 9.03.E;
 - g. the Procurement Contract Price has been reduced by Change Orders;
 - h. an event that would constitute a default by Seller and therefore justify a termination for cause has occurred;
 - i. liquidated or other damages have accrued as a result of Seller's failure to achieve Milestones, Substantial Completion, or final completion of the Goods and Special Services; or
 - j. liens have been filed in connection with the Procurement Contract, except where Seller has delivered a specific bond satisfactory to Buyer to secure the satisfaction and discharge of such liens.
- B. If Buyer refuses to make payment of the full amount recommended by Engineer, Buyer will provide Seller and Engineer immediate written notice stating the reason for such action and promptly pay Seller any amount remaining after deduction of the amount withheld. Buyer shall promptly pay Seller the amount withheld when Seller corrects the reason for such action to Buyer's satisfaction.

13.05 *Final Payment*

- A. After Seller has corrected all non-conformities to the reasonable satisfaction of Buyer and Engineer and furnished all Special Services, Seller may submit its final Application for Payment following the procedures for progress payments.
- B. The final Application for Payment will be accompanied by all documentation called for in the Procurement Contract Documents (including but not limited to all final operations and maintenance manuals, and any special warranties), a list of all unsettled Claims, and the written consent of surety to the making of final payment.
- C. If, on the basis of final inspection and the review of the final Application for Payment and accompanying documentation, Engineer is reasonably satisfied that Seller has furnished the Goods and Special Services in accordance with the Procurement Contract Documents, and that Seller has fulfilled all other obligations under the Procurement Contract Documents, then Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment subject to the provisions of Paragraph 13.02, and present the final Application for Payment to Buyer. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Buyer from loss for the reasons stated in Paragraph 13.02.
- D. If Engineer does not recommend final payment, Engineer will return the final Application for Payment to Seller, indicating the reasons for refusing to recommend final payment, in which case Seller shall make the necessary corrections and resubmit the final Application for Payment.
- E. In support of its recommendation of final payment Engineer will also give written notice to Buyer and Seller that the Goods and Special Services are acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 13.06.
- F. If the final Application for Payment and accompanying documentation are appropriate as to form and substance, Buyer shall, within 30 days after receipt thereof, pay Seller the amount recommended by Engineer, less any sum Buyer is entitled to set off against Engineer's recommendation, pursuant to the provisions of Paragraph 13.04.
- G. Buyer will not make final payment, or return or release included retainage (if any) at any time, unless Seller submits written consent of the surety to such payment, return, or release.

13.06 *Waiver of Claims*

- A. By making final payment, Buyer waives its claim or right to liquidated damages or other damages for late completion by Seller, except as set forth in an outstanding Claim, appeal, set-off, or express reservation of rights by Buyer. Buyer reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Seller will constitute a waiver by Seller of all claims and rights against Buyer other than those pending matters that have been duly submitted or appealed under the provisions of Article 12.

ARTICLE 14—CANCELLATION, SUSPENSION, AND TERMINATION

14.01 *Cancellation*

- A. Buyer has the right to cancel the Procurement Contract, without cause, at any time prior to delivery of the Goods by written notice. Cancellation pursuant to the terms of this paragraph will not constitute a breach of contract by Buyer. Upon cancellation:
 - 1. Buyer shall pay Seller for the direct costs incurred in producing any Goods that Seller has specially manufactured for the Project, plus a fair and reasonable amount for overhead and profit.
 - 2. For Goods that are not specially manufactured for the Project, Seller shall be entitled to a restocking charge of 10 percent of the unpaid Procurement Contract Price of such Goods.

14.02 *Suspension of Performance by Buyer*

- A. Buyer has the right to suspend performance of the Procurement Contract for up to 90 days, without cause, by written notice. Upon suspension under this paragraph, Seller shall be entitled to an increase in the Procurement Contract Times and Procurement Contract Price caused by the suspension, provided that performance would not have been suspended or delayed for causes attributable to Seller.

14.03 *Suspension of Performance by Seller*

- A. Seller may suspend the furnishing of the Goods and Special Services only under the following circumstance:
 - 1. Seller has reasonable grounds to conclude that Buyer will not perform its future payment obligations under the Procurement Contract; and
 - 2. Seller has requested in writing assurances from Buyer that future payments will be made in accordance with the Procurement Contract, and Buyer has failed to provide such assurances within ten days of Seller's written request.

14.04 *Breach and Termination*

A. *Buyer's Breach*

- 1. Seller shall have the right to terminate the Procurement Contract for cause by declaring a breach if Buyer fails to comply with any material provision of the Procurement Contract. Upon termination, Seller shall be entitled to all remedies provided by Laws and Regulations.
- 2. If Seller believes Buyer is in breach of its obligations under the Procurement Contract, Seller shall provide Buyer with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Buyer shall have 7 days from receipt of the written notice declaring the breach (or such longer period of time as Seller may grant in writing) within which to cure or to proceed diligently to cure such alleged breach.

B. *Seller's Breach*

- 1. Buyer may terminate Seller's right to perform the Procurement Contract for cause by declaring a breach should Seller fail to comply with any material provision of the

Procurement Contract Documents. Upon termination, Buyer shall be entitled to all remedies provided by Laws and Regulations.

2. In the event Buyer believes Seller is in breach of its obligations under the Procurement Contract, Buyer shall provide Seller with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Seller shall have 7 days from receipt of the written notice declaring the breach (or such longer period of time as Buyer may grant in writing) within which to cure or to proceed diligently to cure such alleged breach.
3. If and to the extent that Seller has provided a performance bond under the provisions of Paragraph 5.01, the notice and cure procedures of that bond, if any, will supersede the notice and cure procedures of Paragraph 14.04.B.2.

ARTICLE 15—MISCELLANEOUS

15.01 *Giving Notice*

- A. Whenever any provision of the Procurement Contract requires the giving of written notice to Buyer, Seller, or Engineer, it will be deemed to have been validly given if delivered:
 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

15.02 *Controlling Law*

- A. This Procurement Contract is to be governed by the law of the state in which the Goods are to be installed.
- B. In the case of any conflict between the express terms of this Procurement Contract and the Uniform Commercial Code, as adopted in the state whose law governs, it is the intent of the parties that the express terms of this Procurement Contract will apply.

