

**CITY OF NEENAH
AMENDED
PUBLIC SERVICES AND SAFETY COMMITTEE MEETING
June 28, 2022 @ 6:30 PM
City Hall, 211 Walnut Street
Council Chambers**

NOTICE IS HEREBY GIVEN, pursuant to the requirements of Wis. Stats. Sec. 19.84, that a majority of the Neenah Common Council may be present at this meeting. Common Council members may be present to gather information about a subject over which they have decision-making responsibility. This may constitute a meeting of the Neenah Common Council and must be noticed as such. The Council will not take any formal action at this meeting.

AGENDA

1. Approval of Minutes of the meeting for June 7, 2022 (Attachment)
2. Public Appearances
3. Resolution 2022-11: Sanitary Sewer Lateral Installation and Lead Water Service Replacement on Hunt Avenue, Madison Street, Nicolet Boulevard, Reddin Avenue and Zemlock Avenue (Attachment)
4. Assessment Report: Sanitary Sewer Lateral Installation and Lead Water Service Replacement on Hunt Avenue, Madison Street, Nicolet Boulevard, Reddin Avenue, and Zemlock Avenue (Attachment)
5. Town of Neenah Boundary Agreement (Attachment)
6. Master Sewer Agreement (Attachment)
7. Commercial Street/Winneconne Avenue Conceptual Design (Attachment)
8. Fleet #77A Scissor Lift Replacement (Attachment)
9. Fleet #69 2022 Leaf Collection Trailer (Attachment)
10. Special Event Barrier Strategies (Attachment)
11. Recommendation to Approve the Construction Management Contract with Miron Construction for the Police Station Remodel (**AMENDED Attachment**)
12. Pavement Marking Change on N. Lake Street (Winneconne to Western)
13. Special Events
 - a. Labor Day Parade and Festival (Attachment)
14. Licenses
 - a. Temporary Class "B" Retailers License to sell fermented malt beverages for Fox Valley Area Labor Council, 157 S. Green Bay Road (Attachment)
15. Announcements/Future Agenda Items
16. Adjournment

In accordance with the requirements of Title II of the Americans with Disabilities Act (ADA), the City of Neenah will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities. If you need assistance, or reasonable accommodation in participating in this meeting or event due to a disability as defined under the ADA, please call the **Public Works Administrative Assistant at (920)886-6240** or the **City's ADA Coordinator at (920)886-6106** or e-mail attorney@ci.Neenah.wi.us at least 48 hours prior to the scheduled meeting or event to request an accommodation.

CITY OF NEENAH
PUBLIC SERVICES AND SAFETY COMMITTEE MEETING MINUTES
Tuesday June 7, 2022, 6:30 PM

Present: Alderpersons, Borchardt, Hillstrom, Lendrum, Stevenson, and Weber

Excused:

Also Present: Mayor Lang, Alderperson Boyette, Public Works Director Kaiser, Community Development & Assessment Director Haese, Utility Director Mach, Public Works Staff Engineer Kummerow, and Public Works Office Manager Mroczkowski

Chairperson Lendrum welcomed newly appointed Alderperson Weber as a new member of the Common Council and as a new member of the Public Services & Safety Committee.

Approval of Minutes of the meeting for the May 24, 2022 meeting

Motion Second/Carried Hillstrom/Stevenson to approve the minutes of the meeting of May 24, 2022. All voting aye.

Public Appearances:

None

Resolution 2022-10: Compliance Maintenance Annual Report for Sanitary Sewer (CMAR)

Public Works staff engineer Kummerow reviewed the CMAR report. He stated that each year the Wisconsin Department of Natural Resources (DNR) requires this report be submitted. He stated the report looks at how the city is maintaining the sanitary system by use of televising and monitoring illegal inflow & infiltration from the storm system into the sanitary system. Engineer Kummerow stated that the city tries to clean 60% of the sanitary mains each year.

Report Following discussion, **Motion/Second/Carried Stevenson/Hillstrom to recommend Council adopt Resolution No. 2022-10 - Compliance Maintenance Annual Report for Sanitary Sewer.** All voting aye.

Bridge over Neenah Creek-Bridgewood Golf Course Redevelopment

Director Kaiser reviewed his memo of June 1, 2022. He stated that proposals were requested from five firms to provide engineering, design and construction management services for the construction of a new bridge over Neenah Creek to connect the Bridgewood Golf Course redevelopment project to Jewelers Park Drive. He stated that GRAEF was the only firm that presented a proposal. Director Kaiser stated that the other firms cited limited staff availability due to project workloads and the project timeframe as reasons for passing on the project.

Director Kaiser stated that the cost proposal estimate from GRAEF for design, permitting and preparation of bid documents is of \$121,659.41. For construction administration services the estimate is \$28,218.92 for a total fee structure estimated at \$149,878.39. He stated that the funding source for this contract would come from TID 7. He stated that with the golf course redevelopment project in the works and the proposed creation of TID 12, the construction of the bridge would be funded through TID 12.

Director Kaiser stated that staff recommends Council approve contracting with GRAEF for engineering, design and construction management services for the construction of a new bridge over Neenah Creek connecting the Bridgewood Golf Course redevelopment project to Jewelers Park Drive and a not to exceed cost of \$149,878.39.

Alderson Hillstrom asked if there should be concern on securing a contractor to do the work since only one of five engineering firms submitted a proposal. Director Kaiser stated that he does not anticipate any problems with getting contractors to bid on this project.

Alderson Hillstrom asked Director Haese for an explanation on the role TID 7 and TID 12 will play in funding this bridge. Director Haese stated that it his preference that TID 12 funds could be attributed to this contract. He stated that if that if is not possible, than TID 7 funds can certainly be used to fund the design and engineer contract. He stated that the question that needs to be answered is whether or not this contract would be considered as an obligation and therefore qualify to be paid out of TID 7.

Alderson Stevenson asked if there has been discussion on where the bridge will be placed. He stated that during the early stakeholder meetings, residents gave their opinions of where they did not want it to be. He stated that he wants to make sure that their voices are being heard when it comes to the placement of the bridge. Director Haese stated that in the redevelopment agreement, the proposed location of the bridge is on the south end of the redevelopment site. Alderson Stevenson stated that before the next council meeting he would like a more defined location of the bridge.

Alderson Borchardt asked if all the costs for the design and bridge will fall onto the city. Director Haese stated that per the redevelopment agreement, all the cost will fall onto the city. He stated that since this is going to be a public piece of infrastructure, the city should be the ones building the bridge.

Following discussion, **Motion/Second/Carried Stevenson/Hillstrom to recommend Council approve contracting with GRAEF for engineering, design and construction management services for the construction of a new bridge over Neenah Creek connecting the Bridgewood Golf Course redevelopment project to Jewelers Park Drive in a not to exceed cost of \$149,878.39 with the funding source coming from TIF #7, and with staff presenting a preliminary location of the bridge at the Council meeting on June 15, 2022.** All voting aye

Sewer Lateral Replacement Coordinated with Lead Service Line Replacement

Director Kaiser reviewed his memo of June 1, 2022. He stated that Council members were informed by Water Utility Director Mach via a May 24 email of the proposed rollout of a lead service line replacement program funded through a grant program. He stated that Director Mach has worked closely with Public Works staff to identify candidate streets and to coordinate the water service work with sewer lateral replacements.

Director Kaiser stated this would be a two-step process. He stated that funding would need to be secured and the special assessment process would need to be started since it's staffs expectation that a portion of the sanitary sewer lateral work would be special assessed to the served property per City policy.

Director Kaiser stated that there are approximately 130 sanitary sewer laterals as part of this replacement project. He stated that there are two, 2022 budgeted Capital Improvement Projects that have funds available that could be reallocated to this project.

Director Kaiser stated there is approximately \$400,000.00 remaining in the S. Commercial Street project after staff changed the scope of the project over the winter and \$162,000.00 from the Grove/Dickehoff Street project. He stated combined that is a total of \$562,000.00.

Aldersperson Boyette stated that the council knew that the city had applied for funding for the lead replacement program with the WiDNR. She stated that what we didn't know was that there was a potential plan to tack on sanitary sewer lateral replacements with the lead service replacement project. She stated that her concern is that Public Works will mandate that the sanitary sewer laterals be replaced and that some of the cost will fall onto the property owner.

Director Kaiser stated that staff will be recommending the sanitary sewer laterals be mandated. He stated that it is difficult to get contractors to bid on the project when they don't know how many services are part of the project. He stated that the cost share between the city and property owner will be 50/50.

Aldersperson Boyette asked what happens if a property owner wants to hire their own plumber. Director Mach stated that property owners are allowed to do that as long as they select from the pre-qualified list of plumbers. He stated that the property owner will most likely not get a call back from the plumber because of workloads.

Aldersperson Boyette asked what the timeline is for this project. Director Mach stated that we are looking at bidding mid-August.

The committee held discussion on left over funds from the DNR loan, if residents outside the streets chosen can apply for lead service replacement and the cost of the owner hiring the contractor versus doing the work under the city contract, how the reimbursement from the state will happen and if TARF funds can be used for the lead service line replacement.

Report

Following discussion, **Motion/Second/Carried Stevenson/Hillstrom to recommend Council approve a budget amendment to provide for sewer lateral replacements done in conjunction with the lead service line replacement program using \$520,000.00 budgeted funds remaining from the S. Commercial Street and Grove Street sanitary sewer replacement projects.** All voting aye

Special Events

Bergstrom-Mahler Museum Art after Dark

C.A.

Following discussion, **Motion/Second/Carried Hillstrom/Stevenson to recommend Bergstrom-Mahler Museum Inc., 165 N Park Drive, to be held on June 23, 2022 the Council approve the Street Use Permit for Ark After Dark, sponsored by The from 5:00 PM to 9:00 PM.** All voting aye.

St. Margaret Mary Parish Farewell Party

C.A.

Following discussion, **Motion/Second/Carried Hillstrom/Weber to recommend the Council approve the Street Use Permit for the Farewell Party, sponsored by St. Margaret Mary Parish, 620 Division Street, to be held on June 26, 2022 from 10:30 AM to 2:00 PM.** All voting aye.

Bikers Against Trafficking-WI

Info Only

Director Kaiser stated that this event is informational because it is considered a Class "B" special event. He stated because it is a Class "B" he or his designee can administratively approve these special events. Director Kaiser stated he has approved this one.

Licenses

Temporary Class "B" (Picnic) License to sell fermented malt beverages for the Bergstrom-Mahler Museum Art After Dark

C.A. Following discussion , **Motion/Second/Carried Stevenson/Hillstrom to recommend Common Council approve the Temporary Class "B" Picnic License Application for the sale of fermented malt beverages to Bergstrom-Mahler Museum Inc., for Art After Dark to be held on June 23, 2022 from 5:00 PM to 9:00 PM.** All voting aye.

Temporary Class "B" (Picnic) License to sell fermented malt beverages and wine for the Bergstrom-Mahler Museum Art Fest

C.A. Following discussion , **Motion/Second/Carried Stevenson/Hillstrom to recommend Common Council approve the Temporary Class "B" Picnic License Application for the sale of fermented malt beverages and wine to Bergstrom-Mahler Museum Inc., for Art Fest to be held on August 12, 2022 and August 13, 2022.** All voting aye.

Public Works General Construction and Department Activity

- 1) Contract 3-20 (Street - Van, Monroe, Gillingham)
 - a) Gillingham, Van, Monroe, Cavalry: Work is complete.
 - b) Shootingstar: The Shootingstar extension has been graded and graveled. The contractor graded Armstrong on June 3.
- 2) Contract 4-21 (Epoxy Pavement Marking): About 75% of the work under this contract has been completed. Work started the week of May 30 on the remainder of the contract. It is tentatively set for completion the week of June 6.
- 3) Contract 6-21 (Misc. Concrete Pavement, Sidewalk Repairs): Work continues. Bell Street from Marathon to Commercial will be closed the week of June 6 to complete the scattered pavement repairs in that area. Additional work west of Marathon will be done under traffic the following week.
- 4) Contract 7-21 (Harrison Pond): Pond excavation is complete. Ground conditions in the footing trough have delayed further work on the west retaining wall.
- 5) Contract 8-21 (Jewelers Park Drive Trail): Work is complete. Final quantities are being prepared.
- 6) Contract 1-22 (Utility Construction in Fredrick Drive area): Work is complete. We Energies has started replacing select gas service lines. Final pay estimate will go to the BPW on June 9th.

- 7) Contract 2-22 (Utility and Street Construction on Grove and Dieckhoff): Sanitary sewer installation is complete. Service replacements are ongoing. We Energies will follow that work with gas main replacement.
- 8) Contract 3-22 (Street Construction in Fredrick Drive area, Fresh Air Pk, Southview Pk): This contract was awarded to Northeast Asphalt, Inc. The contractor has indicated that they will mobilize when We Energies has completed work in the Fredrick Drive area.
- 9) Contract 4-22 (S. Commercial Utility Construction): Sanitary sewer main installation is complete. Sewer and water service work is ongoing and should be complete June 13 after which a concrete patch will be placed.
- 10) Contract 5-22 (CTH JJ/CTH CB Utility Construction): Work is complete. A final payment is being taken to the Board of Public Works on June 9. Winnebago County has awarded the road construction contract to Vinton Construction. Due to a delay in getting some materials needed for the project, road construction is scheduled to start on June 27.

Director Kaiser stated the anticipated completion date for this project is mid-September.

- 11) Contract 7-22 (Winneconne Ave Overpass Repairs): This contract was awarded to Pheifer Brothers, Inc. Work started on delamination of the south column.
- 12) Contract 8-22 (Miscellaneous Asphalt Repairs): This contract was opened on June 1. It is being taken to the Board of Public Works on June 9.
- 13) E-waste – The weight summary for the spring E-waste collection event has been received. The summary is below.

Electronic Waste Collection History							
Weight of Material Collected							
	TVs	CPUs	Monitors	Freon	Electronics	Appliances, Small Electronics & Printers	Total
Spring 2013	6,056	2,269	1,797	1,914	4,481	3,300	19,817
Fall 2013	7,556	3,113	2,912	3,077	5,761	4,560	26,979
Spring 2014	7,870	1,142	1,174	2,858	4,225	5,700	22,969
Fall 2014	15,084	2,582	2,072	3,719	3,505	8,420	35,382
Spring 2015	5,384	2,505	808	1,451	2,613	5,060	17,821
Fall 2015 ¹	13,682	2,219	1,601	2,614		11,742	31,858
Spring 2016 ²	-	-	-	-	-	-	-
Fall 2016 ¹	16,445	2,004	1,898	1,800	4,581	4,700	31,428
Spring 2017	14,833	2,096	698	2,347	2,658	8,035	30,667
Fall 2017 ¹	25,884	2,336	2,797	6,122	4,355	9,148	50,642
Spring 2018	10,144	1,952	588	1,923	2,893	7,418	24,918
Fall 2018	8,488	2,061	780	2,625	2,533	5,572	22,059
Spring 2019	11,068	1,398	710	2,325	3,621	7,758	26,880
Fall 2019	7,025	1,322	234	3,004	2,024	5,156	18,765
Spring 2020	12,759	3,350	1,147	2,211	4,403	8,468	32,338
Fall 2020	11,028	1,581	722	3,532	5,233	8,300	30,396
Spring 2021	7,246	1,551	543	2,432	3,485	7,060	22,317
Fall 2021	5,272	860	349	1,611	2,798	4,480	15,370
Spring 2022	6,702	943	668	2,179	4,312	5,240	20,044
Note 1:	Event sponsored by Cellcom						
Note 2:	There is no record of the weight summary for this event.						

Announcements/Future Agenda Items:

Director Kaiser stated he will not be in attendance for the June 28, 2022 meeting.

Adjournment: **Motion/Second/Carried Hillstrom/Stevenson to adjourn at 7:51 PM.**
All voting aye.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lisa Mroczkowski".

Lisa Mroczkowski
Public Works Office Manager



RESOLUTION NO. 2022-11

RESOLUTION OF INTENT TO EXERCISE SPECIAL ASSESSMENT POWERS BY POLICE POWER UNDER SECTION 66.0703 OF THE WISCONSIN STATUTES AND SECTION 13-1 OF THE NEENAH MUNICIPAL CODE.

RESOLVED, by the Common Council of the City of Neenah, Wisconsin.

- 1. The Common Council hereby declares its intention to exercise its power under Section 66.0703 Wisconsin Statutes, and Section 13-1 of the Neenah Municipal Code to levy special assessments under the police power upon all properties abutting the following improvements in the City of Neenah, Wisconsin:

Installation of Sanitary Sewer Laterals and Lead Water Service Replacement for properties served on the following streets:

- | | |
|---|---|
| <ul style="list-style-type: none"> 1. Hunt Avenue (Madison to Cecil) 3. Nicolet Boulevard (1st to Beaulieu) 5. Zemlock Avenue (Winneconne to Cecil) | <ul style="list-style-type: none"> 2. Madison Street (Reddin to Zemlock) 4. Reddin Avenue (Winneconne to Cecil) |
|---|---|

- 2. The Common Council determines that the above improvements constitute an exercise of the police power and the amount assessed each parcel abutting on the above named street shall be on a reasonable basis as approved by the Common Council which is in effect at the time of installation in accordance with special assessment procedures set forth in provisions of Section 13-1, Neenah Municipal Code.
- 3. The assessments against any parcels of land shall be paid as provided in the City of Neenah Municipal Code, Section 13-2 and 13-3.
- 4. The Public Services and Safety Committee shall with respect to the items mentioned at paragraph 1 above prepare a report consisting of:
 - a. Preliminary or final plans and specifications of the improvements.
 - b. An estimate of the entire cost of the proposed work or improvements.
 - c. A schedule of the proposed assessments as to each parcel of property affected.
 - d. A statement that the properties against which the assessments are proposed are benefited and that the improvements constitute an exercise of the police power.

Upon completion of such report, the Public Services and Safety Committee is directed to file such reports in the City Clerk's office for public inspection.

- 5. Upon receiving a report of the Public Services and Safety Committee, the Clerk is directed to give notice of a public hearing on such report as specified in Section 66.0703(7)(a), Wisconsin Statutes.

Recommended by:
Public Services and Safety Committee

CITY OF NEENAH, WISCONSIN

Moved: _____

Jane B. Lang, Mayor

Passed: _____

Charlotte K. Nagel, City Clerk

**Report of the Committee of Public Services and Safety
on Proposed Assessments**

In accordance with the Resolution No. 2022-11, and the requirements of §66.0703(5), Wis. Stats., we herewith submit our report on the improvements and the assessment of benefits under the police power for the improvements to be made in the streets or portions of streets listed below.

The plans and specifications have been approved by the Committee and are on file with the Director of Public Works.

The descriptions of the improvement and the estimate of the entire cost of the proposed improvements and the benefits and damages, which estimate of benefits and damages have been made from a view of each parcel, are as follows:

Installation of sanitary sewer laterals for properties served by sanitary sewers on the following streets:

	Street	No. of Served Properties	Est. Construction Costs (1)	Est. Assessable Costs (1)	Est. City Costs
1.	Hunt Ave (Madison to Cecil)	38	\$152,000	\$76,000	\$76,000
2.	Madison Street (Reddin to Zemlock)	13	\$52,000	\$26,000	\$30,000
3.	Nicolet Blvd (1st to Beaulieu)	33	\$132,000	\$66,000	\$66,000
4.	Reddin Ave (Winneconne to Cecil)	51	\$204,000	\$102,000	\$102,00
5.	Zemlock Ave (Winneconne to Cecil)	49	\$196,000	\$98,000	\$98,000

Lead Service Replacement on the following streets:

	Street	No. of Served Properties	Est. Construction Costs (1)	Est. Assessable Costs (2)	Est. City Costs
1.	Hunt Ave (Madison to Cecil)	38	\$152,000	\$0	\$0
2.	Madison Street (Reddin to Zemlock)	13	\$52,000	\$0	\$0
3.	Nicolet Blvd (1st to Beaulieu)	33	\$132,000	\$0	\$2,000
4.	Reddin Ave (Winneconne to Cecil)	51	\$204,000	\$0	\$0
5.	Zemlock Ave (Winneconne to Cecil)	49	\$196,000	\$0	\$2,000

Damages - Nil

(1) Sewer lateral construction only. Includes 10% engineering and administration fees

(2) Estimated assessable costs are listed as \$0. Costs may be assessed if ineligible work under the project loan is performed.

A schedule of the properties benefited by the improvements is on file with the Director of Public Works. The properties benefited will be assessed pursuant to Sec. 13-1, Neenah Code, according to the following rates.

