



**Agenda**  
**Stormwater Utility Committee Meeting**  
**625 52<sup>nd</sup> Street, Room 202**  
**Monday, May 2, 2016**  
**5:30 PM**

Chairperson Jesse Downing  
Vice Chairperson Kevin E. Mathewson  
Aldersperson David F. Bogdala

Aldersperson John Fox  
Aldersperson Kevin E. Mathewson  
Aldersperson G. John Ruffolo

Call to Order  
Roll Call  
Citizens Comments

Approval of the Minutes of the Meeting Held on April 18, 2016.

1. Award of Contract for Project 15-1016 39<sup>th</sup> Avenue Resurfacing (39<sup>th</sup> Avenue – 45<sup>th</sup> Street to 52<sup>nd</sup> Street, 45<sup>th</sup> Street – 39<sup>th</sup> Avenue to Pershing Blvd) to Payne & Dolan, Inc. (Kenosha, Wisconsin) in the amount of \$1,213,000.00 (\$104,000.00 Stormwater Funds). (District 7) (referred to PW)
2. Acceptance of Project 15-1015 85<sup>th</sup> Street Resurfacing (85<sup>th</sup> Street – 22<sup>nd</sup> Avenue to 30<sup>th</sup> Avenue) which has been satisfactorily completed by Payne & Dolan, Inc. (Kenosha, Wisconsin). The final amount of the contract is \$568,762.31 (\$64,252.00 Stormwater Funds). (Districts 9 & 13) (referred to PW)
3. Change Order (Contract Deadline Only) for Project 5-1120 Detention Basin Dredging (Heritage Heights North of 69<sup>th</sup> Street & East of 152<sup>nd</sup> Avenue and White Caps E – East of 93<sup>rd</sup> Court & 68<sup>th</sup> Street) (Districts 16 & 17) (referred to PW)
4. Professional Services Agreement with Ruckert-Mielke for Storm Sewer Illicit Discharge Inspection.

**ALDERPERSONS' COMMENTS**

*IF YOU ARE DISABLED AND NEED ASSISTANCE, PLEASE CALL 653-4050 BY NOON BEFORE THIS MEETING TO MAKE ARRANGEMENTS FOR REASONABLE ON-SITE ACCOMMODATIONS.*

STORMWATER UTILITY COMMITTEE  
- MINUTES -

MONDAY, APRIL 18, 2016  
5:30 P.M.

Chairperson Patrick Juliana  
Vice Chairperson Scott N. Gordon  
Aldersperson Steve Bostrom

Aldersperson Eric Haugaard  
Aldersperson Rhonda Jenkins  
Aldersperson Jan Michalski

The regular meeting of the Stormwater Utility Committee was held on Monday, April 18, 2016 in Room 202 of the Municipal Building. The following members were present: Chairperson Patrick Juliana, Vice Chairperson Scott N. Gordon, Alderspersons Steve Bostrom, Eric Haugaard, Rhonda Jenkins, and Jan Michalski. The meeting was called to order at 6:24 PM. Staff member in attendance was Shelly Billingsley, Director of Public Works.

Approval of minutes of regular meeting held on April 4, 2016.

*It was moved by Aldersperson Michalski, seconded by Aldersperson Gordon to approve. Motion passed 6-0.*

1. Acceptance of Project 13-1013 CDBG Resurfacing (CDBG Area (13<sup>th</sup> Ct – 43<sup>rd</sup> St to 42<sup>nd</sup> St, 41<sup>st</sup> St – 22<sup>nd</sup> Ave to 21<sup>st</sup> Ave) Alternate II Area (70<sup>th</sup> St – 39<sup>th</sup> Ave to 40<sup>th</sup> Ave, Lincoln Rd Intersections) which has been satisfactorily completed by Stark Pavement Corp. (Brookfield, Wisconsin). The final amount of the contract is \$912,785.10. (Storm Sewer Funds \$120,688.65) (Districts 6, 13 & 15) (referred to PW)  
*It was moved by Aldersperson Michalski, seconded by Aldersperson Gordon to approve. Motion passed 6-0.*
2. Acceptance of Project 14-1208 Sidewalk & Curb/Gutter Program (Citywide Locations) which has been satisfactorily completed by A.W. Oakes & Son, Inc. (Racine, Wisconsin). The final amount of the contract is \$828,107.24. (Curb & Gutter Funds \$84,217.65) (All Districts) (referred to PW)  
*It was moved by Aldersperson Haugaard, seconded by Aldersperson Gordon to approve. Motion passed 5-1 with Aldersperson Bostrom voting no.*
3. Disbursements for the month of March 2016.  
*It was moved by Aldersperson Michalski, seconded by Aldersperson Gordon to receive and file. Motion passed 6-0.*