15.03 *Computation of Time*

- A. When any period of time is referred to in the Procurement Contract by number of 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.

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

15.05 *Survival of Obligations*

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

15.06 *Entire Agreement*

- A. Buyer and Seller agree that this Procurement Contract is the complete and final agreement between them, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Procurement Contract may not be altered, modified, or amended except in writing signed by an authorized representative of both parties.

15.07 *No Waiver*


- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Procurement Contract.

15.08 *Headings*

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

15.09 *Successors and Assigns*

- A. Buyer and Seller each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Procurement Contract.

PROJECT MANUAL			
	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Supplementary Conditions
		Section:	00 73 01
		Bid Number:	2458-21

SUPPLEMENTARY CONDITIONS OF THE PROCUREMENT CONTRACT

These Supplementary Conditions amend or supplement EJCDC® P-700, Standard General Conditions of the Procurement Contract (2019). The General Conditions remain in full force and effect except as amended.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added—for example, "Paragraph SC-4.05."

ARTICLE 2—PRELIMINARY MATTERS

2.02 Copies of Documents

SC-2.02 Amend the first sentence of Paragraph 2.02.A. to read as follows:

Buyer shall furnish to Seller one fully signed counterpart of the Procurement Agreement).

ARTICLE 5—BONDS AND INSURANCE

5.01 Performance, Payment, and Other Bonds


SC-5.01 Add the following paragraphs immediately after Paragraph 5.01.A:

1. *Required Performance Bond Form:* The performance bond that Seller furnishes will be in the form of EJCDC® P-610, Performance Bond (2010 or 2019 edition).
2. *Required Payment Bond Form:* The payment bond that Contractor furnishes will be in the form of EJCDC® P-615, Payment Bond (2010 or 2019 edition).


5.02 Insurance

SC-5.02 Add the following new paragraphs immediately after Paragraph 5.02.E:

- F. Seller shall purchase and maintain such liability and other insurance as is appropriate for the furnishing of Goods and Special Services and as will provide protection from claims set forth below which may arise out of or result from Seller's furnishing of the Goods or Special Services and Seller's other obligations under the Procurement Contract Documents, whether the furnishing of Goods and Special Services or other obligations are to be performed by Seller, any subcontractor or supplier, or by anyone directly or indirectly employed by any of them to furnish the Goods and Special Services, 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 Seller's employees;

PROJECT MANUAL			
	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Supplementary Conditions
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		Bid Number:	2458-21

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Seller'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 Seller, or (b) by any other person for any other reason;
 5. claims for damages, other than to the Goods, 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.
- G. The policies of insurance so required by this Paragraph 5.02 to be purchased and maintained must:
1. with respect to insurance required by Paragraphs SC-5.02.F.3 through SC-5.02.F.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) Buyer, Engineer, and their consultants, all of whom must be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds must 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 below or required by Laws or Regulations, whichever is greater;
 3. include completed operations insurance;
 4. include contractual liability insurance covering Seller's indemnity obligations under Paragraph 7.07;
 5. contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder will provide a copy of the notice to the other party, each other insured, and Engineer;
 6. remain in effect at least until final payment and at all times thereafter when Seller may be correcting, removing, or replacing non-conforming Goods in accordance with Paragraph 9.03 and 9.04; and
 7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and Seller shall furnish Buyer and each other additional insured identified in these Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Buyer and any such additional insured of continuation of such insurance at final payment and one year thereafter).
- H. The limits of liability for the insurance required by Paragraph SC-5.02.F must provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

PROJECT MANUAL			
	Engineering Division 2026 New Jersey Ave Sheboygan, WI 53081	Document Title:	Supplementary Conditions
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- Workers' Compensation, and related coverages under Paragraphs SC-5.02.F.1 and F.2:


Workers' Compensation and Related Policies	Policy limits of not less than
Workers' Compensation	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
Jones Act (if applicable)	
Bodily injury by accident—each accident	\$1,000,000
Bodily injury by disease—aggregate	\$1,000,000
Employer's Liability	
Each accident	Statutory
Each employee	Statutory
Policy limit	Statutory
Stop-gap Liability Coverage	
For work performed in monopolistic states, stop-gap liability coverage must be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of:	\$

- Seller's General Liability under Paragraphs SC-5.02.F.3 through F.6 which must include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Seller:

Commercial General Liability	Policy limits of not less than
General Aggregate	\$2,000,000
Products—Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$2,000,000
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000

- Automobile Liability under Paragraph SC-5.02.F.6:

Automobile Liability	Policy limits of not less than
Bodily Injury	
Each Person	\$1,000,000
Each Accident	\$1,000,000
Property Damage	
Each Accident	\$1,000,000
[or]	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	\$1,000,000

PROJECT MANUAL			
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		Bid Number:	2458-21

4. Professional Liability (if the Special Services include professional services):

Seller's Professional Liability	Policy limits of not less than
Each Claim	\$1,000,000
Annual Aggregate	\$1,000,000

- I. Seller shall deliver to Buyer, with copies to each additional insured identified in these Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Buyer or any other additional insured) which Seller is required to purchase and maintain.

ARTICLE 7—SELLER'S RESPONSIBILITIES

7.03 *Laws and Regulations*

SC-7.05 Add a new paragraph immediately after Paragraph 7.05.A:

- B. Buyer is exempt from payment of sales and compensating use taxes of the State of Wisconsin and of cities and counties thereof on all materials and equipment to be incorporated into the Project facilities.
 1. Buyer will furnish the required certificates of tax exemption to Seller with respect to materials and equipment to be incorporated into the Project facilities.
 2. Buyer's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Seller, or to supplies or materials not incorporated into the Project facilities.
 3. The Procurement Contract Price does not include the cost of sales or compensating use taxes to the extent such are exempted by this paragraph.

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: A resolution authorizing the appropriate City officials to enter into a contract with Wheeler Lumber, LLC for the purchase of a prefabricated bridge to be installed in Evergreen Park.