Estimated Schedule of Assessment Rates

Single-Family / Two-Family Residence District \$ 2,000 per sewer lateral

Single-Family / Two-Family Residence District \$ 4,000 per water service

Multi-Family /Commercial / Industrial District \$ 4,000 per water service

Public Services and Safety Committee

Dated: _____

By: _____
Chairman



M E M O R A N D U M

DATE: June 28, 2022
TO: Chairperson Lendrum, Members of the Public Services and Safety Committee
FROM: City Attorney Adam Westbrook
RE: Boundary Agreement and Master Sewer Agreement

Attached you will find two agreements regarding the Town of Neenah and the City of Neenah's long standing boundary agreement. The Council had already approved the Boundary Agreement, however the Town Sanitary District refused to sign on to the new agreement until a master sewer agreement was completed. Now that it has been completed a new agreement needs to be signed that removes the sanitary district from the boundary agreement so they will not have the ability to hold any future negotiations hostage like they did with this matter.

The boundary agreement remains identical to the one already approved by Council except for the addition of the clauses that remove the sanitary district as a party to the majority of the agreement.

The master sewer agreement does not include any new provisions, but is rather a joining together of several past agreements into one document. No new obligations were added or removed.

An appropriate motion would be for the Committee to recommend Council approve the Boundary Agreement between the City of Neenah, Town of Neenah, and Sanitary District #2.

An appropriate motion would be for the Committee to recommend Council approve the Master Sewer Agreement between the City of Neenah, Sanitary District #2 and the Town of Neenah.

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT AMONG
THE CITY OF NEENAH, THE TOWN OF NEENAH,
AND THE TOWN OF NEENAH SANITARY DISTRICT #2
TO PROVIDE FOR ORDERLY GROWTH AND DEVELOPMENT
WITHIN AGREED-UPON MUNICIPAL BOUNDARIES

This Agreement is entered into by and among the City of Neenah ("City"), the Town of Neenah ("Town"), and the Town of Neenah Sanitary District #2. The purpose of the Agreement is to set forth the procedures, terms and conditions by which the parties wish to achieve the following mutual goals pursuant to Section 66.0301 of the Wisconsin Statutes and to settle their dispute in *Town of Neenah v. City of Neenah*, Winnebago Co. Case No. 2001 CV 1142 pursuant to Section 66.0225, Wisconsin Statutes:

- Orderly, planned growth for the City and the Town and the provision of appropriate, cost-effective municipal services for such development;
- Orderly boundaries between the City and the Town, promoting cost-effective provision of services and more efficient operation of all units of government;
- Continual City growth to provide the City with an ever-renewing and expanding tax base and a pool of citizen leadership;
- Continual development for the Town to replace tax base lost due to City growth, so that the Town may also have an ever-renewing and expanding tax base and a pool of citizen leadership;
- Promotion of diversity and balanced development in the City and the Town;
- Prevention of unplanned development leading to urban sprawl, and protection of the area's natural resources, including its lakes, streams, rivers, wetlands, and woodlands; and
- Promotion of quality development in the City and the Town.

ARTICLE I
PLANNING AND GROWTH AREA DEFINITIONS

- 1.1_ City Growth Areas. Attached and incorporated by reference is a map marked Exhibit A, identifying existing City development, shown in white, and additional territory identified as "City Growth Area," shown in pink. The City Growth Areas consist primarily of currently undeveloped land that the parties acknowledge is to be developed within the City's municipal boundaries. The

territory within the City Growth Areas will be developed with comprehensive urban services, including but not limited to sanitary sewers and water in conformance with the City's comprehensive plan.

- 1.2 Town Growth Areas. The areas shown in purple on Exhibit A, shall be “Town Growth Areas.” The Town Growth Areas include areas of existing development and adjacent areas that the parties acknowledge are to be developed within the Town's municipal boundaries. Within the Town Growth Areas, when sanitary sewer is available (meaning the area is included in the Sewer Service Area boundaries established by East Central Wisconsin Regional Planning Commission and sewer main is installed to a location that could accommodate hook-ups), the Town Sanitary District(s) will provide sewer hook-ups to Town properties. The Town Growth Areas are subject to modification as provided in section 1.7, below.
- 1.3 Hybrid Areas. Existing developed areas shown in blue on Exhibit A, shall be “Hybrid Areas.” “Hybrid Areas” are defined as areas that are considered City Growth, however, have the option to receive sewer for a defined period of time without annexation. Within the Hybrid Areas, when sanitary sewer is available (meaning the area is included in the Sewer Service Area boundaries established by the East Central Regional Planning Commission and sewer main is installed to a location that could accommodate hook-ups), the City will provide sewer hook-ups to Town properties, at the property owner’s cost, provided the property owner guarantees the eventual annexation either upon sale of the property to third parties or the passage of 15 years (but not to exceed the term of this Agreement), whichever comes first. Such guarantee shall be in written recordable form signed by the property owner. The City is responsible to obtain the recordable document. Creation of Town and/or City islands will be permitted and not contested by the parties to this Agreement during this transition period. In the event that any of the properties in the Hybrid Areas require water service from the City, they shall be required to annex to the City upon receipt of that service. For purposes of this Section 1.3, “third parties” are defined as anyone other than the property owner’s mother, father, child, stepchild or grandparent.

The Town agrees that it will not object should the City at any time annex or attach the entirety of the Armstrong Street right-of-way north of the southern lot line of Parcel 0100509. The City shall defend, indemnify, and hold harmless the Town and its employees, agents, and officials, from and against all claims brought by third-parties related to the City’s authority to annex or attach the Armstrong Street right-of-way.

For all other public rights-of-way within Hybrid Areas, no portion of the right-of-way may be annexed or attached by the City until such time that at least 50% of the frontage on the relevant right-of-way has been annexed or attached or is otherwise located within the City's jurisdictional boundaries. The City may adopt an ordinance under Wis. Stat. § 66.0301(6)(c)2 annexing or attaching the entire right-of-way. Notwithstanding the above, if at any time a portion of right-of-way in the hybrid area is in the Town but joined on both ends by City right-of-way, the City may annex the portion of right-of-way from the Town to connect the two ends and make one continuous City right-of-way.

1.4 Non-annexed City Service Areas. The areas shown in gray on Exhibit A along Dixie Road and U.S. Highway 41, a total of approximately 132 acres, shall be "Non-annexed City Service Areas." Within the Non-annexed City Service Areas, the City will provide sanitary sewer extensions. Town properties within these areas will be allowed to connect to the City Sanitary sewers provided the Town properties pay their proportionate share of the extension and hook up to the City Sanitary sewers. The Town properties within Non-annexed City Service Areas will not be required to annex to the City in order to receive City Sanitary sewers. The Town agrees to cooperate with the City to assess any special assessments required to extend City sanitary sewers to Town properties in the Non-annexed City Service Area. There shall be only one assessment for each benefiting public improvement component (e.g., road pavement, curb & gutter, public sidewalk, streetlights, sanitary sewers, water, etc.). In the event that any of the properties in the Non-annexed City Service Areas require water service from the City, they shall be required to annex to the City upon receipt of that service. If all or any portion of the non-annexed City Service Areas are annexed, the City will make revenue sharing payments to the Town until April 15 2033 in equal annual payments. The revenue sharing payments will be calculated by using the assessed value of the real estate and personal property on the date of the annexation. In the event that the assessed value changes due to a change in how the State assesses property, the payment will be recalculated to reflect such change. The revenue sharing formula will be based on the Town tax rate in effect on the date of the annexation. Creation of Town and/or City islands will be permitted and not contested by the parties during the term of this Agreement.

1.5 Town Service Areas. The areas shown in yellow on Exhibit A, a total of approximately 32 acres, shall be "Town Service Areas." Within the Town Service Areas, when sanitary sewer is available (meaning the area is included in the Sewer Service Area boundaries established by the East Central Regional Planning Commission and sewer main is installed to a location that could accommodate hook-ups), the Town Sanitary District(s) will provide sewer hook-ups to Town properties. No City water service will be provided until property is

annexed. Annexations will be according to state statutes; no Town and/or City islands will be permitted.

- 1.6 Parks/Environmentally Sensitive Areas. The areas shown in green on Exhibit A shall be “Parks/Environmentally Sensitive Areas.” Existing parks shall be as they exist as of the date of this Agreement. Non-park environmentally sensitive areas shall be those areas identified on DNR wetland maps and floodplains designated by FEMA or other governmental agencies, as areas where development is prohibited. In Parks/Environmentally Sensitive Areas, no development shall be permitted except such development necessary to promote recreational use and/or necessary to protect the natural environment. Notwithstanding the foregoing, nothing in this Agreement is intended by the parties to restrict the ability of either party to modify the boundaries of existing environmental areas in accordance with shoreland, floodplain or wetland zoning or other regulations. If a Town park become surrounded by the City, the Town shall transfer its entire interest in the park to the City and the City shall accept the transfer and, thereafter, assume jurisdiction over and liability for the park. The parties acknowledge that the City’s agreement to assume jurisdiction over and liability for the park constitutes adequate consideration for the transfer. The parties further acknowledge that the definition of “Parks/Environmentally Sensitive Areas” differs from the official definition used by East Central Wisconsin Regional Planning Commission and the Wisconsin Department of Natural Resources for Sewer Service Area planning purposes.
- 1.7 Boundaries Of Growth Areas. The parties agree that the Growth Areas identified for each party have been determined after considerable negotiation and, as so delineated, serve the best interests of each of the parties. No party will seek or allow, through any annexation or detachment process, any change in the delineated boundaries that would be contrary to the terms of this Agreement, unless the change is by mutual consent of the City and the Town. Each party retains the right to determine the sequence of sewered development of each specific parcel of land within its Growth Areas, and to exchange like numbered acres of sewered land between designated Sanitary Sewer Service Area boundaries and land outside said boundaries.
- 1.8 Unsewered Development in Town. The Town also reserve the right to permit unsewered development on land in the Town Growth Areas, provided the development is consistent with the Town's comprehensive plan, which plan will not be adopted or amended without providing the City with an opportunity to comment thereon. While the City's right to comment on the Town’s comprehensive plan shall not be construed as a right to approve or disapprove of

the plan or its components, the Town will consider the City's comments before adoption or amendment of their plans. The Town will not permit any additional unsewered development in the City Growth Areas beyond the development that is permitted in Sections 2.2 and 2.3(c), below.

- 1.9 City/Town Road Boundaries. Where a road is proposed in an annexation to serve as a boundary between the City and the Town, the governments will discuss the exact location of the boundary in order to avoid jurisdictional confusion over the governmental services to be provided within or by way of that segment of highway. In general, the City will either annex all or none of the road right-of-way. The Town will cooperate with the City on the City's reconstruction of the road to urban standards according to the City's capital improvement program. The City must obtain the Town's consent before the Town is financially obligated to pay for any portion of the reconstruction of the relevant road.

- 1.10 East Central Wisconsin Regional Planning Commission. The East Central Wisconsin Regional Planning Commission ("East Central") is the official comprehensive planning agency for the East Central Wisconsin Counties of Calumet, Fond du Lac, Green Lake, Marquette, Menominee, Outagamie, Shawano, Waupaca, Waushara and Winnebago. As a Regional Planning Commission, East Central participates in the process of defining geographical areas where sanitary sewers may be extended ("Sewer Service Area"). The boundary of a Sewer Service Area delineates those areas which can be provided public sanitary sewer more cost-effectively than on-site treatment methods over a 20-year period. The Sewer Service Area is ultimately defined and approved by the Wisconsin Department of Natural Resources under Wisconsin Administrative Code NR-121. The parties acknowledge that the extension of sanitary sewers as referenced in this Agreement is subject to review and approval by East Central and the Wisconsin Department of Natural Resources. Nothing contained in this Agreement is intended to modify the planning and review processes administered by East Central.

ARTICLE II DEVELOPMENT WITHIN CITY GROWTH AREAS

- 2.1 General Agreement. The City and the Town covenant to take action, or refrain from taking action, as set forth in this Article II, with respect to those areas delineated as City Growth Areas.

- 2.2 Town Covenants. The Town agrees as follows concerning the City Growth Areas:

- (a) The City may condition any extension of sewer and water services (collectively “City Services”) into the City Growth Areas on annexation of those to the City, notwithstanding the agreement of the parties with regard to any other areas subject to this Agreement. Any property owner in the City Growth Area that seeks and receives City Services will be required to annex to the City without objection by the Town.
- (b) The Town will cooperate to maintain currently undeveloped lands in an undeveloped state, in order to preserve them for future City development. It is acknowledged that City development of such lands may be gradual, extending over several decades.
- (c) The Town will discourage premature development by recommending that Winnebago County deny any request for zoning classifications that do not permit, or that discourage, such development and by informing its assessor of the nature of this Agreement so that assessments consistent with preserving land until needed by the City are promoted to the extent allowed by assessment laws. If at any time during the term of this Agreement, the Town exercises town zoning, the Town will prohibit premature development by maintaining zoning classifications that do not permit, or that discourage, such development. Notwithstanding the restrictions in this section, property owners within the City Growth Areas will be permitted to develop land in accordance with the zoning classifications in effect as of April 15, 2003.
- (d) The Town will recommend that Winnebago County maintain zoning classifications in existence as of April 15, 2003. If at any time during this Agreement, the Town exercises town zoning, the Town will maintain zoning classifications in existence as of the April 15, 2003. Any changes to zoning classifications will be recommended for approval, or as applicable, approved by the Town only after consultation with, and the agreement of, the City. Development in the City Growth Areas proposed for purposes other than those that are authorized under zoning in effect as of the date of this Agreement shall be subject to City approval in accordance with development standards set forth in the City’s ordinances. Consultation by the Town, and the agreement or disapproval of the City, shall be in writing. Failure of the City to respond within 30 days of notice shall be deemed an approval. Failure of the Town to abide by the City action of disapproval shall void the subject amendment, to the extent permitted by law. Notwithstanding the foregoing, nothing in this Agreement shall limit the one-time division of a five-acre or larger parcel

existing as of the date of this Agreement into two parcels for residential purposes if otherwise permitted by the Town's zoning and subdivision regulations in effect at the time of this Agreement.

- (e) To the extent authorized by law, the Town will refuse to approve or as applicable, recommend approval of certified survey maps, platted subdivisions, unless the City consents to them. Failure of the City to respond within 30 days of notice shall be deemed an approval. Failure of the Town to abide by the City action of disapproval shall void the subject amendment. Further, the Town will refer all conditional use permit applications to the City for its review and recommendation and will consider all recommendations before acting on the application. Failure of the City to respond within 30 days of notice shall be deemed a denial .
- (f) The Town will not challenge, judicially or otherwise, any annexation that is in accordance with the terms of this Agreement. The Town also agrees not to financially or otherwise support anyone who opposes or contests any such annexation. The City further agrees to meet with Town officials prior to or shortly after the filing of any annexation petition to discuss matters of mutual concern. If a party other than the City impleads the Town in any annexation lawsuit, the Town will immediately stipulate that it does not oppose the contested annexation. The Town will also cooperate with the City on the dismissal of the Town as a party to the relevant lawsuit. The Town agrees that the City may exercise powers pursuant to sec. 236.10(4), Stats., for the approval of all subdivision plats and land divisions (certified survey maps) within the annexation territory. The City's authority under the preceding will include, without limitation, the right to require full compliance by all proposed subdivision plats and land divisions with all City land subdivision regulation ordinance requirements then in effect. The Town consents to, and will not challenge directly or indirectly, the City creating Town islands through annexations of land in the City Growth Areas.
- (g) The Town will permit the City to use Town right-of-ways to extend sewer, water and other utilities into the City Growth Area and further consents to the City obtaining private easements for the extensions of City Services into the City Growth Area if public rights-of-way cannot be used.
- (h) At the City's written request, the Town will levy special assessments against the parcel in the City Growth Area for improvements that specially benefit the parcel, subject to the following conditions:

- (i) The owner may challenge the special assessment as if he or she were owners of property in the City;
 - (ii) The special assessment is not payable and interest shall not accrue until the parcel is annexed to the City. In the alternative, if the City revises its special assessment policy to allow for a credit against the special assessment for depreciation, then the City may charge and accrue interest on the special assessment, offset by the depreciation factor;
 - (iii) Upon annexation the assessment is payable in 8 annual installments with interest in accordance with the then existing City special assessment policy. (Note: if the City permits a longer payment schedule, that schedule would apply.);
 - (iv) Prior to annexation, there shall be only one assessment for each benefiting public improvement component (e.g. road pavement, curb & gutter, public sidewalk, streetlights, sanitary sewers, water, etc.);
-
- (i) The Town shall not acquire, directly or indirectly, an ownership interest in any additional land in the City Growth Area. The preceding does not apply to unsolicited donations, provided the donation is restricted for use as parkland or comparable public uses. The Town agrees that it would be contrary to the intent of this Agreement for it to acquire land within any portion of the City Growth Area for the purpose of directly or indirectly impeding the expansion of the City into the subject land.
 - (j) The Town will cooperate with, and not object to, the City's efforts to obtain, by eminent domain or other method permitted by law any highway right-of-way necessary to extend planned City streets through the City Growth Area, including, but not limited to connecting Pendleton Road to County Highway JJ at the intersection with County Highway CB.
 - (k) Except as authorized under Section 1.7 above and as exists as of the date of this Agreement, the Town will not extend sewer service from Sanitary Districts located within the boundaries of the Town Growth Areas into territory located beyond the boundaries of the Town Growth Areas. The Town will refuse to permit sanitary sewer hookups or extensions in City Growth Areas prior to annexation or City permission. Furthermore, the Town shall not create a new Town Sanitary District or enlarge existing sanitary districts in the City Growth Areas without the City's prior written consent, which consent may be withheld at the City's sole discretion.

- (l) The Town and District will cooperate with the City to carry City-generated sewage in Town or District sewer lines upon such execution of a master sewer agreement between the City and District that authorizes the relevant connection. All rights are reserved by the District and Town with respect to the review and approval of the relevant connection, which will include (but not limited to) review of the District's current and anticipated future capacity at the connection point and downstream. The Town will levy its usual and customary service charges, such as annual sewer use fee, to the property so affected, not to the City, excluding "hook-up" and other capital related fees in these areas of City Growth Areas that are within or adjacent to Town Sanitary Districts. The City will cooperate with the Town in the collections of any unpaid District Utility Charges. The provisions of this Section 2.2 (l) apply only to sewer connections occurring after the date of this Agreement.
- (m) The Town will utilize any planning and construction standards proposed by the City for new or reconstructed roads, utilities and other public facilities in the City Growth Areas, which are based upon the ultimate development capacity of said areas. The preceding does not apply to the maintenance or repair of existing roads. The planning and construction standards referenced above cannot be more stringent than the planning and construction standards then-existing in the City.
- (n) The Town shall not take any action to remove acreage, or otherwise amend the boundaries of the Sewer Service Area in the City Growth Areas as defined by East Central or its successor organization.

2.3 City Covenants. The City agrees as follows concerning the City Growth Areas:

- (a) In general, the City will annex territory from City Growth Areas whenever orderly, planned development reasonably dictates that the land should be developed within the City. However, where developed land is presently contiguous to the City on several sides, the City will encourage annexation in order to eliminate problems associated with duplication of services, or difficulties in provision of services due to illogical municipal boundaries.
- (b) The City will only annex those lands from the City Growth Areas whose owners consent to said annexation. All annexations from the City Growth Areas to the City must comply with the then existing procedural requirements of the Wisconsin Statutes, except as otherwise provided for in this Agreement. In addition to the Town's agreement not to challenge

annexations as outlined in Section 2.2 above, the Town agrees not to raise any de minimis technical objection to an annexation by the City in the City Growth Area.

- (c) If a property owner owning land within the City Growth Areas submits a proper annexation petition, the City shall annex the subject territory within the then-current statutory deadline and, furthermore, the City shall extend sewer and water to the subject property within 12 months of the date of the annexation ordinance, provided sewer and water are contiguous to the subject property. For purposes of determining contiguity, road rights-of-way are not taken into consideration. The property owner and the Town are released from the development restrictions in Section 2.2 if the City fails to meet the above 12-month deadline. The 12-month deadline may be extended by agreement between the owner and the City.
- (d) Notwithstanding paragraph 2.3(b) above, the parties agree that any parcel not annexed from the City Growth Area that is assessed for services by the City pursuant to paragraph 2.2(h) shall be designated a Hybrid Area (blue) requiring annexation upon transfer to a third party or after 10 years, or the end of the term of this Agreement, whichever is earlier.
- (e) All annexations from the City Growth Areas shall include the full width of abutting Town roads except those roads, the centerline of which is a designated borderline and those Town roads where the City of Neenah has no other right of way ownership on either side of the right-of-way which would otherwise be annexed under this paragraph (e.g., South Park Ave.). In any event, the City shall be required to either annex all or none of the adjoining Town right-of-way.
- (f) Where a new road is proposed by the City to be built on land located in the City Growth Area, the parties will discuss the exact location of the road in order to avoid jurisdictional confusion over the provision of governmental services. The City shall obtain the Town's prior written consent before the Town is financially obligated to pay for any portion of the construction or reconstruction of a road project initiated by the City in the City Growth Area.
- (g) The City shall provide notice of zoning and other land use hearings, decisions and actions to the owners of record of properties in the Town located in the City Growth Areas in the same manner as it gives notice to

the owners of record of properties in the City. The Town shall cooperate with the City to enable such notices to occur.