#### ALDERPERSONS' COMMENTS

ADJOURNMENT - *There being no further business to come before the Stormwater Utility Committee, it was moved, seconded and unanimously approved to adjourn the meeting at 6:28 PM.*



SHELLY BILLINGSLEY, MBA, PE  
Director of Public Works

April 28, 2016

To: David F. Bogdala, Chairperson, Public Works Committee  
Jesse Downing, Chairperson, Stormwater Utility Committee

From: Shelly Billingsley, MBA, PE  
Director of Public Works *Shelly Billingsley*

Subject: Project: 15-1016 39<sup>th</sup> Avenue Resurfacing  
Location: 39<sup>th</sup> Avenue – 45<sup>th</sup> Street to 52<sup>nd</sup> Street, 45<sup>th</sup> Street – 39<sup>th</sup> Avenue to Pershing Blvd

The Department of Public Works, Engineering Division has opened bids for the above referenced project. Engineer's Estimate was \$1,000,000.00. Budget amount is \$1,200,000.00 for resurfacing and \$100,000.00 for storm sewer.

This project consists of milling, removing and replacing storm sewer inlets, removing and replacing storm sewer pipe, removing and replacing storm sewer manholes, removing and replacing damaged concrete curb and gutter, removing and replacing damaged concrete sidewalks and curb ramps, rubblizing concrete pavement, adjusting inlets and utility manholes, installing vehicle detection systems, pavement markings, resurfacing with hot mixed asphalt, site restoration, and construction staking curb and gutter.

**Following is the list of bidders:**

	Payne & Dolan, Inc.
Resurfacing Base Bid	\$867,369.75
Storm Sewer Base Bid	\$94,811.00
Alternate I – Pavement Markings	\$98,806.00
Alternate II – Radar Sensor System	\$29,880.02
Alternate III – Restoration Sod	\$12,027.50

It is recommended that this contract be awarded to Payne & Dolan, Inc., Kenosha, Wisconsin for a total award amount of \$1,213,000.00 (\$1,109,000.00 Resurfacing + \$104,000.00 Storm Water). The bid is broken down as follows: resurfacing amount of \$867,369.75 (awarding Alternate III reduces the amount of the resurfacing base bid from \$888,425.73 to \$867,369.75 due to deduct items), plus Alternate I in the amount of \$98,806.00, plus Alternate II in the amount of \$29,880.02 and Alternate III in the amount of \$12,027.50 for a total of \$1,008,083.27 plus \$100,916.83 in contingency for unforeseen conditions (if needed) for a resurfacing total of \$1,109,000.00, funding is from CIP Line Item IN-12-004; storm sewer bid of \$94,811.00 plus \$9,189.00 in contingency for unforeseen conditions (if needed) for a storm sewer total of \$104,000.00, funding is from CIP Line Item SW-13-002.

SAB/kjb



SHELLY BILLINGSLEY, MBA, PE  
Director of Public Works

April 27, 2016

To: David F. Bogdala, Chairperson, Public Works Committee  
Jesse Downing, Chairperson, Stormwater Utility Committee

From: Shelly Billingsley, MBA, PE *Shelly Billingsley*  
Director of Public Works

Subject: Acceptance of Project 15-1015 85<sup>th</sup> Street Resurfacing

Location: 85<sup>th</sup> Street – 22<sup>nd</sup> Avenue to 30<sup>th</sup> Avenue

Please be advised that the above referenced project has been satisfactorily completed by Payne & Dolan, Inc., Kenosha, Wisconsin. This project consisted of replacing storm inlets and storm sewer, rubbilizing pavement, placement of base course, repairing concrete sidewalk and curb & gutter, adjusting various sanitary and storm structures and site restoration.