REPORT PREPARED BY: Ryan Sazama, City Engineer

REPORT DATE: September 9, 2021

MEETING DATE: September 14, 2021

FISCAL SUMMARY:

STATUTORY REFERENCE:

Budget Line Item: See attached Resolution
Budget Summary: See attached Resolution
Budget Expenditure: \$151,550.00
Budgeted Revenue: N/A

Wisconsin Statutes:
Municipal Code: N/A

BACKGROUND / ANALYSIS: The attached document authorizes the appropriate City officials to enter into a contract with Wheeler Lumber, LLC for the purchase of a prefabricated bridge to be installed in Evergreen Park.

This project will replace the deteriorating bridge between Evergreen Park, Area #5 and the main area of Evergreen Park with a new bridge in a new, nearby location. The new bridge would provide accessible fishing areas at the edge of the river and accessible fishing bump-outs on the bridge that would allow an angler easier access to the Pigeon River. The old wooden bridge and concrete abutments will be removed and new pathways will connect the bridge to the existing main road in Evergreen Park as well as the restroom facility in Area 5.

The City applied for a Natural Resource Damage Assessment (NRDA) grant in the Summer of 2019. A grant in the amount of \$196,000 was awarded and \$176,000 was allocated for replacement of the bridge.

The City of Sheboygan Comprehensive Outdoor Recreation Plan identifies replacing the pedestrian bridge over the Pigeon River as a future project. This bridge would provide accessibility to the Pigeon River to support additional fishing opportunities. The project would meet a goal of the plan to “promote outdoor recreation as a means of improving public health among the community.”

The City of Sheboygan Parks Department will be responsible for future, ongoing maintenance.

Note, this expenditure is only for purchasing the bridge. Installation of additional construction will be awarded as part of a future contract to be bid later this year.

STAFF COMMENTS: Department of Public Works recommends approval of the resolution.

ACTION REQUESTED: Motion to recommend the Common Council adopt Res. No. 54-21-22 authorizing the appropriate City officials to enter into a contract with Wheeler Lumber, LLC for the purchase of a prefabricated bridge to be installed in Evergreen Park.

ATTACHMENTS:

- I. Res. No. 54-21-22
- II. Wheeler Lumber Agreement

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: A resolution authorizing the Purchasing Agent to issue a purchase order to Industrial Marketing & Consulting for the purchase of a replacement street sweeper for the Public Works Department.

REPORT PREPARED BY: Bernard R. Rammer Purchasing Agent

REPORT DATE: September 7, 2021

MEETING DATE: September 14, 2021

FISCAL SUMMARY:

Budget Line Item: 70136100-641100
Budget Summary: Motor Vehicle Fund
Motor Vehicles 2022
Budgeted Expenditure: \$ 295,000
Budgeted Revenue: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS: The Motor Vehicle Division is in need of a replacement street sweeper to replace a 12-year-old unit that is in need of major repairs. The expenditure is included in the 2022 Capital Improvements plan.

STAFF COMMENTS: After considerable research and investigating several brands, the Motor Vehicle Division has determined that a machine manufactured by Tymco® Sweepers best meets all of the needs of the division and offers the best overall value. While Cooperative national contracts are in place with Tymco® Sweepers, the quote provided by the regional authorized Tymco® Representative was found to be the lowest cost with all things being equal.

Following receipt of the new unit in 2022, the old unit will be sold at auction with the proceeds to be deposited back into the Motor Vehicle Fund. It bears noting that since the time that the budget was developed, the unit to be replaced has developed several mechanical issues which will not be repaired prior to sale and will most likely have an adverse impact on the residual value. The shortfall will be made up utilizing fund balance in the Motor Vehicle Fund.

ACTION REQUESTED: Motion to recommend the Common Council approve Res. No. 55-21-22 a resolution authorizing the Purchasing Agent to issue a purchase order to Industrial Marketing & Consulting for the purchase of a replacement street sweeper for the Public Works Department.

ATTACHMENTS:

- I. Res. No. 55-21-22
- II. Industrial Marketing & Consulting Quotation

III

5.7

Res. No. 55- 21 - 22. By Alderpersons Dekker and Perella.
September 7, 2021.

A RESOLUTION authorizing the Purchasing Agent to issue a purchase order to Industrial Marketing & Consulting for the purchase of a replacement street sweeper for the Public Works Department.

WHEREAS, it is anticipated that there will be funding for the purchase of a replacement street sweeper for the Public Works Department in the 2022 budget; and

WHEREAS, in light of the long lead time on street sweepers, it is desirable to place the order, and lock in the price, for the street sweeper in 2021, even though delivery will not occur until 2022; and

WHEREAS, City Staff has explored purchasing the street sweeper through a cooperative purchasing plan, but the City is able to obtain a better price by working directly with the street sweeper dealer assigned to this region; and

WHEREAS, the quote from the assigned dealer - Industrial Marketing & Consulting - which identifies all of the specifications of the street sweeper, is attached to this Resolution; and

WHEREAS, once the new street sweeper has been received, the street sweeper it is replacing will be put to public auction.

NOW, THEREFORE, BE IT RESOLVED: That the Purchasing Agent is authorized to issue a standard City of Sheboygan Purchase Order to Industrial Marketing & Consulting for the purchase of one street sweeper that meets the specifications set forth in the attached quote.

BE IT FURTHER RESOLVED: That the Purchase Order issued to Industrial Marketing & Consulting shall include a non-appropriation clause.

PW

BE IT FURTHER RESOLVED: That in the 2022 calendar year, if sufficient funds are appropriated in the City's budget approved by the Council, the appropriate City officials are hereby authorized to draw funds in the amount of \$291,750.00 for the purchase of the street sweeper. These funds shall be drawn from the Motor Vehicle Fund (Account No. 70136100-641400) in an amount not to exceed \$291,750.00.