- (h) Where the City extends sanitary sewer interceptors or mains across or adjacent to properties located outside the corporate boundaries of the City and outside the boundaries of a current Town Sanitary District but within a Town Growth Area, the relevant Town property owner will be allowed to connect to the sewer, provided that the hook-up was to a developed parcel or lot of record existing at the time of the Agreement and the Town property owner paid the usual and customary charges for connecting to the City sewer system. This connection privilege only applies if the City sewer must pass through a portion of the Town Growth Area and to those properties by which it passes.
- (i) To the extent that the City utilizes Town road right-of-way to extend City Services into the City Growth Areas, the City shall restore the Town road right-of-way in accordance with the Town policy on restoring road right-of-way after repairs.
- (j) The City agrees to indemnify and hold the Town harmless in the event a court of competent jurisdiction imposes liability or damages as a result of the Town's promises relating to the Town's obligations applicable to the City Growth Area under this Agreement.
- (k) The City Growth Area map includes an 80-acre parcel located in Section 4, T. 19-20 N., R. 17 E., Town of Neenah, Winnebago County, Wisconsin, owned by Bank One for the benefit of what is referred to as the "DeKeyser Trust." The City agrees that the "DeKeyser Trust" land shall be developed consistent with the principles set forth in the City's 1999 2020 Plan.

ARTICLE III

DEVELOPMENT WITHIN TOWN GROWTH AREAS

- 3.1 General Agreement. The City and the Town covenant to take action, or refrain from taking action, as set forth in this Article III, with respect to those areas delineated as Town Growth Areas.
- 3.2 City Covenants. The City agrees as follows concerning the Town Growth Areas:
 - (a) The City will not annex any land from Town Growth Areas without the Town's prior written consent. A written request for consent will be

submitted to the Town upon receipt of an annexation petition. The Town will respond in writing to such a request within 30 ~~45~~ days. Failure to respond within said 30 days shall be deemed to be a denial.

- (b) At the Town's option, the City will permit, without requiring annexation, extension of sanitary sewer services within the Town Growth Areas. The various agreements between the City and the Town of Neenah Sanitary District 2 are hereby amended to reflect the additional territory eligible to receive sanitary sewer services. The City shall cooperate fully with the extension of sanitary sewer services to the territory within the Town Growth Areas, provided that the design and operations plans meet then-existing professional engineering standards and further provided that the interceptor capacity is adequate to accept such projected quantities of wastewater. The relevant Sanitary District is responsible for the costs of the relevant extensions.
- (c) The City will permit the Town to use City right-of-ways to extend sewer, water and other utilities into the Town Growth Area and further consents to the Town obtaining private easements for the extensions of Town Services into the Town Growth Area if public rights-of-way cannot be used.
- (d) The City will permit the Town to use City right-of-ways to extend utilities into the Town Growth Area and further consents to the Town obtaining private easements for the extensions of Town Services into the Town Growth Area if public rights-of-way cannot be used.
- (e) The City shall not take any action to remove acreage, or otherwise amend the boundaries of the Sewer Service Area in the Town Growth Areas as defined by East Central or its successor organization.
- (f) Except as provided in Section 3.4, the City is not obligated to provide water service to any property within the Town Growth Areas without annexation unless the following conditions are met:
 - (i) Water service by the City of Neenah Water Utility will only be considered for residential development or lots of record existing on April 15, 2003. New development shall not be eligible for City water service unless such development annexes to the City.
 - (ii) The Town and property owners requesting water service from the City have exhausted all other reasonable options for the provision of water to the affected properties;

- (iii) The City of Neenah Water Commission has reviewed the steps taken by the Town and affected property owners and determined that no other feasible option for water exists;
- (iv) The City of Neenah Water Commission has reviewed the plans for extension of water into the Town Growth Area and determined that the Neenah Water Utility has the present and future capacity to provide for the expected demand created by the Town's access to the City's water system;
- (v) The Neenah Water Utility will only provide water on a wholesale basis to the Town through a single meter. The Town shall be responsible to provide for all infrastructure from the single connection with the Neenah Water Utility to the areas to be served in the Town Growth Area and for billing to individual customers in the Town Growth Areas utilizing water obtained by the Town from the Neenah Water Utility on a wholesale basis. The Town will be responsible for all costs associated with providing the wholesale connection with the Neenah Water Utility. Notwithstanding the foregoing, nothing in this Agreement shall limit the ability of the Town to assess the costs of the connection with the Neenah Water Utility, and any associated costs to provide for distribution to individual properties, in accordance with the Town's special assessment authority under §66.0703, Wis. Stats.;
- (vi) Under no circumstances shall any water connection permitted under subsection be allowed to loop and create a second connection point with the Neenah Water Utility System. In the event that such a second connection is necessary to provide the water service, the properties served by the looped water service shall be required to annex to the City before such second connection is made.
- (vii) The Neenah Water Utility may temporarily deny access to water by the Town under this provision after a connection has been established in the event that the expected output of the water treatment plant exceeds 9 million gallons in a 24-hour period. Such interruption of service shall continue until such time as the expected output of the water treatment plant declines below 9 million gallons in a 24-hour period.

The parties acknowledge that, in lieu of the above water provisions, they discussed allowing the Town to participate in the City's water utility system as if the Town were a part of the City. The parties further acknowledge that they were unable to

agree on this issue. Nevertheless, the City agrees that, upon the Town's written request, it will negotiate with the Town over the subject of adding Town territory to the City's water utility jurisdiction as if the territory were located within the City. The preceding does not obligate the City or the Town to reach an agreement on this subject matter. All rights are reserved.

3.3 Town Covenants. The Town agrees as follows concerning the Town Growth Areas:

- (a) The Town will require neighborhood development plans prior to development that address storm water control issues of concern to both the Town and the City (where the development could adversely affect storm water flows within the City's municipal boundaries or City Growth Areas). The Town will cooperate with the City in the implementation of applicable Wisconsin Priority Watershed projects.
- (b) To the extent that the Town utilizes City road right-of-way to extend Town Services into the Town Growth Areas, the Town shall restore the City road right-of-way in accordance with the City policy on restoring road right-of-way after repairs, or, in the alternative, the City shall perform the restoration work and charge the Town at the same rate that the City would internally account for the expense. It is the intent of the preceding that the price of construction be the same on both sides of the border.
- (c) The Town will provide notice to the City prior to new commercial or industrial development (including billboards), abutting or within 300 feet of Federal or State highways. The City will comment on the development plans to assure highway accessibility, aesthetics, and appropriate building design, site landscaping as well as paved surfaces for drives and parking. The City may waive its right of comment after the Town has adopted and successfully administered amendments to its land division and/or zoning ordinances regulating development along said highways.
- (d) The Town will include in its neighborhood plans, together with implementing Town zoning changes, a range of housing types that tends to create a diversity of population within the Town, as compared to county or metropolitan averages.
- (e) The Town will provide the City with the first right and exclusive option of offering water service to any Town Growth Areas, without annexation, if regulatory approval is being sought by a Town for the establishment of

municipal water service in that growth area. The parties agree that this subsection does not preclude the City from offering annexation as a condition of water service, in which case the exclusive option provision above is waived. Nor does this subsection preclude the Town from obtaining water service from the Village of Fox Crossing.

- (f) The Town agrees to indemnify and hold the City harmless in the event a court of competent jurisdiction imposes liability or damages as a result of the City's promises relating to the City's obligations applicable to the Town Growth Area under the Agreement.
- (g) The parties agree that Marathon Avenue, Industrial Drive and Maple Grove Drive may eventually be extended to the south consistent with the City's 1999 2020 Plan. The Town shall not directly or indirectly bring any form of legal action opposing any potential extensions as long as the extensions are consistent with the City's 1999 2020 Plan. However, the Town reserves its right to express its policy objections concerning the merits of a contemplated extension. Whether the extension is in a City Growth Area or a Town Growth Area, it shall be constructed in accordance with the City's then-existing road standards. The City shall pay the entire cost of any road extension project it initiates. If a road extension project is initiated by the Town, the City shall promptly reimburse the Town for the additional costs incurred by the Town to construct the road to City road standards. The Town will provide advance written notice of its intent to initiate a road project. Nothing in this subsection 3.3 (g) precludes the Town from opposing, legally or politically, the alignment of CTH "A."

3.4 Utility Service in Tullar/Oakridge Corridor.

(a) The City will, without requiring annexation of any property, permit the Town of Neenah Sanitary District #2 (the "District") to connect to the City's sanitary sewer main connection point at Rockledge Lane. The Town may extend sanitary sewer service from this connection point to service any property located within Town Growth Area provided that the Connection point will be controlled to not exceed 0.6 cubic feet per second of flowage. The sanitary sewer collection system connecting to the Rockledge Lane connection point will be owned, operated, and maintained by the District at no cost to the City.

The parties further acknowledge that some sewer extensions in this area may necessitate Sewer Service Area Amendments. The District will be

responsible for obtaining approval of all required Sewer Service Area Amendments. The City agrees to not object to all applications by the District for Sewer Service Area Amendments for property to be serviced by the Rockledge Lane connection point, provided that the Sewer Service Area Amendment does not involve a swap of territory from a location outside of the Town. The District may not extend sewer service from the Rockledge Lane connection point outside of the Town without prior written approval of the City.

(b) Attached as Exhibit B is a map depicting a City Water Service Area. The City will provide extraterritorial water service to this area without requiring annexation of any property. The water distribution system within this area will be owned, operated, and maintained by the City at its sole cost. However, the Town will be responsible for the initial construction of the system (and may pass on the responsibility to developers as the Town determines appropriate).

(c) The City will charge sewer and water rates to Town users that are consistent with the charges applicable to similarly-situated City residents. The Town will cooperate with the City in the collection of any unpaid City utility charges.

ARTICLE IV

COOPERATION WITH GOVERNMENTAL AGENCIES

- 4.1 Advancement of Mutual Interests. The parties acknowledge that in order to effectively implement this Agreement, it may be necessary to obtain the cooperation and approval of other governmental agencies, including but not limited to, the East Central, the Wisconsin Department of Natural Resources and the Wisconsin Department of Transportation. In all matters necessary to implement this Agreement, the parties agree to seek the cooperation and approval of all relevant agencies. To the extent practicable, the parties will, where necessary to obtain such required approval, submit a single, joint request or other appropriate document requesting the approval. The cooperative provisions of this Section 4.1 shall not be deemed a waiver or a delegation of the parties' respective

municipal powers; nor shall they be construed as the grant of a power of attorney to either party.

- 4.2 Examples of Joint Requests. Examples of joint requests that shall require the cooperation of the parties include, but are not limited to, the following:
- (a) Approvals to size and cost sharing of future sanitary sewer extensions to accommodate anticipated growth over a period of 50 years, rather than the usual 20-year planning.
 - (b) Approvals to size and cost sharing of future wastewater treatment plant capacity improvements to accommodate anticipated growth over a period in excess of usual planning periods, or to plan for staged capacity increases to accommodate anticipated growth several decades in advance.
 - (c) Approvals for access to Federal, State or County roadways.
 - (d) Stormwater management, soil erosion control, wetlands and woodlands management.
 - (e) Approvals required by East Central, including, without limitation, amendments to Sewer Service Area boundaries and the exchange (swap) of vacant lands within the Sewer Service Area boundaries.
- 4.3 Hydrant Usage. The existing hydrant usage agreement between the Town and the City shall be extended to any territory within the Town not already covered by the hydrant usage agreement in effect on the date of this Agreement. Only hydrants in the vicinity of the relevant fire may be accessed by the Town. The existing hydrants available to the Town under this Section 4.3 are set forth in a list kept on file with the City. Furthermore, the respective Town and City fire departments shall make a reasonable effort to cooperate in the provision of fire response services. However, the preceding is not intended to impose a formal mutual aid arrangement. Formal mutual aid agreements, if any, are beyond the scope of this Agreement.

ARTICLE V MISCELLANEOUS PROVISIONS

- 5.1 Sale of Town Property. The Town agrees to sell to the City the Town-owned property along Dixie Road in the northeast quarter of Sec. 8, Township 19 North, Range 17 East, Town of Neenah, Winnebago County, Wisconsin for the purpose

of expansion of the City's industrial park. The sale price shall be the greater of either the total value of the Town's investment (consisting of the purchase price, closing costs, engineering and legal fees and an amount equal to the time value of the total of the preceding investment, all as set forth in Exhibit C) or the fair market value as determined by an independent appraisal. If the parties cannot agree on a single appraiser, each shall designate their own appraiser to perform fair market value appraisals and the arithmetic average of the appraised values shall be used. In addition to other factors, the appraisal shall take into account the value of any tower leases applicable to the property. Sale of this land is contingent on the Town obtaining approval of the sale by the Town Meeting pursuant to §60.10(2)(g), Wis. Stats. In the event that the Town is unable to obtain Town Meeting approval of the sale of the Town-owned property on or before May 13, 2003, then the City may void this Agreement in its entirety.

- 5.2 CTH "JJ" Parcels. The parties acknowledge that various parcels of real estate owned by James A. Miringoff, Thomas Braun and Wiegman, located north and west of CTH "JJ" are currently for sale. The combined acreage that is for sale is approximately 65 acres. Exhibit A designates this area as being within the City Growth Area. Notwithstanding this designation, this acreage will be transferred to the Town Growth Area on Exhibit A if, prior to the date of this Agreement, the City receives a letter from the owner or the prospective purchaser requesting that the land in question be designated as Town Growth Area not City Growth Area. The letter shall be accompanied by a copy of an executed offer to purchase (with the purchase price and other confidential information redacted). The offer shall provide that the closing will occur within 6 months of the date of this Agreement. The transmittal letter or the offer shall also represent and warrant that the subject land will be platted within 12 months of the date of this Agreement. The land described in this Section 5.2 shall remain City Growth Area if the above documentation is not received by the City on or before the date of this Agreement.
- 5.3 South Park Storm Water. The City and Town agree to cooperate to develop plans to mitigate the storm water drainage problems along South Park Avenue between County Highway A and Bell Street. Both parties agree to not approve any developments within their respective jurisdictions that will result in the net increase in the rate of 2, 10 and 100 year storm events of storm water discharge into the South Park Avenue storm water drainage system. Notwithstanding this Agreement, nothing in this paragraph is intended to obligate either party to expend sums to correct any pre-existing storm water drainage problem.
- 5.4 Existing Sewer Agreement. To the extent that this Agreement conflicts with any agreement the City has with a Town sanitary district over the extension of sanitary

sewers within the Town Growth Areas the City agrees to abide by the terms of this Agreement.

5.4.1 Special Attachment Parcels.

- (a) County Road CB Parcel. Attached hereto as Exhibit C is a map depicting the parcel located at 200 County Road CB. The City has, by ordinance adopted pursuant to Wis. Stat. § 66.0301(6)(e), attached that parcel to the City .

The parties further agree that if at any time the City fails to make any payment to the Town in accordance with the City-Town Shared Services Agreement, the Town may demand that the parcel be detached to the Town and may accomplish a detachment through adoption of an ordinance under Wis. Stat. § 66.0301(6)(e). In that event, the City shall take all action necessary to accomplish such a detachment.

- (b) Breezewood Parcels. Attached hereto as Exhibit D is a map depicting an area of property with Parcel ID Numbers 0100346, 0100347, 0100349, and 0100351. At the earlier of (i) the expiration of all life estates described in the Life Estate Agreement recorded at the Winnebago County Register of Deeds Office as Document No. 1824652, or (ii) 45 days prior to the expiration of this Agreement, the City may, by ordinance adopted pursuant to Wis. Stat. § 66.0301(6)(e), attach that parcel to the City.

5.4.2 Tullar Road Access. The Town will notify the City of any requests for access to Tullar Road and will consider all comments provide by the City prior to acting on such requests.

5.5 Amendments. This Agreement may be amended, from time to time, by mutual consent of all parties hereto. Any party wishing to propose such an amendment will give written notice to all other parties. The notice will identify the proposed amendment and the reasons supporting such amendment. Within 30 days after receipt of the notice, the parties will meet to discuss and, if necessary, negotiate the proposed amendment. If, after 90 days, the parties are unable to agree upon and approve the proposed amendment, it shall be automatically deemed to have been withdrawn and shall not thereafter be proposed for a period of 2 years after

the date of the initial notice, unless a majority of the parties jointly re-submit it for consideration.

- 5.6 Notices. All notices required under this Agreement must be served, either personally or by certified mail, upon the parties' respective municipal clerks. A copy of the notices shall also be mailed via regular U.S. mail to the Town Chairman and City Mayor. Any action taken by a party in violation of the relevant notice requirement is voidable unless, under the facts of the particular case, the public interest outweighs strict enforcement of the notice requirement.
- 5.7 Enforceability. The parties have entered into this Agreement under the authority of Sections 60.22(1), 66.0225 and 66.0301 of the Wisconsin Statutes. Its enforceability will not be affected by statutory amendments, changes in the forms of City or Town government, or changes in elected officials. The parties agree that this Agreement be construed so as to be binding on their respective successors, agents and employees.
- 5.8 Dispute Resolution. All disputes over the interpretation or application of this Agreement shall be resolved according to the following dispute resolution procedures:
- (a) If the dispute cannot be resolved by the personnel directly involved, the parties will conduct the following mediation process before invoking formal arbitration:
 - (i) Each party will designate a representative with appropriate authority to be its representative in the mediation of the dispute.
 - (ii) Either representative may request the assistance of a qualified mediator. If the parties cannot agree on the qualified mediator within five days of the request for a mediator, a qualified mediator will be appointed by the Chairperson of the Alternative Dispute Resolution Committee of the State Bar of Wisconsin, or if the Chairperson fails to appoint a mediator, by the American Arbitration Association.
 - (iii) The mediation session shall take place within 30 days of the appointment of the respective representatives designated by the parties, or the designation of a mediator, whichever occurs last.
 - (iv) In the event that a mediator is used, each party shall provide the mediator with a brief memorandum setting forth its position with regard to the issues that need to be resolved at least 10 days prior to the first scheduled mediation session. The parties will also produce

all information reasonably required for the mediator to understand the issues presented. The mediator may require either party to supplement such information.

- (v) The mediator does not have authority to impose a settlement upon the parties but will attempt to help the parties reach a satisfactory resolution of their dispute. The mediation session(s) are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding, views expressed or suggestions made by the other party with respect to a possible settlement of the dispute, or admissions made by the other party in the course of the mediation proceedings.
 - (vi) The expenses of a mediator, if any, shall be borne equally by the parties.
- (b) If unresolved after (a) above, the parties will submit the dispute to binding arbitration by an arbitrator of recognized qualifications. If the parties cannot agree on an arbitrator they will request a 5-person panel list from the Wisconsin Public Service Commission. Each party will have two strikes from the 5-person panel. The parties may agree to an alternative method for the selection of the single arbitrator.
 - (c) The City and the Town will be responsible for the fees of their own arbitrator and will equally divide the fees of the third arbitrator, as well as the costs of court reporters, if any. The City and the Town will be responsible for their own attorneys' and expert fees.
 - (d) The arbitration panel shall not be bound by rules of evidence or the substantive, internal laws of Wisconsin. The award of the panel is final and binding, and shall be enforceable at law. The arbitration provisions of Chapter 788 of the Wisconsin Statutes shall apply to the arbitration proceedings, unless the parties agree on different arbitration procedures.
 - (e) The parties agree that arbitration proceedings must be instituted within one year after the claimed breach occurred, and that the failure to institute arbitration proceedings within such periods shall constitute an absolute bar to the institution of any proceedings and a waiver of all claims.