It is recommended that the project be accepted in the final amount of \$568,762.31 (\$504,510.31 Resurfacing Funds, \$64,252.00 Storm Sewer Funds).

Original contract amount was \$681,000.00. The bid is broken down as follows: resurfacing bid amount of \$530,210.74 plus \$79,289.26 in contingency for unforeseen conditions (if needed), for total resurfacing amount of \$609,500.00, funding is from CIP Line Item IN-11-004; storm sewer bid amount of \$62,252.00 plus \$9,248.00 in contingency for unforeseen conditions (if needed), for a total storm sewer amount of \$71,500.00, funding is from CIP Line Item SW-15-003.

SAB/kjb



SHELLY BILLINGSLEY, MBA, PE  
Director of Public Works

April 27, 2016

To: David F. Bogdala, Chairperson, Public Works Committee  
Jesse Downing, Chairperson, Stormwater Utility Committee

From: Shelly Billingsley, MBA, PE *Shelly Billingsley*  
Director of Public Works

Subject: 15-1120 Detention Basin Dredging Change Order (Contract Deadline Only)

**BACKGROUND INFORMATION**

This change order is needed to extend the contract deadline only due to holding a public information meeting before construction begins. The public hearing is scheduled for Thursday, May 12, 2016. Staff feels it best to inform the public before construction begins.

**RECOMMENDATION**

Approve the change order extending the contract deadline.

SAB/kjb

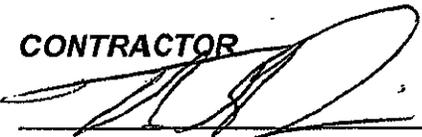
**THE CITY OF KENOSHA**  
**CHANGE ORDER**

Project Name:	Detention Basin Dredging
Project Number:	15-1120
C.I.P. Line Item:	SW-11-003
Purchase Order #:	Not issued yet
Contractor:	Ray Hintz, Inc.
Park Commission Action:	N/A
Public Works Committee Action:	5/2/16
Finance Committee:	N/A
Date of Common Council Action:	5/2/16

City and contractor agree that the above contract is amended to specify that contract completion deadline will be extended 35 days. The project will be completed no later than **July 8, 2016**.

This change order is approved by:

**CONTRACTOR**

  
\_\_\_\_\_

**CITY OF KENOSHA, MAYOR**

\_\_\_\_\_

**DATE**

4-26-16

**DATE**

\_\_\_\_\_



April 28, 2016

To: Jesse Downing, Chairperson, Stormwater Utility Committee

From: Shelly Billingsley, MBA, PE  
Director of Public Works

Subject: ***Approval of Professional Services Agreement with Ruekert Mielke for 2016 Illicit Discharge Inspection***

**BACKGROUND INFORMATION**

The Kenosha Stormwater Utility has received a proposal to complete the 2016 Dry Weather Storm Sewer Outfall Screening at the priority outfalls as required by the City's Wisconsin Pollutant Discharge Elimination System (WPDES) permit and NR 216.07. The Stormwater Utility utilized Ruekert-Mielke to complete the 2010, 2011, 2012, 2013, 2014, and 2015 dry weather screening. Ruekert-Mielke will be utilizing past data to identify the priority outfalls and develop an updated outfall inspection program to comply with updated Wisconsin DNR Guidance.