Dean Dipke

Gordon Puntke

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

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

INDUSTRIAL MARKETING & CONSULTING

516 D AVENUE
 GWINN, MI 49841
 USA

QUOTATION

Quote Number: 022407
 Quote Date: Aug 30, 2021
 Page: 1

Voice: 906-346-7888
 Fax: 906-346-7578

Quoted To:

CITY OF SHEBOYGAN
 PURCHASING DIVISION
 828 CENTER AVE.
 SHEBOYGAN, WI 53081
 USA

Customer ID	Good Thru	Payment Terms	Sales Rep
SHE1	9/29/21	upon receipt	

Quantity	Item	Description	Unit Price	Amount
1.00	600000	2021 MODEL 600 TYMCO SWEEPER	146,750.00	146,750.00
2.00	600088	Floodlight-Incandescent (additional)	200.00	400.00
1.00	600054-C	REAR CAMERA/MONITOR SYSTEM...SINGLE VIEW WITH TWO ADDITIONAL CAMERAS.	2,000.00	2,000.00
1.00	600053	AUX. HYD. SYSTEM	1,100.00	1,100.00
1.00	600067	Sweeper Deluge System	1,000.00	1,000.00
1.00	600015-A	Extra Water Capacity; additional 110 gallons for a total of 330. Water pump standard 5GPM. Electric Type.	4,500.00	4,500.00
2.00	600022	G.B. TILT ADJUSTER	800.00	1,600.00
1.00	600002	Hydraulic Shut Off Valve	200.00	200.00
1.00	600007	Additional Water Spray Nozzle- Left Gutter Broom Nozzle	400.00	400.00
1.00	600007-A	Additional Water Spray Nozzle- Right Gutter Broom Nozzle	400.00	400.00
1.00	600007-D	Additional Water Spray Nozzle-Hopper Nozzles	400.00	400.00
1.00	600036	ABRASION PROTECTION PACKAGE	950.00	950.00
1.00		Skid Bumper Extension Set 3"	250.00	250.00
1.00	600004	Limb Guard. Stainless steel guard mounted on hopper for protection from tree branches while sweeping.	200.00	200.00
1.00	600045	HIGH OUTPUT WATER	750.00	750.00
			Subtotal	Continued
			Sales Tax	Continued
			Freight	
			TOTAL	Continued

INDUSTRIAL MARKETING & CONSULTING

516 D AVENUE
 GWINN, MI 49841
 USA

QUOTATION

Quote Number: 022407
 Quote Date: Aug 30, 2021
 Page: 2

Voice: 906-346-7888
 Fax: 906-346-7578

Quoted To:

CITY OF SHEBOYGAN
 PURCHASING DIVISION
 828 CENTER AVE.
 SHEBOYGAN, WI 53081
 USA

Customer ID	Good Thru	Payment Terms	Sales Rep
SHE1	9/29/21	upon receipt	

Quantity	Item	Description	Unit Price	Amount
1.00	600087	Front Pick Up Head Curtain Lifter	1,500.00	1,500.00
1.00	600009	Gutter Broom Variable Speed	750.00	750.00
1.00	600079	AUTO SWEEP INTERRUPT with overspeed interrupt.	1,000.00	1,000.00
2.00	600076	Gutter Broom Drop Down (requires GB tilt adjuster)	800.00	1,600.00
1.00	600084	DUMP SWITCH IN CAB	200.00	200.00
1.00	600091T	Stainless Hopper Assy(includes hopper weldment, door, inspection doors, raker plate, high capacity dust separator, skimmer hood & hopper screen	19,500.00	19,500.00
1.00	600096	Stainless Hopper Drain	750.00	750.00
1.00	600092	STAINLESS STEEL BOLT ON BLOWER HOUSING	1,500.00	1,500.00
1.00	600033T	FRONT REMOVABLE CURTAIN SET	250.00	250.00
1.00		2022 Peterbilt 220 Right Hand Steer. 1-speed	96,500.00	96,500.00
1.00	600803	LED LIGHTS...STOP/TURN/TAIL	500.00	500.00
1.00	600828	HAZARD REFLECTORS	100.00	100.00
1.00	600810	AMBER BEACON LIGHT-LED: SAE CLASS 1 WITH PROTECTIVE LIMB GUARD (CAB MOUNTED)	350.00	350.00
1.00	600824T	LED TRAFFIC DIRECTING LIGHT 44" LONG	800.00	800.00
1.00	600827	FIRE EXTINGUISHER	100.00	100.00

Subtotal	Continued
Sales Tax	Continued
Freight	
TOTAL	Continued

INDUSTRIAL MARKETING & CONSULTING

516 D AVENUE
 GWINN, MI 49841
 USA

Voice: 906-346-7888
 Fax: 906-346-7578

QUOTATION

Quote Number: 022407
 Quote Date: Aug 30, 2021
 Page: 3

Quoted To:

CITY OF SHEBOYGAN
 PURCHASING DIVISION
 828 CENTER AVE.
 SHEBOYGAN, WI 53081
 USA

Customer ID	Good Thru	Payment Terms	Sales Rep
SHE1	9/29/21	upon receipt	

Quantity	Item	Description	Unit Price	Amount
1.00		Battery Disconnect Switch	450.00	450.00
1.00	TTL	Any applicable tax, title or license fees are additional.		
1.00		Freight, delivery, setup and training	5,000.00	5,000.00
			Subtotal	291,750.00
			Sales Tax	
			Freight	
			TOTAL	291,750.00

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: A resolution authorizing the appropriate City officials to accept the necessary permanent and temporary easements for the City to construct a sidewalk on the northside of Union Avenue.

REPORT PREPARED BY: Ryan Sazama, City Engineer

REPORT DATE: September 9, 2021

MEETING DATE: September 14, 2021

FISCAL SUMMARY:

Budget Line Item: N/A
Budget Summary: N/A
Budget Expenditure: N/A
Budgeted Revenue: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS: The attached document authorizes the Department of Public Works to accept the necessary easements from various property owners so that the reconstruction of Union Avenue between Georgia Avenue and South 26th Street can be constructed to City standards. The reconstruction of Union Avenue between Georgia Avenue and South 26th will consist of the upgrading of utilities, street lighting, curb/gutter, sidewalk, and the overall vehicular driving surface.

This construction is being completed in advance of the opening of the new Aurora Hospital further west on Union Avenue.

STAFF COMMENTS: Department of Public Works recommends adopting the resolution.