- 5.9 Complete Agreement. This Agreement is the complete agreement of the parties with respect to the matters covered by this Agreement and it shall supersede all prior agreements or municipal policies to the contrary. No agreements, promises, or representations made during or in connection with the negotiations for or approval of this Agreement shall be binding or effective unless they are included herein. This Agreement may be filed with the Register of Deeds of Winnebago County. This Agreement may be used in litigation and may be introduced into evidence by either party without objection in any action to enforce the terms of this Agreement.
- 5.10 Other Agreements. Except as specifically provided herein, this Agreement does not supersede prior or other contracts, agreements, Court Decisions, or Arbitration Awards between the parties. **All other intergovernmental agreements between the parties remain in full force and effect. In the event of a conflict between another intergovernmental agreement and this Agreement, the one imposing the greater obligation on the parties shall apply unless such other agreement expressly provides otherwise.** All rights are reserved.
- 5.11 No Waiver. The failure of any party to require strict performance with any provision of this Agreement will not constitute a waiver of the provision or of any of the parties' rights under this Agreement. Rights and obligations under this Agreement may only be waived or modified in writing. A writing waiving a right must be signed by the party waiving the right. If an obligation of a party is being waived or released, the writing must be signed by all affected parties. Waiver of one right, or release of one obligation, will not constitute a waiver or release of any other right or obligation of any party. Waivers and releases will affect only the specific right or obligation waived or released and will not affect the rights or obligations of any other party that did not sign the waiver or release.
- 5.12 Term of Agreement. The term of this Agreement shall expire on April 15, 2040. No breach or violation of any of the terms of this Agreement shall operate to void or terminate this Agreement, it being the intent of the parties that any such breach or violation shall only be redressed, enjoined, or otherwise remedied by exercise of any lawful, contractual enforcement remedies then available to be utilized by the aggrieved party to enforce the terms of this Agreement.
- 5.13 Performance Standard. This Agreement requires the parties to act or to refrain from acting on a number of matters. The parties hereby acknowledge that this Agreement imposes on them a duty of good faith and fair dealing. In addition, whenever consent or approval is required by a party, the consent or approval shall not be unreasonably withheld.

- 5.14 No Third Party Beneficiary. This Agreement is intended to be solely between the signatories set forth on the following pages. Nothing in this Agreement grants any third party beneficiary rights to any non-party that may be enforced by any non-party to this Agreement.
- 5.15 Construction. This Agreement shall be liberally construed to accomplish its intended purposes. The parties acknowledge that the language contained in this Agreement is the product of numerous individuals representing the various interests. Therefore, ambiguities shall not be construed against the drafter of this document. This Agreement should be construed to give a reasonable meaning to each of its provisions, and a construction that would render any of its provisions meaningless, inexplicable, or mere surplusage is to be avoided.
- 5.16 Non-Severability. The parties acknowledge that the provisions of this Agreement are interconnected. Therefore, if any provision of this Agreement is held invalid, illegal or unenforceable, the entire Agreement will be void if the parties are unable to replace the invalid provision through the process described below.

If any provision of this Agreement is held invalid, illegal or unenforceable, the parties shall make a concerted, good faith effort to substitute a valid and enforceable provision as similar as possible to the provision at issue. If agreement is not reached within 90 days of the adverse determination, the parties shall submit the issue to mediation pursuant to the mediation provisions of Section 5.8 (a), above. If unresolved after mediation, the Agreement is void.

5.17. Town Sanitary District No. 2 Party Status. The Town of Neenah Sanitary District No. 2 shall be considered a party to this Agreement solely with respect to Sections 2.2(k) and 2.2(l), as amended, and agrees to be considered as non-signatory for any extension of the agreement or addition of parties. All terms set forth in the Master Sewer Agreement between the District and the City or in such other agreements as may exist between the parties, shall remain in force in accordance with their terms.

ARTICLE VI GRACE EVANGELICAL ANNEXATION

- 6.1 Resolution of Pending Litigation. The parties agree to stipulate to the dismissal of Town of Neenah v. City of Neenah, Winnebago County Case No. 2001 CV 1142, as follows:

- (a) The property owned by Clifton A. Schultz and Marjorie Schultz, 1370 Breezewood Lane and Lynn A. Keyes, 1430 Breezewood Lane shall be detached from the City if requested by the property owner;
 - (b) The property owners of 1330 Breezewood Lane (Sukanen property) will be given the opportunity of electing to remain in the City or to be detached from the City. The parties shall jointly draft and submit a letter to the property owners explaining their option to remain in the City or to be detached from the City. The letter will offer the opportunity for a meeting. If a meeting is requested, the Town Chairman and the City Mayor will meet with the Sukanen residents in order to elicit their preference; and
 - (c) The remaining property owners who petitioned for annexation shall remain in the City in accordance with their annexation petition.
- 6.2 Town Approvals. The Town shall grant the City all approvals, including easements, necessary to extend sewer and water to the properties referenced in Section 6.1, above, remaining in the City. Those properties referenced in Section 6.1, above, that are to be detached from the City will thereafter be identified as Hybrid Areas.
- 6.3 Submission Pursuant to Sec. 66.0225, Wis. Stats. Sec. 66.0225, Wis. Stats., authorizes municipal boundaries to be fixed by a court judgment. The Town and the City agree to submit this Agreement to the Circuit Court having jurisdiction in Winnebago County Case No. 2001 CV 1142 pursuant to sec. 66.0225, Wis. Stats., for the purpose of (a) the resolution of the pending Grace Evangelical annexation lawsuit, Winnebago County Case No. 2001 CV 1142, and (b) fixing the common boundary line between the Town and the City in accordance with the terms of this Agreement. This Agreement shall be incorporated into a stipulation for submission and approval by the Circuit Court.

[This area left blank intentionally]
[Signature pages follow]

CITY OF NEENAH

Date: _____

By: _____

Jane R Lang, Mayor

Attest:

Charlotte Nagel, City Clerk

TOWN OF NEENAH

Date: _____ By: _____
Robert Schmeichel, Chairperson

Attest:

Ellen Skerke, Administrator-Clerk-Treasurer

TOWN OF NEENAH SANITARY DISTRICT #2

Date: _____ By: _____
Dan Osero, President

Attest:

Ellen Skerke Administrator- Clerk-Treasurer

NEENAH AREA WASTEWATER AGREEMENT

This Agreement is entered into as of the latest date set forth below by and between the Town of Neenah Sanitary District No. 2, a town sanitary district existing under Subchapter IX of Chapter 60 of the Wisconsin Statutes (the “District”), the City of Neenah, a Wisconsin municipal corporation (the “City”) and, for the limited purpose described below, the Town of Neenah, a Wisconsin town (“Town”).

Recitals

- A. The City of Neenah owns and operates a wastewater collection and conveyance systems that transports wastewater and sewage to the plant owned and operated by the Neenah-Menasha Regional Sewerage Commission.
- B. The Town of Neenah Sanitary District #2 owns and operates a wastewater collection system that transports wastewater and sewage to the City of Neenah’s wastewater conveyance system.
- C. The District and City are parties to various prior agreements concerning the operation and shared use of these systems.
- D. The parties wish to adopt a single, integrated agreement that incorporates their prior agreements and sets forth the framework for the future operation and shared use of their systems.

NOW, THEREFORE, in consideration of the above recitals, which are contractual, and for other good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, the parties agree as follows:

1. Authority and Purpose. This Agreement is entered into pursuant to Wis. Stat. § 66.0301. Its purpose is to establish an arrangement for intergovernmental cooperation with respect to the joint collection and transportation of wastewater between the District and the City. It is the general intent of the parties that this Agreement shall provide the District with access to the Neenah-Menasha Sewerage Commission treatment plant through the City’s collection system and that, where necessary, the District will provide the City with access to its own collection system through the District’s system.
2. Connection Points. The parties have established various “connection points” at which one party’s wastewater collection or conveyance system is permitted to connect to the other’s. The current connection points are identified in the map attached hereto as Exhibit 1. The parties agree that if a party wishes to change the location of a connection point hereafter based upon its engineer’s recommendation, such change shall be permitted provided it is agreed upon by both parties based on

sound engineering principles. In the event of a disagreement between the parties, such disagreement shall be subject to the dispute resolution procedures set forth in this Agreement.

3. District Territory Served. The District may transport wastewater to a City connection point from any location that is within the District's then-current boundaries and also within the Neenah-Menasha sewer service area, provided that the District at all times complies with the capacity limitations for the relevant connection point as set forth in Exhibit 2 and further provided that the District does not extend sewer service to any new areas outside of the Town of Neenah without the City's prior written consent. Nothing in this Agreement shall prohibit the District from increasing its size or boundaries pursuant to Wis. Stat. § 60.785, as amended.
4. City Territory Served. The City shall have unrestricted authority to provide sewer service to users within its territory when service is managed entirely through City infrastructure. When City service shall be provided via District infrastructure the City shall obtain the District's written consent
5. Calculating District's Capacity Usage. When determining the District's capacity usage for purposes of this Agreement, only wastewater originating at properties located within the District shall be counted toward the District's share. All other use, whether from property located in the City or in third-party municipalities shall not be counted against the District's capacity.
6. District Approval for Extensions to Third-Party Municipalities. The City may not extend sewerage collection or transportation service to a third-party municipality in a manner that would necessitate conveyance of sewage through any portion of the District's system without the District's prior written consent.
7. Metering and Sampling. Metering and sampling shall be used to measure flows and pollutant concentrations of all wastewater being discharged from one party's system into the other's. Metering devices shall be located so that all wastewater transmitted from one party's system to the other's passes through a metering device and is sampled. All meters shall be regularly calibrated to ensure their accuracy. Each party shall be solely responsible for the location, design, construction, operation, and maintenance of the monitoring and sampling located within its boundaries. All parties shall retain flow monitoring records for a minimum of five years.
8. Cost Sharing.
 - a. As agreed to in the September 19, 1997 amendment, the District shall pay 35% the total rate of a City resident per 1000 gallons. This percentage is based on a 1995 study by John Mayer Associates which was agreed to by both parties. If the City changes its volume charge, the District charge shall be pro-

rated at the same rate that the volume charge is changed and this change shall be made to the District's charge at the same time that it is implemented in the City. The City will provide a ninety (90) day notice to the District of any rate change. In 1997, the City rate was \$1.30 and the District rate was \$0.4562 per 1000 gallons. The present cost is \$3.19 for a City user and \$1.1194 per 1000 gallons of wastewater for the District. This charge shall be in effect starting immediately.

- b. If at a future time the City elects to have a new rate study done to determine utilization, the City shall notify the District of such study when the study is authorized, provide a copy of such study, and the results of that study shall automatically be applied to the percentage paid by the District .
 - c. In addition to all other charges, a one (1) percent charge shall be added to cover administrative costs.
9. Upsizing Cost Sharing. In the event that upsizing is necessary, the party responsible for the upsizing as determined by an independent engineer shall pay all expenses related to the upsizing, including the difference in cost between the standard 8" pipe and the upsized pipe and any increased installation costs necessitated by the upsized pipe.
10. Cross-Jurisdictional Connections.
- a. In the event that a proposed development located within the boundaries of one party connects directly into the sewer system owned by the other party, the municipality in which the development is located shall be responsible to pay all connection charges applicable to the development at the time the development is approved and may, at its option, recover some or all such charges from the developer. No plumbing permits or connections will be permitted without payment in full of all connection charges applicable to the development. Thereafter, the development will be billed for sewer service as though it were located within the boundaries of the party whose system it is connected to. The parties agree to take all action necessary to implement this billing procedure, including all action necessary to cooperate in the cross-jurisdictional collection of delinquencies, including, but not limited to, the use of utility liens as provided by law.
 - b. The City shall use a meter at the existing City connection to District sewer near Dell Court within two years of the date of this agreement. Any future City sewer expansion west of Woodside Green Estates shall require metered connection by the City to the Cumings Lane Collector.
 - c. Per the Amended and Restated Intergovernmental Agreement among the City of Neenah, the Town of Neenah, and Town of Neenah Sanitary District #2 to Provide Orderly Growth and Development within Agreed Upon Municipal Boundaries, Article II, Section 2.3(h), the Town of Neenah will be allowed to connect to a future City of Neenah sewer interceptor or main installed on

Breezewood Lane adjacent to the Town of Neenah Municipal Building at 1600 Breezewood Lane, Parcel ID 010-0075.

11. Maintenance, Repair, and Replacement. Except as otherwise provided herein, it shall be the obligation of each party to provide for all costs of constructing, repairing, operating, maintaining, and replacing infrastructure under its ownership.
12. Cumings Collector. Attached hereto as Exhibit 3 is an existing memorandum of understanding concerning the construction and operation of the “Cumings Collector.” Except as modified herein, the terms of that memorandum of understanding survive the execution of this Agreement and are incorporated herein by reference.
13. Service to Tullar/Oakridge. The City will, without requiring annexation of any property, permit the District to connect to the City’s sanitary sewer main connection point at Rockledge Lane, or at an alternate location in the area determined by the parties. The District may extend sanitary sewer service from this connection point to service any property located within Town Growth Area (as defined in the Town-City boundary agreement) provided that the connection point will be controlled to not exceed 0.6 cubic feet per second of flowage. The sanitary sewer collection system connecting to the Rockledge Lane connection point will be owned, operated, and maintained by the District at no cost to the City.

The parties further acknowledge that some sewer extensions in this area may necessitate Sewer Service Area Amendments. The District will be responsible for obtaining approval of all required Sewer Service Area Amendments. The City agrees to not object to all applications by the District for Sewer Service Area Amendments for property to be serviced by the Rockledge Lane connection point, provided that the Sewer Service Area Amendment does not involve a swap of territory from a location outside of the Town. The District may not extend sewer service from the Rockledge Lane connection point outside of the Town without prior written approval of the City.
14. Billing. All invoices from one party to the other pursuant to this Agreement shall be payable within no less than forty-five days.
15. Deleterious Materials and Prohibited Discharges. The parties agree that the introduction of deleterious materials and prohibited discharges, as defined in the parties’ respective sewer use ordinances, into the parties’ systems shall be prohibited.
16. Compliance with Law. The parties agree to comply with all applicable Federal, State, and local laws, regulations, and ordinances concerning the operation of their sewerage systems.

17. Removal of the Town of Neenah

18. Books and Records. The parties shall each keep accurate books, records, and accounts of costs, expenses, expenditures, and receipts as they pertain to this Agreement. Upon reasonable prior notice, either party shall be entitled to examine the books and records of the other. The parties may adopt document destruction schedules related to such records provided they are compliant with state record retention requirements.

19. Effective Date. The effective date of this Agreement shall be the date upon which it is executed by the parties. It shall continue in effect for as long as either party depends on the other for the conveyance of wastewater.

20. Severability. If any clause, provision, or section of this Agreement is declared invalid or unenforceable by any court of competent jurisdiction, the invalidity of such clause, provision, or section shall not affect any of the remaining provisions.

21. Amendment. This Agreement may be amended only by written agreement of the parties.

22. Binding Effect. This Agreement shall be binding on the parties and their respective successors, transferors, and assigns, and shall insure to the benefit of its successors, transferors, and assigns.

23. Governing Law. This Agreement shall be interpreted in accordance with the laws of the State of Wisconsin.

24. No Third-Party Beneficiaries. Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either of the parties.

25. Entire Agreement. This Agreement represents the entire agreement between the parties concerning its subject matter. It supersedes all previous agreements and understandings, if any, written and oral, relating to its subject matter.

26. Indemnification/Hold Harmless. To the maximum extent permitted by law, each party shall defend, indemnify, and hold harmless the other and their offices, employees, elected officials, agents, and insurers from and against all liability, claims, demands, actions, costs, expenses, losses, or damages of any type whatsoever (including reasonable attorneys' fees) to the extent arising out of that party's negligence or willful misconduct.

27. Dispute Resolution. All disputes over the interpretation, application or enforceability of this Agreement shall be resolved according to the following dispute resolution procedures:

- a. If the dispute cannot be resolved by the personnel directly involved, the parties will consider the following mediation process before invoking litigation:
 - i. Each party will designate a representative with appropriate authority to be its representative in the mediation of the dispute.
 - ii. Either representative may request the assistance of a qualified mediator. If the parties cannot agree on the qualified mediator within five days of the request for a mediator, a qualified mediator will be selected by the Municipal Boundary Review Director of the Office of Land Information Services of the State of Wisconsin Department of Administration, or their successor.
 - iii. The mediation session shall take place within 30 days of the appointment of the respective representative designated by the parties, or the designation of a mediator, whichever occurs last.
 - iv. In the event that a mediator is used, each party shall provide the mediator with a brief memorandum setting forth its position with regard to the issues that need to be resolved at least 10 days prior to the first scheduled mediation session. The Parties will also produce all information reasonably required for the mediator to understand the issues presented. The mediator may require the Parties to supplement such information.
 - v. The mediator does not have authority to impose a settlement upon the Parties but will attempt to help the Parties reach a satisfactory resolution of their dispute. To the extent authorized by law, the mediation session(s) are private. The Parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the Parties and with the consent of the mediator. The Parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding, views expressed, or suggestions made by the other party with respect to a possible settlement of the dispute, or admissions made by the other party in the course of mediation proceedings.
 - vi. The expenses of a mediator, if any, shall be borne equally by the Parties.
- b. If unresolved after (a) above, either Party may seek a judicial determination of the matter by the filing of an action in the Circuit Court of Winnebago County, State of Wisconsin according to statute.

Dated this _____ day of _____, 2022.

TOWN OF NEENAH SANITARY
DISTRICT NO. 2

By: _____
Dan Osero
President

Attest: _____
Victoria Boushele
Town Deputy Clerk-Treasurer

Dated this _____ day of _____, 2022.

CITY OF NEENAH

By: _____
Mayor

Attest: _____
City Clerk

Dated this _____ day of _____, 2022.

TOWN OF NEENAH

By: _____
Robert Schmeichel
Chairman

Attest: _____
Ellen Skerke
Town Clerk-Treasurer



M E M O R A N D U M

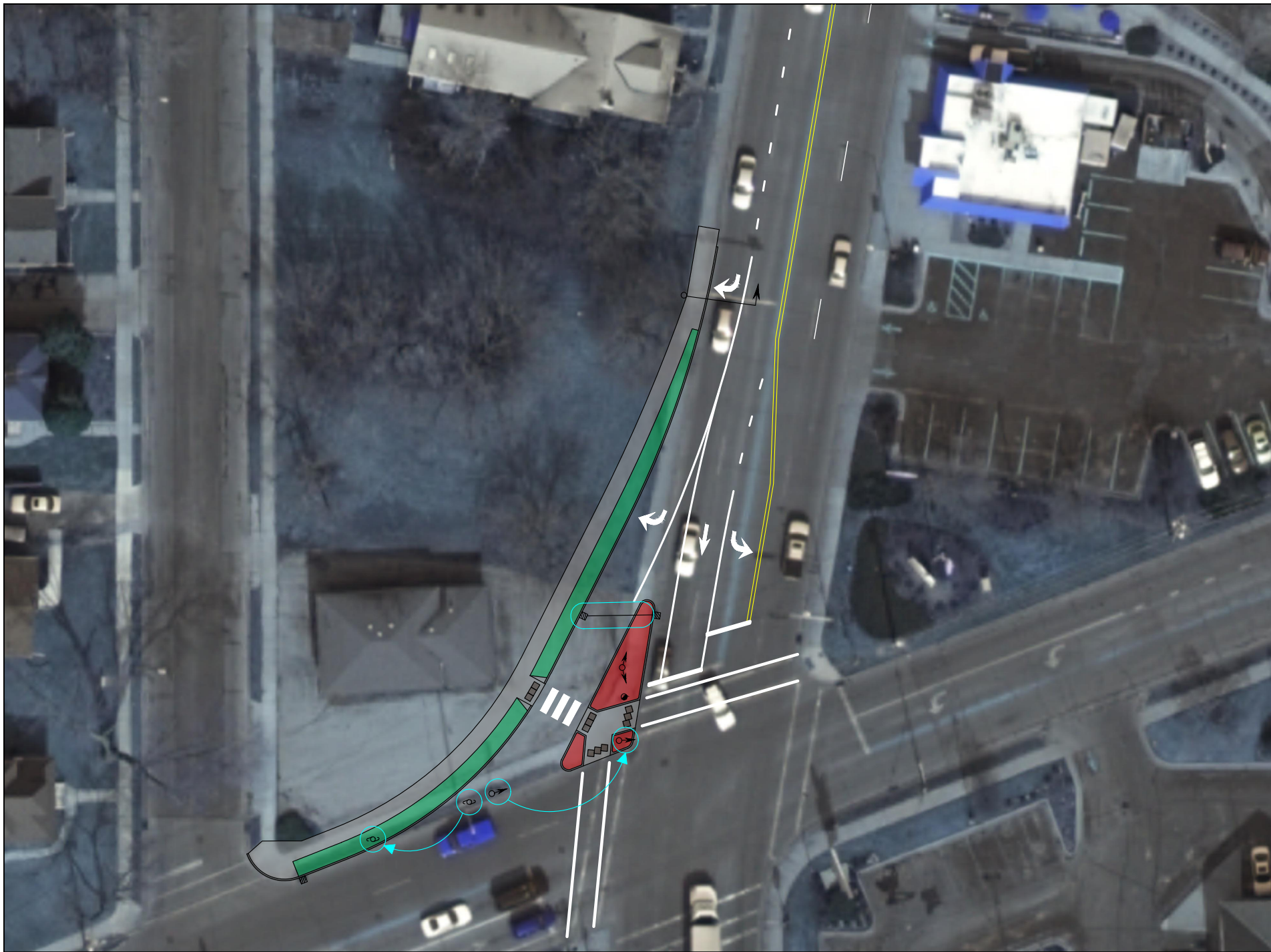
TO: Mayor Lang and Members of the Common Council
FROM: James Merten, Traffic Engineer
DATE: June 24, 2022
RE: Commercial Street/Winneconne Avenue Intersection Design Proposal

Staff have begun design work with Westwood on the S. Commercial Street reconstruction project slated for 2025. When reviewing layouts, one discussion point that came up is how to address the road layout between Winneconne Avenue and Division Street. Currently, the road layout features two southbound drive lanes, one of which becomes a left turn only lane at Division Street. This has been a point of frustration for residents since its implementation in 2013, as it creates a merge competition zone, resulting in speeding, weaving, and increased queueing at upstream intersections due to poor lane utilization.