ACTION REQUESTED: Motion to recommend the Common Council adopt Res. No. 56-21-22 authorizing the appropriate City officials to accept the necessary permanent and temporary easements for the City to construct a sidewalk on the northside of Union Avenue.

ATTACHMENTS:

- I. Res. No. 56-21-22
- II. Easements

III

Other Matters

9.2

Res. No. 56 - 21 - 22. By Alderpersons Dekker and Perrella.
September 7, 2021.

A RESOLUTION authorizing the appropriate City officials to accept the necessary permanent and temporary easements for the City to construct a sidewalk on the northside of Union Avenue.

RESOLVED: That the Mayor and City Clerk are authorized and directed to accept the attached Permanent Limited Easements from the Sheboygan Area School District and James Blum, once properly executed, for the City to construct a sidewalk on the northside of Union Avenue.

BE IT FURTHER RESOLVED: That the Mayor and City Clerk are authorized to accept any Temporary Limited Easements necessary for the City to construct a sidewalk on the northside of Union Avenue.

AW

Dean Dekker

Garrison Puller

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

Dated _____ 20 . _____, City Clerk

Approved _____ 20 . _____, Mayor

PERMANENT LIMITED EASEMENT

Exempt from filing transfer form [s. 77.21(1), 77.22(1) Wis. Stats.]
Ipa1552 04/2016 (replaces Ipa1552 08/2011) Ch. 84 Wis. Stats.

THIS EASEMENT, made by **THE SHEBOYGAN AREA SCHOOL DISTRICT**, GRANTOR, conveys a permanent limited easement as described below to the **CITY OF SHEBOYGAN**, a municipal corporation of the State of Wisconsin, GRANTEE, for the sum of **One dollar (\$1.00)** and other valuable consideration for the purpose of the improvement of **SIDEWALK ALONG THE NORTHSIDE OF UNION AVENUE**, in the City of Sheboygan, Sheboygan County, Wisconsin.

Any person named in this conveyance may make an appeal from the amount of compensation within six months after the date of recording of this conveyance as set forth in s.32.05(2a) Wisconsin Statutes. For the purpose of any such appeal, the amount of compensation stated on the conveyance shall be treated as the award, and the date the conveyance is recorded shall be treated as the date of taking and the date of evaluation.

Other persons having an interest of record in the property: None per this document.

This space is reserved for recording data
Return to City of Sheboygan City Attorney's Office 828 Center Avenue, Suite 210 Sheboygan, WI 53081
Parcel Identification Number/Tax Key Number Part of 59281431060

MAP AND LEGAL DESCRIPTION ARE ATTACHED AND MADE A PART OF THIS DOCUMENT BY REFERENCE - SEE EXHIBITS "A.1", "A.2", AND "B".

Signature Date

Print Name and Title

Signature Date

Print Name and Title

Signature Date

Print Name and Title

Signature Date

Print Name and Title

Date

State of Wisconsin)
)
) ss.
)
) County)

On the above date, this instrument was acknowledged before me by the named person(s).

Signature, Notary Public, State of Wisconsin

Print or Type Name, Notary Public, State of Wisconsin

Date Commission Expires

This instrument was drafted by:
Michael P. Born, WI PLS S-2984
City of Sheboygan

Accepted By: **CITY OF SHEBOYGAN**

Ryan Sorenson
City of Sheboygan - Mayor

Meredith DeBruin
City of Sheboygan – City Clerk

STATE OF WISCONSIN)
) SS
COUNTY OF SHEBOYGAN)

Personally came before me this ____ day of _____, 2021, the above named Ryan Sorenson, Mayor, and Meredith DeBruin, City Clerk, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public

My Commission expires _____

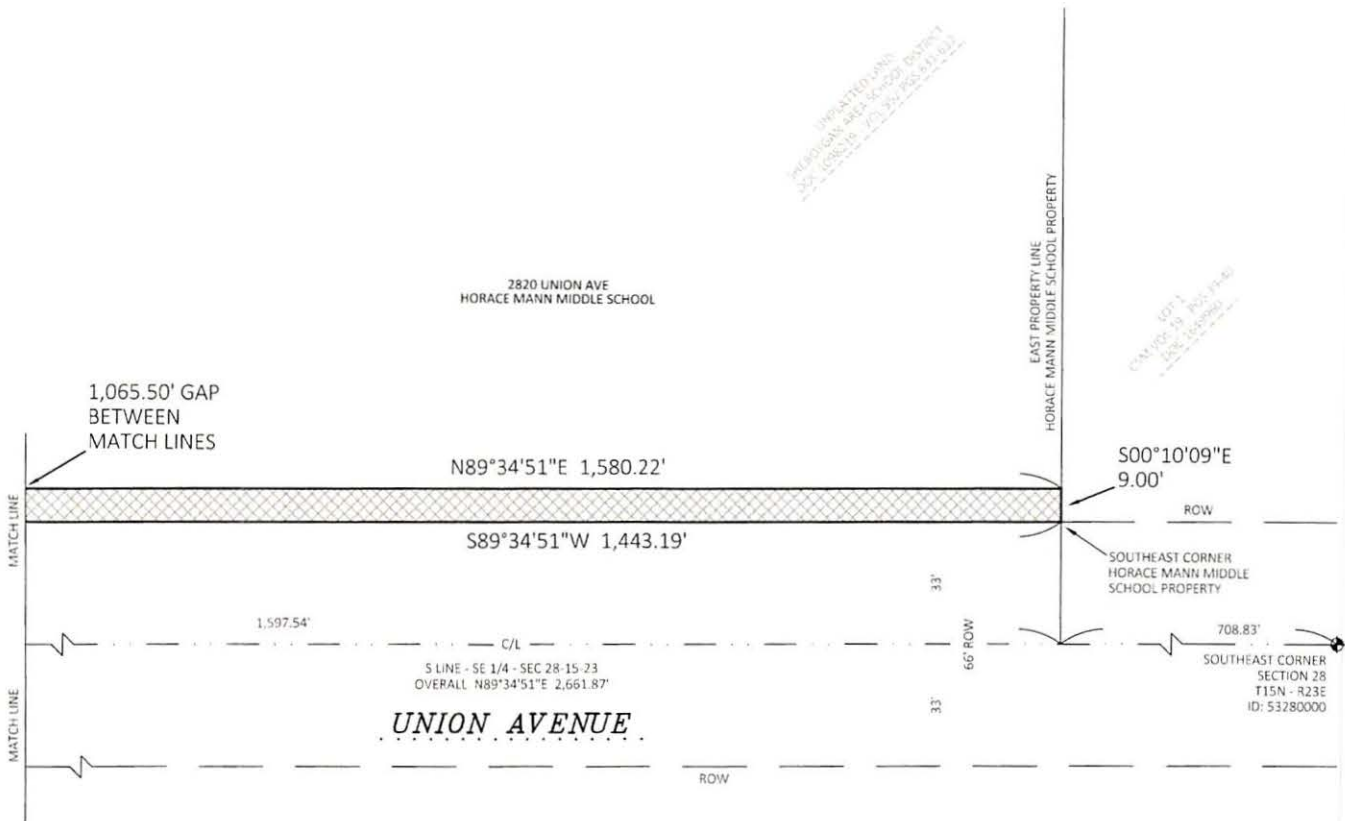
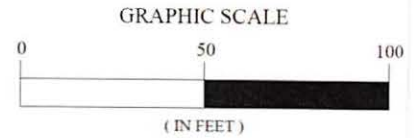
Acceptance is authorized by and in accordance with Resolution Number _____

EXHIBIT A.2

PERMANENT LIMITED EASEMENT MAP

UNPLATTED LAND LOCATED IN THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 AND THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 28, TOWN 15 NORTH - RANGE 23 EAST, CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN

BEARINGS ARE REFERENCED TO THE SOUTH LINE OF THE SOUTHWEST 1/4 OF SECTION 28-15-23 RECORDED AS N89°34'51"E (SHEBOYGAN COUNTY COORDINATES - NAD83 (1991))



MAP PREPARED BY: MICHAEL P. BORN, PLS DATED: 07/22/2021
 MAP REVIEWED BY: TYLER D. HILL, CST DATED: 07/22/2021

CITY OF SHEBOYGAN
PUBLIC WORKS
 Department of Public Works
 Engineering Division
 City of Sheboygan, Wisconsin
 Phone: 920-459-3440
 Fax: 920-459-3443

MAP CREATED FOR:
 RYAN SAZAMA, CITY ENGINEER
 CITY OF SHEBOYGAN
 DEPARTMENT OF PUBLIC WORKS
 2026 NEW JERSEY AVENUE
 SHEBOYGAN, WI 53081

PARENT PARCEL ID:
 PART OF 59281431060

SHEET 4 OF 5 SHEETS

EXHIBIT B
PERMANENT LIMITED EASEMENT
LEGAL DESCRIPTION

UNPLATTED LAND LOCATED IN THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 AND THE
SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 28, TOWN 15 NORTH - RANGE 23 EAST,
CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN

Unplatted land located in the Southwest 1/4 of the Southeast 1/4 and the Southeast 1/4 of the Southeast 1/4 of Section 28, Town 15 North - Range 23 East, City of Sheboygan, Sheboygan County, Wisconsin and being more particularly described as follows:

Commencing at the South 1/4 corner of said Section 28, thence North 89°34'51" East, along the South line of said Southeast 1/4 and the centerline of Union Avenue, a distance of 355.50 feet; thence North 00°25'09" West a distance of 38.63 feet to the Point of Beginning for this description; thence North 34°33'40" West a distance of 4.96 feet; thence South 88°19'55" East a distance of 20.31 feet; thence North 89°34'51" East, along a line 9.00 feet North of and parallel to the North Right of Way line of Union Avenue, as used and accepted, a distance of 1,580.22 feet to the East line of land owned by the Sheboygan Area School District; thence South 00°10'09" East, along said East line, a distance of 9.00 feet to said North Right of Way line of Union Avenue; thence South 89°34'51" West, along said North Right of Way line of Union Avenue, a distance of 1,443.19 feet; thence North 88°19'55" West a distance of 154.61 feet to the Point of Beginning.

The land described above contains 0.3204 acres (13,956 square feet) of land, more or less.

End of description.

DESCRIPTION PREPARED BY: MICHAEL P. BORN, PLS DATE: 07/22/2021
DESCRIPTION REVIEWED BY: TYLER D. HILL, CST DATE: 07/22/2021

CITY OF SHEBOYGAN PUBLIC WORKS	Department of Public Works Engineering Division City of Sheboygan, Wisconsin Phone: 920-459-3440 Fax: 920-459-3443
---	--

PERMANENT LIMITED EASEMENT

Exempt from filing transfer form [s. 77.21(1), 77.22(1) Wis. Stats.]
lpa1552 04/2016 (replaces lpa1552 08/2011) Ch. 84 Wis. Stats.

THIS EASEMENT, made by **JAMES T. BLUM**, a single person, GRANTOR, conveys a permanent limited easement as described below to the **CITY OF SHEBOYGAN**, a municipal corporation of the State of Wisconsin, GRANTEE, for the sum of **One dollar (\$1.00)** and other valuable consideration for the purpose of the improvement of **SIDEWALK ALONG THE NORTHSIDE OF UNION AVENUE**, in the City of Sheboygan, Sheboygan County, Wisconsin.

Any person named in this conveyance may make an appeal from the amount of compensation within six months after the date of recording of this conveyance as set forth in s.32.05(2a) Wisconsin Statutes. For the purpose of any such appeal, the amount of compensation stated on the conveyance shall be treated as the award, and the date the conveyance is recorded shall be treated as the date of taking and the date of evaluation.

Other persons having an interest of record in the property: None per this document.

This space is reserved for recording data

Return to
 City of Sheboygan
 City Attorney's Office
 828 Center Avenue, Suite 210
 Sheboygan, WI 53081

Parcel Identification Number/Tax Key Number
 Part of 59281431070

MAP AND LEGAL DESCRIPTION ARE ATTACHED AND MADE A PART OF THIS DOCUMENT BY REFERENCE - SEE EXHIBITS "A" AND "B".