Thus as part of this project, staff recommends removing this merge point by channeling traffic north of the Winneconne Avenue intersection, such that a right turn lane is created for southbound Commercial Street and a single lane is available for southbound through traffic. To maintain acceptable levels of traffic flow and signal timing, a design similar to the attached concept drawing would be required.

Staff requested that Westwood prepare an amendment to our current contract for design and real estate services for the concept. The Westwood proposal is attached below. Westwood's estimate for these services is \$49,800. If approved, this would be financed through this year's design contract budget (\$250,000) and would be accounted for through adjustments made to the 2023 design contract budget.

Staff recommend to proceed with the Westwood amendment for design and real estate services to modify the Winneconne and Commercial Street intersection as proposed.



Westwood Infrastructure, Inc. Project Change Order
Number 1

PROJECT NAME: S Commercial Street Reconstruction
PROJECT NUMBER: R3001439.00
CLIENT NAME: City of Neenah
DATE OF CHANGE ORDER: June 20, 2022
PROJECT MANAGER: Phil Roberts

This Project Change Order between Client and Westwood is set forth pursuant to our Agreement to provide professional services effective *June 20, 2022*. The purpose of this Project Change Order is to modify the conditions and the scope of work as defined in the originally proposed services dated *January 7, 2022*.

1. REVISION REQUESTED BY: *James Merten*
2. REQUESTED REVISIONS: City of Neenah intends to modify the lane configuration at the intersection of Commercial St and Winneconne Ave. Westwood will perform the following:

A. See Attachment A

3. REVISION TO FEES:

ITEM	METHOD	FEE
<i>CO #1 from 2. above</i>	<i>Lump Sum</i>	<i>\$ 49,800.00</i>
<i>Original Contract</i>	<i>Lump Sum</i>	<i><u>\$557,440.00</u></i>
	<i>NEW CONTRACT TOTAL</i>	<i><u>\$607,240.00</u></i>

4. COMMENTS/ASSUMPTIONS: See Attachment A

By signing below, the parties agree and affirm that each has reviewed and understands the provisions set out above and that each party shall be bound by each and all of said provisions. A copy of this Change Order to the Agreement shall serve and may be relied upon as an original.

WESTWOOD INFRASTRUCTURE, INC.



Signature

Name: Phillip T. Roberts

Date: June 20, 2022

CITY OF NEENAH

Signature

Name: _____

Date: _____

Project Description

The proposed project will modify the lane configuration at the intersection of Commercial St and Winneconne Ave. On the north side of the intersection a right turn lane will be added as shown in the sketch provided by Neenah. The southbound lane configuration will be changed to a left turn lane, thru lane and right turn lane separated by a pedestrian island.

Capacity analysis of the intersection is not required. One of the design goals is to keep the walk time the same as existing. That is the reason for the pedestrian island. Another key component of the design is for the right turn lane to accommodate large trucks.

Project Scope

Westwood will provide the following professional services for the project.

Project Administration and Coordination

- Coordinate project development and documentation with the City of Neenah.

Agency and Utility Coordination


- Utility coordination
 - Request system maps
 - Send 60% plans and request utility workplans
 - Identify and resolve potential conflicts
 - Review and approve utility workplans
 - Send final plans and specials to each utility

Topographic Survey

- Full topographic survey of the Commercial St and Winneconne Ave intersection.
- Measure downs at all manholes, inlets, and catch basins
- Locate all utilities with the project limits
- Locate existing right of way irons

Design

- Add southbound right turn lane using the existing pavement thickness and reconfigure the remaining lanes with pavement marking.
- Design for WB-65 vehicle
- Adjust storm sewer inlets
- Traffic Signal Modifications
 - Adjust signal pole locations and signal heads as needed
 - Adjust signal timing and sequence as needed
- Traffic Control
- Final Plans
 - Title sheet
 - General notes
 - Typical section

- 
- Construction detail
 - Paving and intersection details
 - Curb ramp details for 6 curb ramps
 - Storm sewer sheets
 - Signing Sheets
 - Pavement marking sheets
 - Traffic Signal Modification Details
 - Temporary Traffic Signals Details
 - Traffic control
 - Miscellaneous Quantity Sheets
 - Plan Sheet including erosion control and removals
 - Cross section sheets at 50' sections
 - Final Plans, Specifications and Estimates

Right-of-Way Plat

- Provide 1 title report and 1 title update
- Establish existing right-of-way
- Prepare Transportation Project Plat (TPP) or traditional right-of-way plat for the parcel in the northwest quadrant of the intersection
- Provide legal description, deed and release of rights
- Stake proposed right-of-way one time with lath for appraisals
- Monument new right of way with 1" x 24" iron pipe

Real Estate Acquisition

- Provide Real Estate Project Manager
- Prepare a Project Data Book/Expanded Sales Study and determine nominal parcels. Westwood will subcontract with Steiro Appraisals for this work
- Complete Nominal Payment Parcel Report
- Perform all negotiations
- Obtain all Fee Title, PLE, TLE, and Access Rights
- Provide Fee Titles
- Obtain City approval for each step of the process as outlined in the Local Public Agency (LPA) Manual for Right of Way Acquisition
- Coordinate all work with City of Neenah

Meetings

- Design Kickoff meeting
- Coordinate and attend 30% and 90% design review meetings.
- Pre-construction meeting

Information Provided by Neenah

- As-built plans if available
- Existing plans if available
- Existing signal timing



Extra Work

- Traffic counts and analysis
- Pavement Design
- Public Involvement Meeting
- Geotechnical Investigation
- Hazardous Material Investigation
- Bidding
- Relocation of the Business in the NW quadrant
- Total buyout of the Business in the NW quadrant



City Services Building

1495 Tullar Road Neenah, WI 54956

Phone: (920) 886-6260 Fax: (920) 886-6269

Proposal

Fleet #77A (Scissor Lift)

- | | | |
|--|--|-------------|
| • Aerial Work Platforms, Inc.
Neenah, WI | Used JLG 2630ES | \$15,900.00 |
| • Aerial Work Platforms, Inc.
Neenah, WI | New JLG 2630ES
Unable to commit to pricing and availability | \$ ---- |
| • Wolter Inc. (Wisc. Lift Truck)
Brookfield, WI | Used Genie GS-2646
2020 (50hrs.) | \$19,900.00 |
| • Wolter Inc. (Wisc. Lift Truck)
Brookfield, WI | Used JLG 2630ES
2013 (284hrs.)
(Factory re-conditioned) | \$16,900.00 |

Staff recommends purchasing a 2013 re-conditioned JLG 2630 scissor lift from Wolter Inc. of Brookfield, WI for \$16,900.00.

Staff would like to note that this is a returned piece of equipment that has been factory certified and re-conditioned and includes a 1-year warranty. The other 2 used lifts are not reconditioned and come with a 60-day warranty.

Existing equipment will be kept as other City Departments use the lifts(s) for projects rather than renting.

Budgeted 2022 amount \$25,000.00.

(Page 333, Item #1 in 2022 Budget Book)

(Page 333, Item #1 in 2022 Budget Book)

USED EQUIPMENT FOR SALE

Stock #: 257408

Used 2013 JLG Factory Certified Scissor Lift
Model: 2630ES
Approx. Hours: 284
Basic Capacity: 500#
Platform Height: 26'
Work Height: 32'
Platform Dimensions: 30" W x 90.5" L (Plus Deck Extension)
Fuel/Power Type: 24-Volt Electric System (New Batteries)
Included Option(s): New Tires, New Paint
Tire Type: Non-Mark Cushion
Warranty: 12-Month JLG Certified Used Product Warranty
Unit ID: 257408
Sale Price: \$16,900 (Plus Delivery & Tax, if Applicable)



Material Handling



Automation & Robotics



Cranes & Hoists



Engineered Systems



Standby Power & Generators



Workplace Storage



Industrial Storage & Handling



Railcar Movers



City Services Building

1495 Tullar Road Neenah, WI 54956

Phone: (920) 886-6260 Fax: (920) 886-6269

Proposal

Fleet #69 (2022 Leaf Collection Trailer)

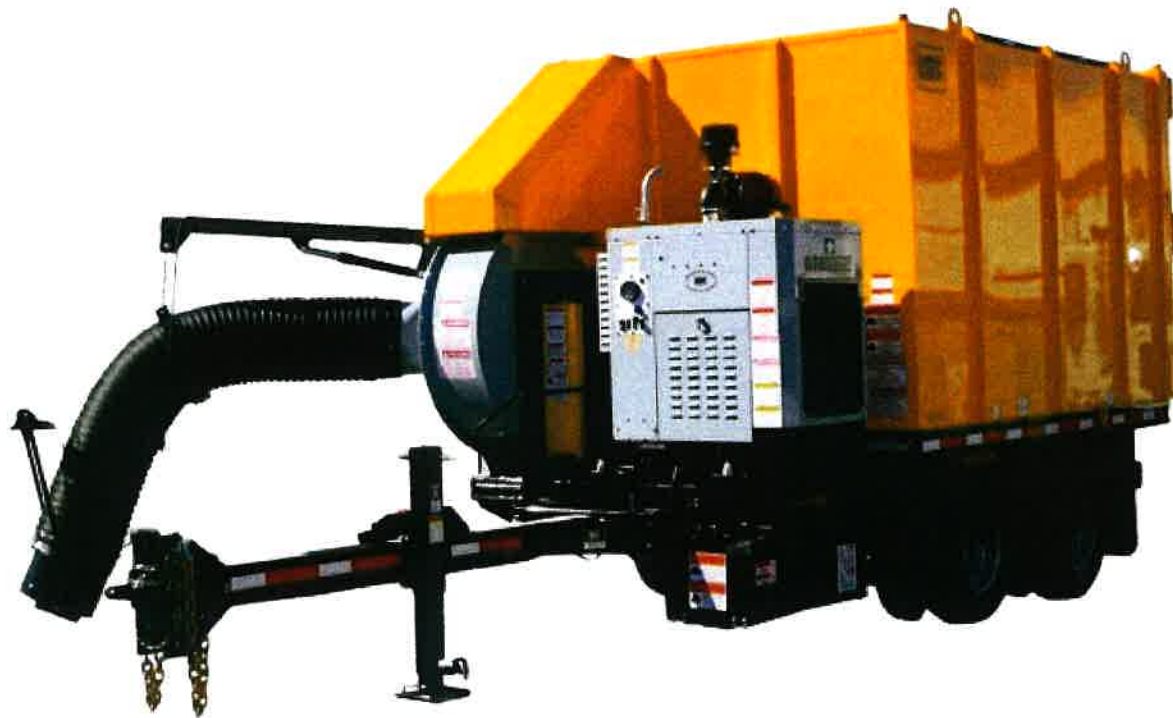
• MacQueen Equipment Menomonee Falls, WI	ODB DLC-800	\$124,867.00
• Sourcewell Purchasing Group	ODB DLC-800	\$124,867.00
• Minnesota State Contract	ODB DLC-800	\$129,438.00
• Bell Equipment Lake Orion, MI	Bonnell Spartan Pro Plus	\$136,403.00
• Sourcewell Purchasing Group	Bonnell Spartan Pro Plus	\$136,403.00

Staff recommends purchasing a 2022 OBD DCL-800 Leaf Collection Trailer for \$124,867.00 from MacQueen Equipment.

Existing equipment (Fleet #69 – 1991 Front-mount leaf picker) will be sold at auction through GovDeals.

Budgeted 2022 amount of \$110,000.00

(Page 333 Item #25 in 2022 Budget Book)





CITY OF NEENAH POLICE DEPARTMENT

2111 Marathon Avenue
Neenah, Wisconsin 54956



Memo

To: Alderman Cari Lendrum, Public Services and Safety Committee Chair
Mayor Jane Lang

From: Assistant Chief Jeffrey P. Bernice

Date: 6/17/2022

Re: **Special Event Barrier Strategies**

The purpose of this memorandum is to respectfully request assistance in developing mitigation strategies that fall within budget parameters to enhance roadway safety during outdoor events in the city of Neenah.

Safety and security are the key components of every special event held in our city, and several departments plan and coordinate to create a safe and enjoyable atmosphere for attendees. Unfortunately, we live in a world of criminals, radicalized individuals and hostile groups who wish to harm innocent citizens, typically at public gatherings considered "soft targets." A "soft target" is defined as a location easily accessible to the general public and relatively unprotected, making it vulnerable to an attack.

One tactic of these crazed individuals is using a vehicle as a deadly weapon to target groups of pedestrians in open areas. We have seen this countless times over the last 2 decades, and in just in the last 5 years alone there have been over 70 of these incidents worldwide. A few examples of these incidents are listed below:

- July 14, 2016 (Nice, France): Man drove a truck into a crowd striking and killing 86 people
- August 17, 2017 (Barcelona, Spain): Van was driven through a tourist district, killing 13 and injuring 100
- October 31, 2017 (New York City, NY): Man drove a pickup truck down a bike path, killing 8 and injuring 12
- November 21, 2021 (Waukesha, WI): Subject drove through a Christmas parade, killing 5 and injuring 40

Special events are unique because we do not want extreme defensive measures to create a negative atmosphere but rather a positive and encouraging environment. Members of the Neenah Police Department, Public Works Department, Fire Department and Parks & Recreation have been successful

and ahead of many other communities by positioning City-owned vehicles along strategic avenues of approach. Main roads are concentrated on, but entrance into these special events is still possible.

Over the past several years, it has been more common to see vehicles entering a special event as a result of an intoxicated, elderly, or confused driver. The following are a few recent examples:

- Unknown year, but within last 5 years: Intoxicated driver joined the high school homecoming parade on Wisconsin Avenue
- 2018 or 2019: Wrong-way driver drove into the Labor Day parade on Wisconsin Avenue; the driver was trying to get to Menasha and was confused
- 2021: Vehicle attempted to drive into Labor Day parade from Church Street and was stopped by an officer and the mayor
- 2021: Intoxicated driver hit a City vehicle parked as barrier during the streetball event at West Wisconsin and South Commercial Streets
- Miscellaneous: There have been many other occasions during the Fox Cities Marathon, Fourth of July Community Fest, and a Very Neenah Christmas in which confused drivers almost entered a closed road

Attempting to strengthen the perimeter of an event is costly and time consuming. Here are a few different strategies for discussion:

- Vehicle Blockages (currently used) - Positioning City-owned vehicles as barriers on the main routes into the event. These vehicles include police squads, public works trucks, and other city-owned vehicles.
- Jersey Barriers - Using large cement obstacles to block roads. These must be stored elsewhere, moved by heavy equipment, and then removed when the event is complete. The main restraints are the amount of staff hours to assemble and disassemble these structures.
- Portable Modular Vehicle Barriers - These are mission specific systems used to stop vehicles weighing up to multi-ton heavy trucks. These are costly and can be time consuming based on the number of staff members constructing and removing the systems. (See figures 1 and 2)
- Permanent Hydraulic Barrier Systems - This system would have barrier devices installed permanently in the roadway that could easily extend and retract when needed for events. This solution would be initially costly due to installation, parts, and road construction, but it would reduce staff hours before, during, and after events.
- Hybrid System - Using a combination of the items listed above.

Figure 1 (meridian barrier system)



Figure 2 (modular vehicle barrier system)



Earlier this year, the Waukesha Police Department reviewed the modular barrier system (Figure 2) and initially needed 230 linear feet of roadway covered. This was quoted at \$297,050.00, but in April they purchased \$800,000.00 worth of these devices to cover their smaller parade route.

A couple of months ago, we had an onsite demonstration of the above platform. If we focused on Downtown Neenah and placed these barrier systems on Main Street (at Doty Avenue and Commercial Avenue) and Church Street (both sides of Main Street), it would be approximately 230 linear feet, which would cost approximately \$315,214.00. As you can see, the price has risen significantly over the past several months.

Please remember this is only one small component of the overall event plan when it comes to safety and security. Neenah Police Department Lieutenant Jon Kuffel, City of Neenah Traffic Engineer James Merten, and many other members of the City of Neenah have always been focused on the protection of our citizens. They are constantly trying to create the best environment for our community when it comes to roadway access to events.

The Neenah Police Department, Public Works Department, Parks & Recreation, and Fire Department want the best for our city and its citizens, but we also understand budget restraints. We are requesting guidance on how best to proceed with this initiative for the future.

Recommendation: Determine the best course of action in developing mitigation strategies that fall within budget parameters to enhance roadway safety during outdoor events in the city of Neenah.



Aaron L. Olson
Chief of Police

CITY OF NEENAH POLICE DEPARTMENT



2111 Marathon Avenue
Neenah, Wisconsin 54956

Memo

To: Alderperson Cari Lendrum, Chair
Public Services and Safety Committee
Mayor Jane Lang

From: Chief Aaron L. Olson *ALO*

Date: June 23 2022

Re: **Recommendation to Approve Miron Construction Document A133**

On May 24, the PSSC approved Miron Construction to be our Construction Manager. The next and final step is to approve the AIA Document A133, which is the standard form of agreement between Neenah PD and Miron as our Constructor.

Recommendation:

Approve the AIA Document A133, which is the standard form of agreement between Neenah PD and Miron as our Constructor.

AIA® Document A133™ – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 3rd day of June in the year 2022
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

City of Neenah
2111 Marathon Avenue
Neenah, WI 54956

and the Construction Manager:
(Name, legal status, address, and other information)

Miron Construction Co., Inc.
1471 McMahan Drive
Neenah, WI 54956

for the following Project:
(Name, location, and detailed description)

New Neenah Police Training Facility
Neenah, WI

The Architect:
(Name, legal status, address, and other information)

FGM Architects Inc.
219 North Milwaukee Street, Suite 325
Milwaukee, WI 53202

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

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9	SUBCONTRACTS AND OTHER AGREEMENTS
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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Owner's Program to be finalized during the schematic and design development activities.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

New Neenah Police Training Facility is anticipated to be approximately 18,550 SF of single-story slab on grade construction.

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

(Provide total and, if known, a line item breakdown.)

Total Project cost is unidentified at this time.

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

.2 Construction commencement date:

Anticipated construction commencement is August 2022; to be finalized in the GMP Amendment.

.3 Substantial Completion date or dates:

Anticipated Substantial Completion is August 2023; to be finalized in the GMP Amendment.

.4 Other milestone dates:

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

Early bid package for structure is required to be released by the end of July.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

Not applicable.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

Aaron Olson, Chief of Police
City of Neenah
2111 Marathon Avenue
Neenah, WI 54956

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

Not applicable.

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

Unidentified at this time.

.2 Civil Engineer:

Unidentified at this time.

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

Unidentified at this time.

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

Andrew Mayo, Senior Associate
FGM Architects Inc.
219 North Milwaukee Street, Suite 325
Milwaukee, WI 53202

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

Matt Scharenbroch, Project Manager
Miron Construction Co., Inc.
1471 McMahan Drive
Neenah, WI 54956

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

Not applicable.

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

Trade packages to be bid as defined in Article 9.

§ 1.1.15 Other Initial Information on which this Agreement is based:

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of

services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The

Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201-2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The

written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Preconstruction Phase services to be provided and are included in the fee identified in Article 6.1.2.

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position

Rate

Init.

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within twelve (12) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid twenty (20) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

12 % per annum

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

Construction Manager's Fee shall be equal to 2.35% of the Cost of the Work.

The Construction Manager will be compensated for the Staffing items, which include Project manager, Project Superintendent, Document Controls Administrator/Accountant for a lump sum value of \$27,265 per month.

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

All additive changes to the Project shall be equal to 2.35% of the Cost of the Work.

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Subcontractor's overhead and profit shall not exceed 15%.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed percent (%) of the standard rental rate paid at the place of the Project.