Signature Date

Print Name and Title

Signature Date

Print Name and Title

Signature Date

Print Name and Title

Signature Date

Print Name and Title

Date

State of Wisconsin)
)
) ss.
)
) County)

On the above date, this instrument was acknowledged before me by the named person(s).

Signature, Notary Public, State of Wisconsin

Print or Type Name, Notary Public, State of Wisconsin

Date Commission Expires

This instrument was drafted by:
Michael P. Born, WI PLS S-2984
City of Sheboygan

Accepted By: CITY OF SHEBOYGAN

Ryan Sorenson
City of Sheboygan - Mayor

Meredith DeBruin
City of Sheboygan – City Clerk

STATE OF WISCONSIN)
) SS
COUNTY OF SHEBOYGAN)

Personally came before me this ____ day of _____, 2021, the above named Ryan Sorenson, Mayor, and Meredith DeBruin, City Clerk, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public

My Commission expires _____

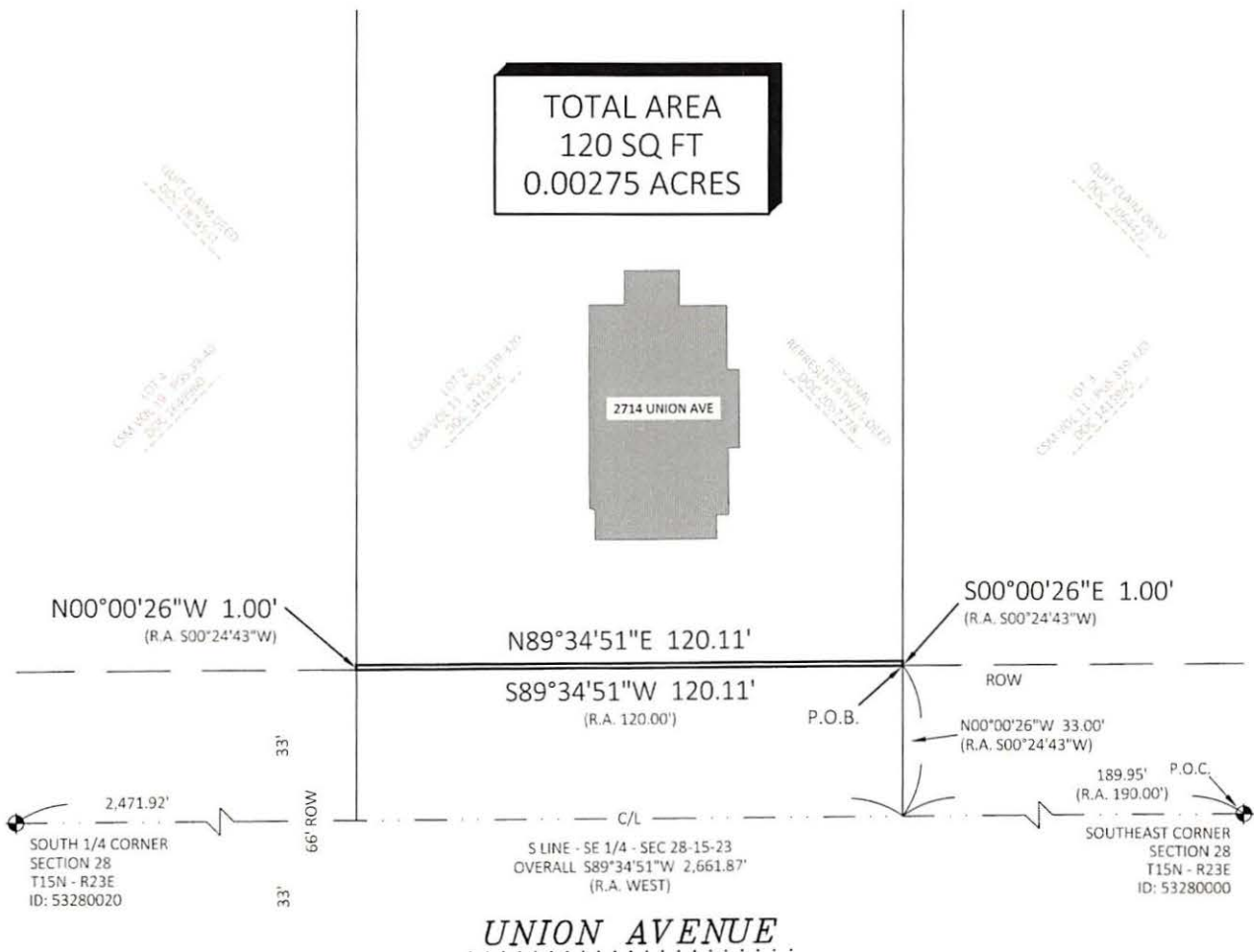
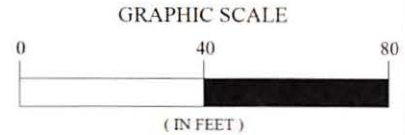
Acceptance is authorized by and in accordance with Resolution Number _____

EXHIBIT A

PERMANENT LIMITED EASEMENT MAP

PART OF LOT 2 OF CERTIFIED SURVEY MAP VOLUME 11, PAGES 319-320,
 LOCATED IN THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 28,
 TOWN 15 NORTH - RANGE 23 EAST, CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN

BEARINGS ARE REFERENCED TO
 THE SOUTH LINE OF THE
 SOUTHEAST 1/4 OF SECTION 28-15-23
 RECORDED AS S89°34'51"W (SHEBOYGAN
 COUNTY COORDINATES - NAD83 (1991))



MAP PREPARED BY: MICHAEL P. BORN, PLS DATED: 07/26/2021
 MAP REVIEWED BY: TYLER D. HILL, CST DATED: 07/26/2021

MAP CREATED FOR:
 RYAN SAZAMA, CITY ENGINEER
 CITY OF SHEBOYGAN
 DEPARTMENT OF PUBLIC WORKS
 2026 NEW JERSEY AVENUE
 SHEBOYGAN, WI 53081

PARENT PARCEL ID:
 PART OF 59281431070

CITY OF SHEBOYGAN
PUBLIC WORKS
 Department of Public Works
 Engineering Division
 City of Sheboygan, Wisconsin
 Phone: 920-459-3440
 Fax: 920-459-3443

SHEET 3 OF 4 SHEETS

EXHIBIT B
PERMANENT LIMITED EASEMENT
LEGAL DESCRIPTION

PART OF LOT 2 OF CERTIFIED SURVEY MAP VOLUME 11, PAGES 319-320,
LOCATED IN THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 28,
TOWN 15 NORTH - RANGE 23 EAST, CITY OF SHEBOYGAN, SHEBOYGAN COUNTY, WISCONSIN

Part of Lot 2 of a Certified Survey Map, recorded in Volume 11 on Pages 319-320 of Certified Survey Maps as Document 1415945 in the Sheboygan County Register of Deeds Office, located in the Southeast 1/4 of the Southeast 1/4 of Section 28, Town 15 North - Range 23 East, City of Sheboygan, Sheboygan County, Wisconsin and being more particularly described as follows:

Commencing at the Southeast corner of said Section 28 and the Southeast corner of said Certified Survey Map, thence South 89°34'51" West along the South lines of said Southeast 1/4, said Certified Survey Map, and the centerline of Union Avenue, a distance of 189.95 feet to the Southeast corner of said Lot 2;
thence North 00°00'26" West, along the East line of said Lot 2, a distance of 33.00 feet to the North right of way line of said Union Avenue, as used and accepted, and the Point of Beginning for this description;
thence South 89°34'51" West, along said North Right of Way line of Union Avenue, a distance of 120.11 feet to the West line of said Lot 2;
thence North 00°00'26" West, along said West line, a distance of 1.00 foot;
thence North 89°34'51" East, along a line 1.00 foot North of and parallel to said North Right of Way line of Union Avenue, a distance of 120.11 feet to said East line;
thence South 00°00'26" East, along said East line, a distance of 1.00 foot to said North Right of Way line of Union Avenue and the Point of Beginning.

The land described above contains 0.00275 acres (120 square feet) of land, more or less.

End of description.

DESCRIPTION PREPARED BY: MICHAEL P. BORN, PLS DATE: 07/26/2021
DESCRIPTION REVIEWED BY: TYLER D. HILL, CST DATE: 07/26/2021

CITY OF SHEBOYGAN PUBLIC WORKS	Department of Public Works Engineering Division City of Sheboygan, Wisconsin Phone: 920-459-3440 Fax: 920-459-3443
---	--

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: A resolution designating the City Forester as the City’s Authorized Representative for the purpose of Wisconsin Department of Natural Resources (DNR) Urban Forestry Grants for Calendar Year 2022 and instructing the Authorized Representative to submit an Urban Forestry Grant Application.

REPORT PREPARED BY: Joseph L. Kerlin, Superintendent of Parks and Forestry

REPORT DATE: September 9, 2021

MEETING DATE: September 14, 2021

FISCAL SUMMARY:

Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: 23.097
Municipal Code: N/A

BACKGROUND / ANALYSIS: In 2016 the City wrote and approved an Urban Forestry Management Plan. The City has since budgeted annual funds for tree planting, tree removal, tree trimming and ash tree treatment. The Department of Public Works has also applied for and has received over \$100,000 dollars in grants since 2016, to assist with the management plan. The Department will be applying for another DNR grant and in order to be eligible for the grant the attached resolution needs to be approved by the Common Council. The maximum size of the grant is \$25,000, which would require a \$25,000 match from the City. This would be covered by the annual forestry budget. The grant application is due on October 1, 2021 and will be used for the calendar year 2022.

STAFF COMMENTS: Tim Bull, City Forester, is looking at several different project options that would be grant eligible. Each year the DNR highlight different areas of urban forestry that would score higher in the grant process. Tim is looking to combine several needed projects that would score high in the grant ranking.

ACTION REQUESTED: Motion to recommend the Common Council approve Res. No. 57-21-22 designating the City Forester as the City’s Authorized Representative for the purpose of Wisconsin Department of Natural Resources Urban Forestry Grant for Calendar Year 2022 and instructing the Authorized Representative to submit an Urban Forestry Grant Application.

ATTACHMENTS:

- I. Res No 57-21-22

CITY OF SHEBOYGAN

REQUEST FOR PUBLIC WORKS COMMITTEE CONSIDERATION

ITEM DESCRIPTION: An ordinance creating a no parking zone on the east side of North 9th Street north of Center Avenue.

REPORT PREPARED BY: Ryan Sazama, City Engineer

REPORT DATE: August 19, 2021

MEETING DATE: August 24, 2021

FISCAL SUMMARY:

STATUTORY REFERENCE:

Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

Wisconsin Statutes:
Municipal Code: N/A

BACKGROUND / ANALYSIS: There are concerns with vehicles parking near the driveway that exits and enters onto North 9th Street from the parking lot located on the northside of City Hall creating sight distance issues for vehicles exiting the parking lot. Parked vehicles at this location are also blocking the view of the new visitor signage for City Hall.

STAFF COMMENTS: The Department of Public Works recommends adding the parking restriction of No Parking on this section of North 9th Street for the safety reasons listed above.

ACTION REQUESTED: Motion to recommend the Common Council adopt General Ordinance 20-21-22 creating a no parking zone on the east side of North 9th Street north of Center Avenue.

ATTACHMENTS:

- I. Gen. Ord. 20-21-22

~~X~~

7-3

Gen. Ord. No. 20 - 21 - 22. By Alderpersons Dekker and Perrella.
August 16, 2021.

AN ORDINANCE creating a no parking zone on the east side of North 9th Street north of Center Avenue.

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

Section 1. Pursuant to Section 118-126 of the Municipal Code entitled "Prohibitions and Restrictions Authorized," the east side of North 9th Street from 70 feet north of the north curb line of Center Avenue to 245 feet north of the north curb line of Center Avenue is hereby added to the list of locations where parking is not permitted.

Section 2. The Department of Public Works and the Police Department are hereby authorized and directed to install the signs to give notification of the aforementioned parking restriction.

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

Dean Dekker

Public works

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

Dated _____ 20____, _____, City Clerk

Approved _____ 20____, _____, Mayor