§ 6.1.6

(Paragraphs deleted)

Intentionally Deleted

§ 6.1.7

(Paragraphs deleted)

Intentionally Deleted

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the

Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

All savings from the Guaranteed Maximum Price shall return to the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7. All trade contracts will be bid and based on a lump sum value; only allowances, General Conditions/Requirements, or other activities performed on a time and material basis will be tracked on a reimbursable basis.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, wages paid for labor involved in expediting material and equipment for the project from the Construction Manager's yard and maintenance facilities. Labor, as identified throughout Article 7.1, will be billed as set forth in the attached Exhibit 1 – Labor Rate Schedule, which in addition to wages paid and attendant burden includes charges for overhead and/or profit in addition to the fee for any work that is not performed on a lump sum basis.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work.

Init.

§ 7.2.2.1 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

Project Manager
Project Accountant
Document Controls Administrator

§ 7.2.3 Wages and salaries of the Construction Manager’s supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner’s property at the completion of the Work or, at the Owner’s option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner’s prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item. Reference Exhibit 2 for equipment rates applicable for any portion of the Work performed on a time and material basis.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager’s site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner’s prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums or assessed value indicated in the Cost of the Work Summary for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Insurance will be billed at sixty-five hundredths percent (0.65%) of the Cost of the Work.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is or may be liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.6.12 All other General Conditions/Requirements costs which will be identified upon finalization of the Work and mutually agreed upon with Owner, Architect, and Construction Manager.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

Init.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure of to fulfill a specific responsibility of the Contract;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 The Construction Manager shall obtain bids to be opened at a designated time and location as identified in the bidding documents from Subcontractors and from suppliers of materials or equipment fabricated to a special design of the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect. The Construction Manager will be allowed to submit bids for portions of the Work that are customarily performed by the Construction Manager's own personnel. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 5th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 4th Thursday of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress

payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Retainage of five percent (5%) will be applicable.

§ 11.1.8.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

Upon reaching 50% completion based on the billing of the Cost of the Work, no additional retainage will be held if the Work is satisfactorily on schedule.

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

.3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201-2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201-2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201-2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

12 % per annum

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201-2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- Arbitration pursuant to Article 15 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other: (Specify)

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not

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otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1** Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2** Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3** Subtract the aggregate of previous payments made by the Owner; and
- .4** Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than one million dollars (\$ 1,000,000) for each occurrence and two million dollars (\$ 2,000,000) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than one million dollars (\$ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than five hundred thousand dollars (\$ 500,000) each accident, five hundred thousand dollars (\$ 500,000) each employee, and five hundred thousand dollars (\$ 500,000) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than one million dollars (\$ 1,000,000) per claim and two million dollars (\$ 2,000,000) in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

Limits

§ 14.3.1.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

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§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents. The bonds will be billed at one percent (1.0%) of the Cost of the Work.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

- .6 Other Exhibits:
 - Exhibit 1 Labor Rate Schedule
 - Exhibit 2 Equipment Rates

(Check all boxes that apply.)

AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

Supplementary and other Conditions of the Contract:

Document

Title

Date

Pages

- .7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)


This Agreement is entered into as of the day and year first written above.

OWNER (Signature)

(Printed name and title)



CONSTRUCTION MANAGER (Signature)

 Vice President

(Printed name and title)



AIA[®]

Document A133™ – 2019 Exhibit B

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the 3rd day of June in the year 2022
(In words, indicate day, month and year.)

for the following **PROJECT**:
(Name and location or address)

New Neenah Police Training Facility
Neenah, WI

THE OWNER:
(Name, legal status, and address)

City of Neenah
2111 Marathon Avenue
Neenah, WI 54956

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

Miron Construction Co., Inc.
1471 McMahon Drive
Neenah, WI 54956

TABLE OF ARTICLES

- B.1 GENERAL**
- B.2 OWNER'S INSURANCE**
- B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS**
- B.4 SPECIAL TERMS AND CONDITIONS**

ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

ARTICLE B.2 OWNER'S INSURANCE

§ B.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.

§ B.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner’s usual general liability insurance.

§ B.2.3 Required Property Insurance

§ B.2.3.1 Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder’s risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner’s property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ B.2.3.1.1 Causes of Loss. The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

Cause of Loss	Sub-Limit
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§ B.2.3.1.2 Specific Required Coverages. The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect’s and Construction Manager’s services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit
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§ B.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ B.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ B.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner’s occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ B.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- § B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner’s property, or the inability to conduct normal operations due to a covered cause of loss.

- § B.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

- § B.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

- § B.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

- § B.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

- § B.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured’s business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

- § B.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

§ B.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

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(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

§ B.2.5.1 **Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. (Indicate applicable limits of coverage or other conditions in the fill point below.)

§ B.2.5.2 **Other Insurance**
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

§ B.3.1 General

§ B.3.1.1 **Certificates of Insurance.** The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.

§ B.3.1.2 **Deductibles and Self-Insured Retentions.** The Construction Manager shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Construction Manager.

§ B.3.1.3 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 04 13, CG 20 37 04 13, and, with respect to the Architect and the Architect's consultants, CG 20 32 04 13.

§ B.3.2 Construction Manager's Required Insurance Coverage

§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below: (If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than one million dollars (\$1,000,000) each occurrence, two million (\$2,000,000) general aggregate, and two million (\$2,000,000) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property; and
- .4 bodily injury or property damage arising out of completed operations.

§ B.3.2.2.2 The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than one million dollars (\$1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than five hundred thousand dollars (\$500,000) each accident, five hundred thousand dollars (\$500,000) each employee, and five hundred thousand dollars (\$500,000) policy limit.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate.

§ B.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate.

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than ten million dollars (\$10,000,000) per claim and ten million dollars (\$10,000,000) in the aggregate.

§ B.3.3 Construction Manager's Other Insurance Coverage

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

- § B.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below.

Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

- § B.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for Work within fifty (50) feet of railroad property.

- § B.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

- § B.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

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[] § B.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

[] § B.3.3.2.6 Other Insurance
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits
----------	--------

§ B.3.4 Performance Bond and Payment Bond

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	Equal to Contract Value
Performance Bond	Equal to Contract Value

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

AIA[®] Document A201[®] – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

New Neenah Police Training Facility
Neenah, WI

THE OWNER:

(Name, legal status and address)

City of Neenah
2111 Marathon Avenue
Neenah, WI 54956

THE ARCHITECT:

(Name, legal status and address)

FGM Architects Inc.
219 North Milwaukee Street, Suite 325
Milwaukee, WI 53202

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ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503[™], Guide for Supplementary Conditions.

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

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User Notes:

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document

G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. For the avoidance of doubt, the presence of per- and polyfluoroalkyl Substances (PFAS) shall be considered a concealed and unknown physical condition regardless of any provision in the Contract Documents to the contrary and irrespective of any determination by the Architect/Initial Decision Maker, unless clearly and conspicuously identified as a site condition by name (PFAS or per- and polyfluoroalkyl Substances) and expressly included in the scope of Work. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the

operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities

for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings,

Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and

suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

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§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

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- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will

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promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act

or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and

approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

Init.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

EXHIBIT 1

Confidential

City of Neenah
Neenah Police Training Facility
Labor Rates
Effective June 1, 2022 through May 31, 2023

POSITION	S.T.	O.T.	D.T.
Carpenter FM	\$ 88.67	\$ 118.11	\$ 147.54
Carpenter	\$ 83.19	\$ 110.06	\$ 136.93
Carpenter Apprentice	\$ 78.16	\$ 102.68	\$ 127.19
Mason Supt	\$ 112.43	\$ 148.59	\$ 184.74
Mason FM	\$ 90.90	\$ 121.29	\$ 151.66
Mason	\$ 85.33	\$ 113.14	\$ 140.95
Cement Finisher Foreman	\$ 90.90	\$ 121.29	\$ 151.66
Cement Finisher	\$ 85.33	\$ 113.14	\$ 140.95
Laborer Foreman	\$ 73.17	\$ 98.99	\$ 124.79
Laborer	\$ 67.74	\$ 91.00	\$ 114.24
Operating Engineer	\$ 92.89	\$ 125.42	\$ 157.95
Truck Driver	\$ 67.86	\$ 91.34	\$ 114.81
Iron Worker Supt Level 2	\$ 119.82	\$ 159.04	\$ 198.25
Iron Worker Supt Level 1	\$ 111.80	\$ 147.18	\$ 182.55
Iron Worker FM (Steel Erection)	\$ 96.11	\$ 128.29	\$ 160.46
Iron Worker (Steel Erection)	\$ 90.75	\$ 120.36	\$ 149.97
Iron Worker Appr (Steel Erection)	\$ 85.27	\$ 112.26	\$ 139.24

The attached rates are negotiated rates not subject to audit adjustment.

The attached rates for project management and supervision includes the cost of leased vehicles, fuel and maintenance.

Upon expiration of the effective date identified above, the rates are subject to modification for changes in the respective union contracts and related impacts.



EQUIPMENT RENTAL RATES

EXHIBIT 2

Vehicles

Auto
Pickup Truck
Stake Truck
Semi Tractor w/ Trailer
All-Terrain Vehicle

2-Seat 4wd
4-Seat 4wd

Hoisting Equipment

Mobile Cranes (mobilization/demobilization not included and will be priced per project)

70 Ton (4-Hour Minimum)
100 Ton (6-Hour Minimum)
165 Ton (8-Hour Minimum)
200 Ton (8-Hour Minimum)
300 Ton (8-Hour Minimum)
350 Ton (8-Hour Minimum)

Tower Cranes (does not include mobilization/demobilization, labor or electrical costs)

*Hourly and daily rates include operator and electrical costs, applying only to short-term rentals when crane is on site

Crawler Cranes (does not include mobilization/demobilization, labor or fuel)

100 Ton
165 Ton
200 Ton
220 Ton
275 Ton
380 Ton

*Hourly rates include operator and fuel, applying only to short-term rentals when crane is on site

Rough Terrain Cranes (does not include mobilization/demobilization, labor or fuel)

50 Ton
60 Ton
75 Ton
80 Ton
100 Ton
165 Ton

*Hourly rates include operator and fuel, applying only to short-term rentals when crane is on site

Deck Cranes (does not include mobilization/demobilization, labor or fuel)

6 Ton
8.5 Ton
10 Ton
15 Ton
20 Ton

*Hourly rates include operator and fuel, applying only to short-term rentals when crane is on site

Extendable Boom Forklifts

6,000 lbs
8,000 lbs
10,000 lbs
12,000 lbs

Tow Motors

3,500 - 5,000 lbs
5,000 - 6,500 lbs
8,000 - 9,000 lbs
10,000 - 12,000 lbs

Versa Lift

17,000 - 25,000 lbs
40,000 - 60,000 lbs
Boom Attachment

Material Duct Lift

20' - 24'

Personnel Lifts

Scissor Lift - Narrow

12' - 15'
19' - 20'
26' - 32'

Scissor Lift - Wide

26' - 39'

Scissor Lift - 4x4 Rough Terrain

26' - 32'
33' - 43'

Boom Lifts

30' - 45' Electric
45' Telescopic
65' Telescopic
85' Telescopic
125' Telescopic
135' Telescopic
60' Atrium Lift

Concrete

Concrete Pumps

85' - 105' Boom Pump
128' - 148' Boom Pump
Spider Placing Boom
Concrete Placer/Dragger
Concrete Trailer Pump

	Hourly	Daily	Weekly
Auto	\$ 10.50	\$ 52.50	\$ 157.50
Pickup Truck	\$ 27.00	\$ 135.00	\$ 405.00
Stake Truck	\$ 40.00	\$ 200.00	\$ 600.00
Semi Tractor w/ Trailer	\$ 65.00	\$ 325.00	\$ 975.00
All-Terrain Vehicle			
2-Seat 4wd	\$ 11.75	\$ 58.75	\$ 176.25
4-Seat 4wd	\$ 20.00	\$ 100.00	\$ 300.00
Mobile Cranes (mobilization/demobilization not included and will be priced per project)			
70 Ton (4-Hour Minimum)	\$ 240.00	Price on request	
100 Ton (6-Hour Minimum)	\$ 285.00	Price on request	
165 Ton (8-Hour Minimum)	\$ 325.00	Price on request	
200 Ton (8-Hour Minimum)	\$ 395.00	Price on request	
300 Ton (8-Hour Minimum)	\$ 445.00	Price on request	
350 Ton (8-Hour Minimum)	\$ 475.00	Price on request	
Tower Cranes (does not include mobilization/demobilization, labor or electrical costs)	\$ 233.00	\$ 1,167.00	\$ 3,500.00
Crawler Cranes (does not include mobilization/demobilization, labor or fuel)			
100 Ton	\$ 275.00	\$ 1,250.00	\$ 3,750.00
165 Ton	\$ 365.00	\$ 1,625.00	\$ 4,875.00
200 Ton	\$ 415.00	\$ 1,875.00	\$ 5,625.00
220 Ton	\$ 435.00	\$ 2,075.00	\$ 6,225.00
275 Ton	\$ 495.00	\$ 2,200.00	\$ 6,600.00
380 Ton	\$ 695.00	\$ 4,700.00	\$ 14,100.00
Rough Terrain Cranes (does not include mobilization/demobilization, labor or fuel)			
50 Ton	\$ 155.00	\$ 625.00	\$ 1,875.00
60 Ton	\$ 175.00	\$ 790.00	\$ 2,370.00
75 Ton	\$ 230.00	\$ 915.00	\$ 2,745.00
80 Ton	\$ 240.00	\$ 1,225.00	\$ 3,675.00
100 Ton	\$ 275.00	\$ 1,325.00	\$ 3,975.00
165 Ton	\$ 380.00	\$ 2,450.00	\$ 7,350.00
Deck Cranes (does not include mobilization/demobilization, labor or fuel)			
6 Ton	\$ 125.00	\$ 235.00	\$ 700.00
8.5 Ton	\$ 145.00	\$ 280.00	\$ 840.00
10 Ton	\$ 150.00	\$ 300.00	\$ 900.00
15 Ton	\$ 150.00	\$ 430.00	\$ 1,290.00
20 Ton	\$ 165.00	\$ 615.00	\$ 1,845.00
Extendable Boom Forklifts			
6,000 lbs	\$ 40.00	\$ 200.00	\$ 600.00
8,000 lbs	\$ 54.00	\$ 270.00	\$ 810.00
10,000 lbs	\$ 68.00	\$ 340.00	\$ 1,020.00
12,000 lbs	\$ 80.00	\$ 400.00	\$ 1,200.00
Tow Motors			
3,500 - 5,000 lbs	\$ 28.00	\$ 140.00	\$ 420.00
5,000 - 6,500 lbs	\$ 30.00	\$ 150.00	\$ 450.00
8,000 - 9,000 lbs	\$ 41.00	\$ 205.00	\$ 615.00
10,000 - 12,000 lbs	\$ 43.00	\$ 215.00	\$ 645.00
Versa Lift			
17,000 - 25,000 lbs	\$ 185.00	\$ 925.00	\$ 2,775.00
40,000 - 60,000 lbs	\$ 220.00	\$ 1,100.00	\$ 3,300.00
Boom Attachment	\$ 30.00	\$ 150.00	\$ 450.00
Material Duct Lift			
20' - 24'	\$ 10.00	\$ 50.00	\$ 150.00
Personnel Lifts			
Scissor Lift - Narrow			
12' - 15'	\$ 9.50	\$ 47.50	\$ 142.50
19' - 20'	\$ 15.80	\$ 79.00	\$ 237.00
26' - 32'	\$ 25.25	\$ 126.25	\$ 378.75
Scissor Lift - Wide			
26' - 39'	\$ 25.25	\$ 126.25	\$ 378.75
Scissor Lift - 4x4 Rough Terrain			
26' - 32'	\$ 25.25	\$ 126.25	\$ 378.75
33' - 43'	\$ 46.40	\$ 232.00	\$ 696.00
Boom Lifts			
30' - 45' Electric	\$ 34.50	\$ 172.50	\$ 517.50
45' Telescopic	\$ 46.50	\$ 232.50	\$ 697.50
65' Telescopic	\$ 66.50	\$ 332.50	\$ 997.50
85' Telescopic	\$ 110.00	\$ 550.00	\$ 1,650.00
125' Telescopic	\$ 195.00	\$ 975.00	\$ 2,925.00
135' Telescopic	\$ 200.00	\$ 1,000.00	\$ 3,000.00
60' Atrium Lift	\$ 160.00	\$ 800.00	\$ 2,400.00
Concrete Pumps			
85' - 105' Boom Pump	N/A	\$ 1,125.00	\$ 3,375.00
128' - 148' Boom Pump	N/A	\$ 1,500.00	\$ 4,500.00
Spider Placing Boom	N/A	\$ 1,000.00	\$ 3,000.00
Concrete Placer/Dragger	N/A	\$ 375.00	\$ 1,125.00
Concrete Trailer Pump	N/A	\$ 300.00	\$ 900.00

EQUIPMENT RENTAL RATES

		Hourly	Daily	Weekly
Walk-Behind Trowel	24" - 30" Edger	\$ 11.50	\$ 57.50	\$ 172.50
	36" Walk-Behind	\$ 12.50	\$ 62.50	\$ 187.50
	48" Walk-Behind	\$ 13.00	\$ 65.00	\$ 195.00
	36" Electric	\$ 12.50	\$ 62.50	\$ 187.50
Rider Trowel	30" Edger Double	\$ 35.60	\$ 178.00	\$ 534.00
	8' Double	\$ 60.00	\$ 300.00	\$ 900.00
	10' Double	\$ 105.00	\$ 525.00	\$ 1,575.00
Concrete Buckets	1/2 to 2 Yds	\$ 15.00	\$ 75.00	\$ 225.00
	3 yd+	\$ 18.00	\$ 90.00	\$ 270.00
Laser Screed	SOMERO S-15R - Ride-On	\$ 252.00	\$ 1,260.00	\$ 3,780.00
	SOMERO S-485 - Walk-Behind	\$ 120.40	\$ 602.00	\$ 1,806.00
	SOMERO - 3D Profiler System	\$ 63.00	\$ 315.00	\$ 945.00
Power Buggy	Small Gas/LP (16 cf)	\$ 15.50	\$ 77.50	\$ 232.50
	Large Gas/LP (21 cf)	\$ 24.00	\$ 120.00	\$ 360.00
	Electric Wheel Barrow	\$ 47.50	\$ 237.50	\$ 712.50
Screeds	Roller Screed System (up to 24')	\$ 24.00	\$ 120.00	\$ 360.00
	Vibra Strike 8' - 14'	\$ 21.00	\$ 105.00	\$ 315.00
	Vibra Strike 16' - 18'	\$ 41.00	\$ 205.00	\$ 615.00
Forming	Aluma Form Systems (\$/sq ft)	N/A	N/A	\$ 0.70
	EFCO Form Systems (\$/sq ft)	N/A	N/A	\$ 0.90
	MEVA Form Systems (\$/sq ft)	N/A	N/A	\$ 0.90
	PERI Form Systems (\$/sq ft)	N/A	N/A	\$ 0.95
	PERI Shoring Systems (\$/sq ft)	N/A	Price on request	
	Symons Form Systems (\$/sq ft)	N/A	N/A	\$ 0.45
Soft-Cut Floor Saws	6" - 7" Gas or Electric	\$ 21.00	\$ 105.00	\$ 315.00
	10" Gas Powered	\$ 47.00	\$ 235.00	\$ 705.00
	12" - 14" Gas Powered	\$ 60.00	\$ 300.00	\$ 900.00
Excavating Equipment				
Backhoe/Loader		\$ 95.00	\$ 475.00	\$ 1,425.00
Mini Excavator 4000 - 7000 lbs		\$ 47.00	\$ 235.00	\$ 705.00
Skid Steer 1200 - 2200 lbs		\$ 34.00	\$ 170.00	\$ 510.00
Skid Steer 2300 - 2900 lbs		\$ 52.00	\$ 260.00	\$ 780.00
Power Broom		\$ 19.00	\$ 95.00	\$ 285.00
Buster Power		\$ 37.00	\$ 185.00	\$ 555.00
Power Auger		\$ 16.00	\$ 80.00	\$ 240.00
Bulldozer		\$ 64.00	\$ 320.00	\$ 960.00
Compactor		\$ 14.00	\$ 70.00	\$ 210.00
Compactor Reversing		\$ 27.00	\$ 135.00	\$ 405.00
Demolition Equipment				
Brokk	Model 180	\$ 160.00	\$ 800.00	\$ 2,400.00
	Model 240	\$ 226.00	\$ 1,130.00	\$ 3,390.00
Concrete Wall Cutting System			Price on request	
Floor Saws (Electric)	16" - 18"	\$ 19.60	\$ 98.00	\$ 294.00
	30"	\$ 34.00	\$ 170.00	\$ 510.00
Floor Saws (Gas)	36"	\$ 49.50	\$ 247.50	\$ 742.50
	24" - 30"	\$ 36.50	\$ 182.50	\$ 547.50
		\$ 5.00	\$ 25.00	\$ 75.00
Hammer - Air Chipping		\$ 9.00	\$ 45.00	\$ 135.00
Hammer - Demo (Electric)				
Hammer - Air	15 - 30 lb	\$ 5.25	\$ 26.25	\$ 78.75
	60 - 90 lb	\$ 8.00	\$ 40.00	\$ 120.00
Hammer - Electric Breaker		\$ 16.00	\$ 80.00	\$ 240.00
Trash Chute		N/A	\$ 125.00	\$ 375.00
Trailers				
Project Office Trailers	10' x 36'	N/A	\$ 40.00	\$ 120.00
	12' x 56'	N/A	\$ 50.00	\$ 150.00
	24' x 56'	N/A	\$ 100.00	\$ 300.00
	36' x 56'	N/A	\$ 150.00	\$ 450.00
Guard Shack		N/A	\$ 50.00	\$ 150.00
Utility		N/A	\$ 50.00	\$ 150.00
Enclosed Trailers	12'	N/A	\$ 22.00	\$ 66.00
	16' - 20'	N/A	\$ 50.00	\$ 150.00
Restroom Trailer		N/A	\$ 175.00	\$ 525.00
Storage Containers	10' - 20'	\$ 6.50	\$ 32.50	\$ 97.50
	40'	\$ 10.00	\$ 50.00	\$ 150.00

EQUIPMENT RENTAL RATES

Welding

Welder - Diesel Trailer Mounted
 Welder - Gas
 Welder - LP
 Welder - Electric
 Welder - Stud - Diesel
 Welder - Stud - Electric
 Welder - Wire Feed
 Fume Cleaner
 Plasma Cutter 110v cut up to 5/8"
 Plasma Cutter 480v cut up to 1 3/4"

Transit/Laser/Layout

Robotic Total Station
 X7 3-D Laser Scanner System
 FARO Laser System (includes vehicle)
 Geo Laser (horizontal & vertical precision laser)
 Slope Laser
 Level Lasers
 Transit - Optical
 Optical Boxes
 Optical Stands
 Transit - Theodolites

Alignment

Belt Hog
 Sheave Master
 Rotalign Equipment
 Cardan Shaft Bracket
 Optalign

Hydro Mobile Scaffold

Hydro Mobile Transport Platform
 Hydro Mobile 24' Motor Unit
 Hydro Mobile 14' Motor Unit
 Hydro Mobile 10' Insert
 Hydro Mobile 5' Insert
 Hydro Mobile 2' Insert
 Hydro Mobile 18' Bridge
 Hydro Mobile 6' Bridge

Masonry

Mortar Mixer - Gas/Electric

6 cu ft
 12 cu ft

Grout Hog

Masonry Saw

14" Dustless
 14" Electric
 20" Gas
 20" Electric
 Brick & Mortar
 Saw Dust Collector

Stone Cutter

Material Unit Lift Enhancer (MULE)

Air Quality

Air Pressure Monitor
 Power Air Purifying Respirator (PAPR)
 Concrete Dust Vacuum

135 cfm
 285 cfm

Heaters

Natural Gas/LP

200k - 400k
 420k - 1.0m
 1.0m - 1.5m

Dehumidifier

HEPA System

500 - 750 cfm
 1400 - 2100 cfm

HEPA Cart (soft containment cart)

HEPA Cart (hard containment cart)

Environmental Partitions

Room pressure monitor

General Construction Equipment

Air Compressor

Diesel
 Gas
 Electric

Pressure Washer

Gas 2500 - 4000 psi
 Gas (Hot water) 3500 psi
 Electric 110v

Floor Sweeper

Floor Scrubber

Walk-Behind
 Riding
 Walk-Behind Self-Propelled

	Hourly	Daily	Weekly
Welder - Diesel Trailer Mounted	\$ 42.00	\$ 210.00	\$ 630.00
Welder - Gas	\$ 11.00	\$ 55.00	\$ 165.00
Welder - LP	\$ 11.00	\$ 55.00	\$ 165.00
Welder - Electric	\$ 7.00	\$ 35.00	\$ 105.00
Welder - Stud - Diesel	\$ 110.00	\$ 550.00	\$ 1,650.00
Welder - Stud - Electric	\$ 58.00	\$ 290.00	\$ 870.00
Welder - Wire Feed	\$ 7.00	\$ 35.00	\$ 105.00
Fume Cleaner	\$ 9.00	\$ 45.00	\$ 135.00
Plasma Cutter 110v cut up to 5/8"	\$ 10.00	\$ 50.00	\$ 150.00
Plasma Cutter 480v cut up to 1 3/4"	\$ 21.00	\$ 105.00	\$ 315.00
<u>Transit/Laser/Layout</u>			
Robotic Total Station	\$ 26.00	\$ 130.00	\$ 390.00
X7 3-D Laser Scanner System	N/A	\$ 600.00	\$ 1,800.00
FARO Laser System (includes vehicle)	N/A	\$ 945.00	\$ 4,725.00
Geo Laser (horizontal & vertical precision laser)	\$ 16.00	\$ 80.00	\$ 240.00
Slope Laser	\$ 14.00	\$ 70.00	\$ 210.00
Level Lasers	\$ 10.50	\$ 52.50	\$ 157.50
Transit - Optical	\$ 5.25	\$ 26.25	\$ 78.75
Optical Boxes	\$ 50.00	\$ 250.00	\$ 750.00
Optical Stands	\$ 4.00	\$ 20.00	\$ 60.00
Transit - Theodolites	\$ 13.50	\$ 67.50	\$ 202.50
<u>Alignment</u>			
Belt Hog	\$ 33.90	\$ 169.50	\$ 508.50
Sheave Master	\$ 15.00	\$ 75.00	\$ 225.00
Rotalign Equipment	\$ 65.00	\$ 325.00	\$ 975.00
Cardan Shaft Bracket	\$ 19.00	\$ 95.00	\$ 285.00
Optalign	\$ 45.00	\$ 225.00	\$ 675.00
<u>Hydro Mobile Scaffold</u>			
Hydro Mobile Transport Platform	\$ 42.20	\$ 211.00	\$ 633.00
Hydro Mobile 24' Motor Unit	\$ 62.50	\$ 312.50	\$ 937.50
Hydro Mobile 14' Motor Unit	\$ 54.00	\$ 270.00	\$ 810.00
Hydro Mobile 10' Insert	\$ 8.00	\$ 40.00	\$ 120.00
Hydro Mobile 5' Insert	\$ 5.00	\$ 25.00	\$ 75.00
Hydro Mobile 2' Insert	\$ 5.00	\$ 25.00	\$ 75.00
Hydro Mobile 18' Bridge	\$ 15.00	\$ 75.00	\$ 225.00
Hydro Mobile 6' Bridge	\$ 5.00	\$ 25.00	\$ 75.00
<u>Masonry</u>			
Mortar Mixer - Gas/Electric	\$ 11.00	\$ 55.00	\$ 165.00
	\$ 14.00	\$ 70.00	\$ 210.00
Grout Hog	\$ 20.00	\$ 100.00	\$ 300.00
Masonry Saw	\$ 10.20	\$ 51.00	\$ 153.00
	\$ 10.20	\$ 51.00	\$ 153.00
	\$ 18.40	\$ 92.00	\$ 276.00
	\$ 12.20	\$ 61.00	\$ 183.00
	\$ 10.20	\$ 51.00	\$ 153.00
	\$ 35.00	\$ 175.00	\$ 525.00
	\$ 5.00	\$ 25.00	\$ 75.00
	\$ 90.00	\$ 450.00	\$ 1,350.00
<u>Air Quality</u>			
Air Pressure Monitor	N/A	\$ 100.00	\$ 300.00
Power Air Purifying Respirator (PAPR)	\$ 21.00	\$ 105.00	\$ 315.00
Concrete Dust Vacuum	\$ 5.25	\$ 26.25	\$ 78.75
	\$ 16.00	\$ 80.00	\$ 240.00
Heaters			
Natural Gas/LP	\$ 15.00	\$ 75.00	\$ 225.00
	\$ 20.00	\$ 100.00	\$ 300.00
	\$ 22.00	\$ 110.00	\$ 330.00
	\$ 15.00	\$ 75.00	\$ 225.00
Dehumidifier			
HEPA System	\$ 13.00	\$ 65.00	\$ 195.00
	\$ 16.25	\$ 81.25	\$ 243.75
	\$ 8.75	\$ 43.75	\$ 131.25
	\$ 32.00	\$ 160.00	\$ 480.00
	\$ 10.00	\$ 50.00	\$ 150.00
<u>General Construction Equipment</u>			
Air Compressor			
	\$ 18.00	\$ 90.00	\$ 270.00
	\$ 8.00	\$ 40.00	\$ 120.00
	\$ 5.00	\$ 25.00	\$ 75.00
Pressure Washer			
	\$ 14.00	\$ 70.00	\$ 210.00
	\$ 23.50	\$ 117.50	\$ 352.50
	\$ 5.25	\$ 26.25	\$ 78.75
	\$ 12.50	\$ 62.50	\$ 187.50
Floor Sweeper			
Floor Scrubber			
	\$ 24.75	\$ 123.75	\$ 371.25
	\$ 44.00	\$ 220.00	\$ 660.00
	\$ 32.00	\$ 160.00	\$ 480.00

EQUIPMENT RENTAL RATES

		Hourly	Daily	Weekly
Floor Stripper (Riding)		\$ 107.00	\$ 535.00	\$ 1,605.00
Floor Stripper (Walk-Behind Self-Propelled)		\$ 32.00	\$ 160.00	\$ 480.00
Carpet Puller		\$ 16.25	\$ 81.25	\$ 243.75
Generator				
Large Power - Diesel				
	8kw	\$ 42.00	\$ 210.00	\$ 630.00
	40-50kw	\$ 47.25	\$ 236.25	\$ 708.75
	70-80kw	\$ 53.40	\$ 267.00	\$ 801.00
	175kw	\$ 92.00	\$ 460.00	\$ 1,380.00
	230kw	\$ 115.00	\$ 575.00	\$ 1,725.00
Gas				
	2000w	\$ 7.50	\$ 37.50	\$ 112.50
	3000w	\$ 10.50	\$ 52.50	\$ 157.50
	4000 - 6000w	\$ 12.50	\$ 62.50	\$ 187.50
Fans				
	Cage Fan	\$ 7.25	\$ 36.25	\$ 108.75
	Drum Fan	\$ 3.60	\$ 18.00	\$ 54.00
	Tube Fan	\$ 3.00	\$ 15.00	\$ 45.00
Rebar Tier		\$ 19.00	\$ 95.00	\$ 285.00
Hytorc Pump		\$ 40.00	\$ 200.00	\$ 600.00
Hytorc Wrench				
	Hytorc Wrench XLCT2	\$ 13.30	\$ 66.50	\$ 199.50
	Hytorc Wrench 3/4" 1MXT	\$ 25.00	\$ 125.00	\$ 375.00
	Hytorc Wrench 1" 3MXT	\$ 30.00	\$ 150.00	\$ 450.00
	Hytorc Wrench 1-1/2" 5MXT	\$ 40.00	\$ 200.00	\$ 600.00
	Hytorc Wrench Stealth 2	\$ 17.80	\$ 89.00	\$ 267.00
	Hytorc Wrench Stealth 4	\$ 21.55	\$ 107.75	\$ 323.25
	Hytorc Wrench Stealth 8	\$ 25.40	\$ 127.00	\$ 381.00
	Hytorc Wrench Stealth 14	\$ 29.30	\$ 146.50	\$ 439.50
	Hytorc Ratchet Link XLCT3	\$ 12.50	\$ 62.50	\$ 187.50
	Hytorc Ratchet Link Stealth 2	\$ 15.90	\$ 79.50	\$ 238.50
	Hytorc Ratchet Link Stealth 4	\$ 21.00	\$ 105.00	\$ 315.00
	Hytorc Ratchet Link Stealth 8	\$ 25.40	\$ 127.00	\$ 381.00
	Hytorc Ratchet Link Stealth 14	\$ 27.60	\$ 138.00	\$ 414.00
Hydraulic Punch		\$ 11.00	\$ 55.00	\$ 165.00
Sediment Box		\$ 10.00	\$ 50.00	\$ 150.00
Air Skate Machine Dolly System				
	25,000 lb system	\$ 28.15	\$ 140.75	\$ 422.25
	75,000 lb system	\$ 63.00	\$ 315.00	\$ 945.00
Pallet Jack - Electric		\$ 14.25	\$ 71.25	\$ 213.75
Pallet Stacker - Electric		\$ 24.00	\$ 120.00	\$ 360.00
Heavy Hauler Machine Dolly				
	12K	\$ 3.50	\$ 17.50	\$ 52.50
	20K	\$ 4.00	\$ 20.00	\$ 60.00
	50K	\$ 5.00	\$ 25.00	\$ 75.00
Hillman Machine Dolly				
	15T	\$ 6.25	\$ 31.25	\$ 93.75
	25T	\$ 7.00	\$ 35.00	\$ 105.00
	65T	\$ 10.00	\$ 50.00	\$ 150.00
Hard Deck Machine Dolly		\$ 10.00	\$ 50.00	\$ 150.00
Machine Dolly - Nylon Wheels				
	36,000 lb Steerable	\$ 9.00	\$ 45.00	\$ 135.00
	50 Ton	\$ 50.00	\$ 250.00	\$ 750.00
Water Wagon		\$ 17.00	\$ 85.00	\$ 255.00
Street Sweeper		\$ 42.00	\$ 210.00	\$ 630.00
Rebar Locator		\$ 65.00	\$ 325.00	\$ 975.00
Epoxy Grout Mixer				
	Electric	\$ 12.20	\$ 61.00	\$ 183.00
	Hydraulic w/ Power Pack	\$ 96.00	\$ 480.00	\$ 1,440.00
Ground Heaters				
	Ground (6,000 sq ft)	\$ 111.20	\$ 556.00	\$ 1,668.00
	Ground (12,000 sq ft)	\$ 186.50	\$ 932.50	\$ 2,797.50
	Hose Reel	\$ 80.00	\$ 400.00	\$ 1,200.00
	Remote Manifold	\$ 20.00	\$ 100.00	\$ 300.00
	Bearing Heater	\$ 20.00	\$ 100.00	\$ 300.00
Chain Hoist				
Air				
	1 ton	\$ 8.00	\$ 40.00	\$ 120.00
	2 ton	\$ 9.50	\$ 47.50	\$ 142.50
Electric				
	1/2 - 1 ton	\$ 11.00	\$ 55.00	\$ 165.00
	2 ton	\$ 12.00	\$ 60.00	\$ 180.00
	3 ton	\$ 17.00	\$ 85.00	\$ 255.00
Gear Pullers				
	30 ton - set	\$ 11.00	\$ 55.00	\$ 165.00
	50 ton - set	\$ 14.00	\$ 70.00	\$ 210.00
	8 - 17 ton	\$ 5.00	\$ 25.00	\$ 75.00
	30 - 50 ton	\$ 14.00	\$ 70.00	\$ 210.00
	100 ton	\$ 28.00	\$ 140.00	\$ 420.00

EQUIPMENT RENTAL RATES

		Hourly	Daily	Weekly
Air Tugger		\$ 21.00	\$ 105.00	\$ 315.00
400 Ton Hydraulic Jacking System		\$ 24.00	\$ 120.00	\$ 360.00
Jon Boat		\$ 8.00	\$ 40.00	\$ 120.00
Barge		\$ 31.00	\$ 155.00	\$ 465.00
Submersible Pumps - Electric				
	2" 110V	\$ 7.60	\$ 38.00	\$ 114.00
	3" 220V	\$ 8.50	\$ 42.50	\$ 127.50
	4" 220V	\$ 14.75	\$ 73.75	\$ 221.25
	3" & 4" 460V	\$ 19.00	\$ 95.00	\$ 285.00
Trash Pumps				
	2" & 3" Gas	\$ 14.70	\$ 73.50	\$ 220.50
	4" Gas	\$ 15.40	\$ 77.00	\$ 231.00
Gantry				
	Aluminum 2 Ton Capacity	\$ 15.70	\$ 78.50	\$ 235.50
Steel Setup				
	Small	\$ 5.25	\$ 26.25	\$ 78.75
	Medium	\$ 5.25	\$ 26.25	\$ 78.75
	Large	\$ 5.25	\$ 26.25	\$ 78.75
Roof Safety Cart		\$ 11.00	\$ 55.00	\$ 165.00
Multi Gas Air Monitor		\$ 20.00	\$ 100.00	\$ 300.00
Vessel Entry Tripod w/ Winch		\$ 14.00	\$ 70.00	\$ 210.00
Light Tower		\$ 25.00	\$ 125.00	\$ 375.00
Equipment Box		\$ 44.00	\$ 220.00	\$ 660.00
Equipment Box (compact)		\$ 22.00	\$ 110.00	\$ 330.00
Rigging Box		\$ 50.00	\$ 250.00	\$ 750.00
Hydraulic Puller Box		\$ 50.00	\$ 250.00	\$ 750.00
Saws				
Cutoff Saw				
	14" Gas	\$ 6.10	\$ 30.50	\$ 91.50
	14" Dustless Electric	\$ 7.00	\$ 35.00	\$ 105.00
Compound Miter Box		\$ 6.75	\$ 33.75	\$ 101.25
Large Cutoff Band Saw		\$ 10.50	\$ 52.50	\$ 157.50
Hydraulic Ring Saw		\$ 57.75	\$ 288.75	\$ 866.25
Hydraulic Power Unit		\$ 20.00	\$ 100.00	\$ 300.00
Diamond Chain Saw Hydraulic		\$ 63.00	\$ 315.00	\$ 945.00
Diamond Chain Gas		\$ 63.00	\$ 315.00	\$ 945.00
Cut & Break Saw		\$ 25.70	\$ 128.50	\$ 385.50
Table Saw - 10"		\$ 7.00	\$ 35.00	\$ 105.00
Drills				
Core Drills				
	Electric	\$ 17.00	\$ 85.00	\$ 255.00
	Electric Handheld	\$ 8.00	\$ 40.00	\$ 120.00
	Handheld Drill Stand	\$ 1.60	\$ 8.00	\$ 24.00
	Gas Powered	\$ 8.50	\$ 42.50	\$ 127.50
	Electric Core Drill Vacuum Pump	\$ 1.60	\$ 8.00	\$ 24.00
	Hydraulic	\$ 10.00	\$ 50.00	\$ 150.00
Air Drills				
	Small	\$ 6.00	\$ 30.00	\$ 90.00
	Large	\$ 7.00	\$ 35.00	\$ 105.00
Magnetic Hole Hawg		\$ 12.00	\$ 60.00	\$ 180.00
Guns				
Lejune Gun (TC Gun)				
	3/4"-1"	\$ 10.00	\$ 50.00	\$ 150.00
	1-1/8"	\$ 12.00	\$ 60.00	\$ 180.00
	Low-Profile	\$ 15.50	\$ 77.50	\$ 232.50
Rotation Gun		\$ 12.00	\$ 60.00	\$ 180.00
Powder Actuated Guns				
	Bar Joist	\$ 15.00	\$ 75.00	\$ 225.00
	Structural	\$ 15.00	\$ 75.00	\$ 225.00



M E M O R A N D U M

TO: Mayor Lang and Members of the Common Council
FROM: James Merten, Traffic Engineer
DATE: June 24, 2022
RE: S. Lake Street No Parking Zone Proposal

Over the past several years, staff have received complaints regarding the Starbucks drivethru queues overflowing onto S. Lake Street, which sometimes create bottlenecks at the Winneconne Avenue roundabout exit onto S. Lake Street. The frequency of these complaints has intensified in recent years. To address these concerns, staff propose redistributing the existing S. Lake Street road width via pavement markings, shifting the travel lanes further to the northwest (away from Starbucks). In order to do so, a no parking zone will be required on the northwest side of the street that does not currently exist. I believe we can achieve two primary benefits: (1) to reduce friction between northbound through traffic and queued drivethru traffic by allocating more space for both to exist simultaneously and (2) to reduce the occurrence of pinched traffic exiting the roundabout by providing clear pavement marking delineation designating where a stopped vehicle can and cannot be.



In order to provide a design which avoids awkward lane markings and weaving movements, staff propose to place a no parking anytime zone along the entire stretch of S. Lake Street from W. Winneconne Avenue to S. Western Avenue (see above). It should be worth noting, this would override a small no parking 7 AM – 6 PM zone in front of the apartments at 1005 S. Lake Street. Vehicle parking along this stretch has been observed to be unutilized except by Auto Trim and Design at 990 S. Lake Street, which primarily uses the southeast side. Staff does not

anticipate any hardships created by the creation of the no parking anytime zone. All abutting property owners were given notice of this meeting on June 24th.

If approved, staff estimate pavement marking and signing changes to cost \$5,000, which would be funded by the pavement marking capital improvement budget and traffic operating budget, respectively.

Staff recommends a “no parking anytime” zone on the northwest side of S. Lake Street from W. Winneconne Avenue to S. Western Avenue to be installed and codified by ordinance within six months upon Common Council approval.



Neenah Special Event Permit Application

Event

Name FOX VALLEY LABOR COUNCIL; AFL-CIO

Webpage WWW.WI.AFLCIO.ORG/FOX VALLEY

Description

- Festival/Concert/Exhibition
 Parade/March
 Other:
 Tournament
 Competitive Race
 Assembly/Rally
 Non-Competitive Run/Walk

List the event activities to take place (or attach brochure):

SEE ATTACHED LETTER #1

Schedule

Date(s)	Setup Time	Start Time	End Time	Cleanup Time
<u>9-5-22</u>		<u>10:00 AM</u>	<u>11:00 AM</u>	

Attendance

List estimated quantities:

Participants 45

Spectators _____

List any entry fees: _____

Location

Park/Public Property:

Public Street/Sidewalk/Trail: SEE ATTACHED LETTER #2

Private Property/Other:

Applicant

Name MARK WESTPHAL Daytime Phone 920-727-4781

Email SSWES@EARTHLINK.NET Cell Phone NA

Organization

Name FVALC AFL-CIO Tax Exempt No. 39-0496246

Email SSWES@EARTHLINK.NET Phone 920-727-1790

Address P.O. Box 186

City MENASHA, WI State WI Zip Code 54952

The organization shall incur all City service and equipment costs associated with the event. 501(c) organizations with a valid tax exempt certificate receive reduced rates for services/equipment provided by the City. See Municipal Code §14-129(g) for details.



Fox Valley Area Labor Council AFL-CIO

P.O. Box 186
Menasha, Wisconsin 54952-0186
920-727-1790 Phone
920-727-1794 Fax
www.wi.aflcio.org/foxvalley



April 8, 2022

To: ALL FOX VALLEY AREA LOCAL UNIONS

Re: LABOR DAY FESTIVAL 2022

The Fox Valley Area Labor Council is preparing for our 39th Annual Labor-Fest and Parade. Our celebration will be held on Monday September 5, 2022. Our Parade will start the festivities at 10:00 am. The Parade will start in Menasha at Curtis Reed Square and proceed into Neenah ending at the intersection of Church and West Main Streets. Please find a Parade entry form enclosed.

Because of the construction of the new Racine Street Bridge in Menasha final details for the Parade are still pending. However, **be assured there will be a Parade** and we will pass along the details to participates when they become finalized.

"A Thank You to Working Families Picnic" will be held at the Neenah Labor Temple, 157 South Green Bay Road in Neenah, 11:00 am through 5:00 pm. Live music and children's entertainment will be available. Food, refreshments, and raffles are also on the schedule. **This event is open to the public!**

We will NOT be publishing our usual Ad Book. However, we are still requesting that **ALL LOCAL UNIONS help us out by providing a donation to off set the considerable cost of this event.** It is our hope that your donation would be consistent with the amount that your local union has graciously given in the past years to assist us in our efforts. All donating Local Unions will be recognized on our Face Book Page and on displays at the Picnic.

Please submit your payment as soon as possible but no later than August 19, 2022 to FVALC Labor-Fest Committee. P.O. Box 186 Menasha, WI 54952

YOUR HELP and PARTICIPATION are vital for our shared success. All donations are greatly appreciated. The expense of presenting this great tradition continues to grow each year. Your solidarity is needed to ensure a successful event. We will be highlighting the visibility of today's Local Labor Movement and its importance to the community.

I would encourage and hope that all of you will join our Labor-Fest Celebration in some manner.

Thank you and Solidarity,

Mark Westphal, President



Fox Valley Area Labor Council AFL-CIO

P.O. Box 186
Menasha, Wisconsin 54952-0186
920-727-1790 Phone
920-727-1794 Fax
www.wi.aflcio.org/foxvalley



July, 2022

Dear Labor Day Parade Participant,

The Fox Valley Area Labor Council is preparing for its 2022 observance of Labor Day.

This will be our **39th Annual Celebration**. One of the highlights of this event is the Parade through the Cities of Menasha and Neenah on **Monday, September 5, 2022**. Would you be interested in celebrating along with us by joining in the Parade festivities?

The Parade will begin at Curtis Reed Square, in Downtown Menasha, at 10:00 am. Please have your entry in the Parking Lot of Germania Hall, 320 Chute Street, Menasha WI., **by 9:30 am. to receive your line-up position (number) and instructions.**

The Parade route will travel west down Main Street in Menasha. It will proceed to Tayco Street, in Menasha, and then turn south, crossing both Tayco Street and Washington Street Bridges. We will enter Neenah on Commercial Street and continue moving south. At Main Street, in Downtown Neenah, the Parade will turn right and head west to the intersection of Church Street and Main Street where the Parade will conclude.

Please note the construction of the Racine Street Bridge will not be completed by Labor Day. The City of Menasha will close the Parade route down to thru traffic but they are requesting that we keep one lane of the street accessible for emergency vehicles, if needed. Please do your best to comply with these orders.

Please join us in the Parade and help make our Labor Day event a success! Enclosed is a Parade entry form. Please fill it out and return by August 25th, 2021

Fox Valley Area Labor Council, P.O. Box 186 Menasha, WI 54952
Or return by email to sswes@earthlink.net

Sincerely,

Mark Westphal
President



Neenah Special Event Permit Application

Police Department

Contact: Lieutenant Jon Kuffel

Phone: +1 (920) 886-6018

Address: 2111 Marathon Ave. Neenah, WI 54956

Email: jkuffel@ci.neenah.wi.us

1. Will you be using the Emergency Response Protocol supplied by the city? (See supplement.) Yes No

The protocol is a set of procedures to be used for various crises including inclement weather, medical emergencies, and disorderly conduct scenarios. It establishes responsibilities and expectations between the event organizer and emergency services in the event of a crisis. If you choose not follow the protocol provided by the city, attach a crisis management plan to this application. All plans must be approved by Neenah Police and Neenah-Menasha Fire Rescue.

2. List at least two Event Coordinator contacts who will be on-site during the event to address issues that might arise.

Event Coordinators are responsible for executing the Emergency Response Protocol.

Name MARK WESTPHAL Phone 920-850-4855 (C)

Name RICK VANDEN HEUVEL Phone 920-209-9076 (C)

3. Will there be security/crowd control services on-site? If so, please list contractor: Yes No

Name _____ Phone _____

4. Will there be first aid/emergency responders on site? If so, please list contractor: Yes No

Name _____ Phone _____

5. Describe the communication method/equipment that will be used to notify event staff/volunteers of emergencies:

CELL PHONES

6. Describe the communication method/equipment that will be used to notify event attendees of emergencies:

P.A. SYSTEM

7. Identify the locations of the following (be specific):

Locations may instead be located on a map submitted with this permit. If a service is not provided or is not applicable, write in "N/A".

Loudspeaker/PA System BEVERAGE TENT

Lost Child Recovery Site _____

Severe Weather Shelter(s) INSIDE BUILDING

First Aid Station(s) _____

Enclosed/Fenced Area(s) PARKING LOT OF LABOR TEMPLE

Enclosed areas are required for alcohol consumption. Entrances and exits must be numbered and labeled for any enclosed/fenced areas.



Neenah Special Event Permit Application

Neenah-Menasha Fire Rescue

Contact: Assistant Chief Vernon Green Phone: +1 (920) 886-6201
Address: 125 E. Columbian Ave. Neenah, WI 54956 Email: vgreen@nmfire.org

- 8. Will there be any pyrotechnics or open burning? Yes No
A [Fireworks/Open Burning Permit](#) is required. Applications should be filed separately with Neenah-Menasha Fire Rescue.
- 9. Will there be any generators used? Yes No
- 10. Will there be any cooking operations? Yes No
- 11. Will there be any tents or canopies? Yes No
- 12. Will there be any use of drones? Yes No

Winnebago County Health Department

Contact: Env. Health Specialist Jennifer Bonzelet Phone: +1 (920) 232-3000
Address: 112 Otter St. Oshkosh, WI 54901 Email: jbonzetlet@co.winnebago.wi.us

- 13. Will there be any food or beverages prepared or served? Yes No
If yes, contact the Winnebago County Health Department.
- 14. Will there be any portable toilets and/or wash stations? Yes No
- 15. Will there be any water activities (ie. dunk tanks, water slides)? Yes No
- 16. Will there be any animals? Yes No

Clerk's Office

Contact: City Clerk Patty Sturn Phone: +1 (920) 886-6100
Address: 211 Walnut St. Neenah, WI 54956 Email: psturn@ci.neenah.wi.us

- 17. Will there be amplified music or announcements used for the event? Yes No
- 18. Will amplified sound be within 7 am - 10 pm on weekdays & 10 am - 11 pm on weekends/holidays? Yes No
If not, a special exemption must be requested and approved as part of this application. List the intended hours of amplified sound (per day, if applicable):
Start Time 11:00 AM End Time 5:00 PM 9-5-22 PARADE
- 19. Will there be any alcohol served? Yes No
A [Temporary Class B Picnic License](#) is required. Applications should be filed separately with the Clerk's Office.
- 20. Will there be any vendors/concessions? If so, please list: Yes No
Vendors will need to have a [Solicitor Permit](#) filed with the Clerk's Office.

VOLUNTEERS WILL BE GRILLING OUTSIDE
SERVING FOOD IN SIDE; BEVERAGE TENT



Neenah Special Event Permit Application

Traffic Department

Contact: Traffic Engineer James Merten
Address: 211 Walnut St. Neenah, WI 54956

Phone: +1 (920) 886-6243
Email: jmerten@ci.neenah.wi.us

21. Will the event close any street/sidewalk/trail (or portions thereof) to traffic? Yes No
 Any adjacent properties must be notified by the applicant 5 weekdays in advance of the event. A copy of the notification must be submitted and approved by the City Traffic Engineer.
22. Will you be providing volunteers to direct traffic? Yes No
 All volunteers must be properly equipped, trained, and supplied with the [Volunteer Flagger Instructions](#). (See attached.)
23. Is any city traffic control equipment or services being requested? If so, check all that apply: Yes No
- Barricade/Sign Equipment
 Check if you are requesting equipment to be delivered to the event grounds. Equipment will need to be moved to their placement locations during the event.
 - Barricade/Sign Placement
 Check if you are requesting equipment to be placed by the City during the event times.
 - Flaggers to Direct Traffic
 Availability of community service aides (CSAs) and/or police officers are not guaranteed.
 - Traffic Signal Programming
 Check if modifications to the traffic signal timing plans may be needed for the event.
 - Message Boards
 Message boards may be used to give advanced notification of street closures for the event.

24. Will a private contractor be used for barricading/signing equipment or services? If so, please list contractor: Yes No
 Any traffic control plan not supplied by the City must be approved by the Traffic Department.

Name _____ Phone _____

25. List any shuttle services (including route locations) being provided for the event:

26. List any locations to be used for either attendee or event staff parking:

27. Please identify handicap accessible parking locations and accommodations:



Neenah Special Event Permit Application

Parks & Recreation Department

Contact: Parks & Recreation Office
Address: 211 Walnut St. Neenah, WI 54956
Phone: +1 (920) 886-6060
Email: parkrec@ci.neenah.wi.us

Public Works Department

Contact: Traffic Engineer James Merten
Address: 211 Walnut St. Neenah, WI 54956
Phone: +1 (920) 886-6243
Email: jmerten@ci.neenah.wi.us

28. Will there be any equipment requiring ground anchoring (ie. tents, fences)? If so, please list locations: Yes No
on private property, rented tent from contractor

- Public Park/Property: _____
- Public Street/Trail: _____
- Other: _____

Any stakes or ground anchoring systems proposed on public property must be approved for their locations. Diggers Hotline (Website: www.diggershotline.com, Phone: 811) must be contacted a minimum of 4 working days before any ground anchors are placed.

29. If there are any portable toilets or wash stations (Question #14), identify proposed locations:

- Public Park/Property: _____
- Public Street/Trail: _____
- Other: _____

30. Have the park shelters been pre-reserved with the Park & Recreation Department?
Park reservations must be completed before submittal of this application.

Yes No *N/A*

31. Are you requesting any street sweeping services to be provided by the city?

Yes No

32. Will there be any dumpsters and/or portable trash receptacles provided?

Yes No

32. Will the event utilize environmentally conscious practices and/or provide recycling receptacles?

Yes No

33. What tasks will be conducted to ensure the event site remains clean throughout (and after) the event?

N/A

34. Please list any additional equipment or services requested to be provided by the city:

N/A

*N/A
all on
private
property*



Neenah Special Event Permit Application

Checklist

Required to process application:

- Application filed with the Mayor's Office within 45 days prior to the event (or 10 days, if there is no full/partial street closure).
Special exceptions must be approved by the Special Events Task Force and the Mayor.
- \$75 application fee. (Not applicable if there is no full/partial street closure.) Receipt No: _____
Payment can be made at the Department of Legal & Administrative Services, 211 Walnut Street Neenah, WI 54956.
- Reservation of park facilities.
Reservations may be made at the Parks & Recreation Office, 211 Walnut Street Neenah, WI 54956. See Question #30.
- Supplemental permits filed.
See Questions #8 (Fireworks/Open Burning Permit), #13 (Food Vending Permit), #19 (Temporary Class B Picnic License), and #20 (Vendor/Solicitor License).
- A detailed map of the event site/route.
A map identifying the event footprint and layout must be submitted with this application.
- A crisis management plan.
Required when not following the Emergency Response Protocol that is provided by the City. See Question #1.

Required to approve application:

- Liability insurance certificate.
Policy must include \$1,000,000 of general liability per occurrence (no exclusions) naming the City of Neenah, its officers, council members, agents, employees, and authorized volunteers as additional insured(s).
- Street closure notification letter.
Required when properties adjacent to or are enclosed within a closed street or street network. Letters must be pre-approved by the City and must be delivered 5 days working days before the event start date.
- Participant waiver forms.
Any waivers of liability signed by participants of the event must also include the City of Neenah (using the same language as for the liability insurance certificate).
- Traffic control plan.
Required when a contractor is providing traffic control services. Traffic control plans must be approved by the Traffic Department.
- Follow through with any contingencies required for approval of this permit application.
Contingencies are determined upon approval of the permit application. The City reserves the right to revoke a permit if any contingency is not met.

Provisions & Terms

This permit is intended to clarify the working relationship between the Applicant of the special event and the City of Neenah. The Applicant agrees to abide by the terms of this permit and all existing policies governing use of City facilities unless specifically noted in the permit. Regulations in Municipal Code §14-125 through §14-132 shall apply to this permit.

Once filed with the Department of Legal & Administrative Services, this permit will be reviewed by the Special Events Task Force. Upon task force recommendation for approval, per Municipal Code §14-129(b)(1), Class B permit applications are approved by the Public Works Director or designee and Class C permit applications are approved by the Public Services & Safety Committee and the City Council. A copy of an approved application will be sent to the Applicant as confirmation of the approved permit. The Applicant is responsible for complying with any contingencies applied to this permit. Failure to do so shall void this permit.

No changes may be made by the Applicant, regarding items included in this agreement, unless written permission is attached to this document. When questions regarding this agreement arise, they should be directed to the appropriate Department. If questions arise during the event and the Department representative is unavailable, the decision of City Staff on duty shall prevail.

Staff and equipment needed to run the event are the responsibility of the Applicant. City services and equipment may be provided at the discretion of the appropriate Department. The Applicant shall be responsible for the City's reasonable service and/or equipment cost associated with the event. The charges are determined from actual cost as outlined in Municipal Code §14-129(g). An invoice detailing charges for City services and/or damages will be sent to the sponsoring organization following the event. Payment is due within 30 days of the date of the invoice.



Neenah Special Event Permit Application

Legal Notice

I, as an authorized member of the organization sponsoring this event, verify that the information contained in this application is true, correct, and complete to the best of my knowledge. I agree to all provisions and terms of this agreement and acknowledge that no changes may be made to this agreement, unless authorized written permission is granted.

I understand the filing of this application does not ensure the issuance of this permit. I also understand that all event organizers, staff, volunteers, participants, and spectators must comply with all applicable city ordinances, traffic rules, park rules, state health laws, fire codes, and liquor licensing regulations. Fees for park facilities, food sales permits, tent, and fireworks permits are in addition to the fees submitted for the Special Event Permit Application. I further understand that an incomplete application may be cause for denial of the event.

Hold harmless indemnification and defense.

For good and valuable consideration the applicant and/or the organization agrees to indemnify, defend and hold harmless the City of Neenah and its officers, officials, employees and agents from and against any and all liability, loss, damage, expenses, costs, including attorney fees arising out of the activities performed as described herein, caused in whole or in part by any negligent act or omission of the applicant/organization, anyone directly or indirectly employed by any of them or anyone whose acts any of them may be liable, except where caused by the sole negligence or willful misconduct of the City.

Signature Mark Westphal Date 6-2-22

Completed applications should be filed with the Department of Legal & Administrative Services, Neenah City Hall, 211 Walnut Street Neenah, WI 54956. For any questions regarding this application or the permitting process, contact Joni Heinz: Phone: +1 (920) 886-6104 Email: jheinz@ci.neenah.wi.us

OFFICE USE ONLY

Cost Estimate	Total Cost	Sponsor Cost
Parks & Recreation _____	_____	_____
Public Works/Traffic _____	_____	_____
Police _____	_____	_____
NM Fire _____	_____	_____
Total	_____	_____
Approvals		
Special Events Task Force		
Signature _____	Date _____	
Class B: Director of Public Works or Designee Class C: Public Services & Safety Committee / City Council		
Signature _____	Date _____	
Contingencies of Permit		

Application for Temporary Class "B" / "Class B" Retailer's License

See Additional Information on reverse side. Contact the municipal clerk if you have questions.

FEE \$ _____

Application Date: _____

Town

Village

City of

NEENAH

County of

WINNEBAGO

The named organization applies for: (check appropriate box(es).)

A Temporary Class "B" license to sell fermented malt beverages at picnics or similar gatherings under s. 125.26(6), Wis. Stats.

A Temporary "Class B" license to sell wine at picnics or similar gatherings under s. 125.51(10), Wis. Stats.

at the premises described below during a special event beginning _____ and ending _____ and agrees to comply with all laws, resolutions, ordinances and regulations (state, federal or local) affecting the sale of fermented malt beverages and/or wine if the license is granted.

1. Organization (check appropriate box) →

Bona fide Club

Church

Lodge/Society

Veteran's Organization

Fair Association or Agricultural Society

Chamber of Commerce or similar Civic or Trade Organization organized under ch. 181, Wis. Stats.

(a) Name FOX VALLEY AREA LABOR COUNCIL; AFL-CIO

(b) Address P.O. BOX 186 MENASHA, WI 54952

(Street)

Town

Village

City

(c) Date organized 1988

(d) If corporation, give date of incorporation _____

(e) If the named organization is not required to hold a Wisconsin seller's permit pursuant to s. 77.54 (7m), Wis. Stats., check this box:

(f) Names and addresses of all officers:

President MARK WESTPHAL 945 HUNT AVE NEENAH, WI 54956

Vice President Rick Vandenberg 207 Prospect St Combined Locks, WI 54113

Secretary Cindy Carter 1102 N Superior St Appleton, WI 54911

Treasurer Jason Schmitz 19055 Spring Valley Rd Menasha, WI 54952

(g) Name and address of manager or person in charge of affair: MARK WESTPHAL

2. Location of Premises Where Beer and/or Wine Will Be Sold, Served, Consumed, or Stored, and Areas Where Alcohol Beverage Records Will be Stored:

(a) Street number 157 S. GREEN BAY RD NEENAH, WI 54956

(b) Lot _____

Block _____

(c) Do premises occupy all or part of building? _____

(d) If part of building, describe fully all premises covered under this application, which floor or floors, or room or rooms, license is to cover: PARKING LOT AND LAWN AREA; BACK HALF OF BUILDING

HALL #3 + #4

3. Name of Event

(a) List name of the event LABOR FEST

(b) Dates of event 9-5-2022

(c) Does this event require a Special Event Permit Application? _____

DECLARATION

An officer of the organization, declares under penalties of law that the information provided in this application is true and correct to the best of his/her knowledge and belief. Any person who knowingly provides materially false information in an application for a license may be required to forfeit not more than \$1,000.

Officer

Mark Westphal 6-2-22
(Signature / Date)

FOX VALLEY AREA LABOR COUNCIL; AFL-CIO
(Name of Organization)

Date Filed with Clerk

6-16-2022

Date Reported to Council or Board

7/6/2022

Date Granted by Council _____

License No. _____