This contract will consist of the following components:

- Priority Outfall Identification
- Illicit Discharge Outfall Inspection where no flow is present. This will incorporate a visual observation.
- Illicit Discharge Outfall Inspection where flow is present. This will require that a grab sample be taken and the following tested and recorded:
  - Temperature of discharge
  - pH, ammonia, detergent, phenol, soluble copper and free/total chlorine.
  - If elevated levels are found additional work will be coordinated to determine the possible sources of these levels as specific to each outfall at an additional fee that will be dependent on the testing required.
- Summary Report will be completed and a copy will be required to be submitted to the Department of Natural Resources for compliance with the City's WPDES permit.

The proposed fee to complete this work is based on the following items as listed above: The cost of outfalls with no flow present is \$150 per outfall, the cost with flow is \$325 per outfall, the cost to complete the summary report is \$2,900, and the cost to identify the priority outfalls is \$6,850. The anticipated project will not exceed \$20,000.

The funding for this work will be paid for out of account 501-09-50102-219 from which this work was budgeted.

**RECOMMENDATION**

Approve the Agreement between the Kenosha Stormwater Utility and Ruekert & Mielke for \$20,000 and authorize the Director to execute the contract. The funding for this work will be paid for out of account 501-09-50102-219 from which this work was budgeted.

April 20, 2016

Ms. Katie Elder  
Engineering Department  
City of Kenosha  
Municipal Building  
625 52nd Street  
Kenosha, WI 53140

RE: 2016 Storm Sewer Illicit Discharge Inspection Proposal

Dear Katie:

Thank you for the opportunity to provide illicit discharge inspection services to help the City of Kenosha comply with their WPDES storm water permit. We have enjoyed working with the City on their previous inspection programs, and welcome the opportunity to continue that relationship through this project.

We propose to continue with the development of the priority outfall program that was started last year, working in sync with the City's ongoing storm water master planning effort. This will allow the City to continue to take advantage of the ongoing drainage area delineation and storm sewer investigation work, as the information needed to develop the priority outfall program goes hand-in-hand with the master planning work.

Approximately 60% of the City was analyzed as part of the 2015 illicit discharge program. For the 2016 program, we will identify priority outfalls and develop an updated outfall inspection program that complies with WDNR's updated guidance throughout the remaining 40% of the City. If the storm water master planning throughout the entire City is not completed by late summer, we will work with the City to adjust the scope of work as appropriate.

We understand the storm sewer illicit discharge inspection project to consist of the following components:

Priority Outfall Identification (for remaining 40% of City)

1. Work with City staff to identify historic illicit discharges, aging infrastructure, industrial site ownership changes and industrial operations that generate wastewater and/or wash water. It is expected that City staff will complete the preliminary research, relaying the findings to our office for further analysis.
2. Calculate land use within each drainage area based on the drainage area delineations completed as part of the Master Planning effort.

Letter to Ms. Katie Elder  
Engineering Department  
City of Kenosha  
April 20, 2016  
Page 2

3. Identify areas of the City with more than 80% impervious area or institutional land use.
4. Utilize this information to determine the City's priority outfalls, and develop a GIS layer for the known major and priority outfalls.
5. Meet with the City to review the results of the analysis and finalize the City's updated inspection program / locations.

Once the complete illicit discharge inspection program is developed and the outfalls to be inspected are identified, field inspections will be completed as outlined below. It is anticipated that all priority outfalls and approximately 20% of the major outfalls will be inspected, although the final inspection program will be determined working in conjunction with the City.

#### Illicit Discharge Outfall Inspection Where No Flow is Present

- Inspect each outfall as requested by the City during dry weather conditions (no precipitation within a 48 hour period prior to the inspection).
- Measure the outfall size.
- Complete the field screening form based on visual observation at the end of the pipe.

#### Illicit Discharge Outfall Inspection Where Flow is Present

- Inspect each outfall as requested by the City during dry weather conditions (no precipitation within a 72 hour period prior to the inspection).
- Measure the outfall size.
- Gather a 250 milliliter grab sample of the discharge in a polyethylene bottle.
- Complete an in-field temperature measurement of the storm sewer discharge.
- Complete pH (digital pH meter), ammonia (salicylate method), detergent (methylene blue method), phenol (4-aminoantipyrine method), soluble copper (bathocuproine method) and free/total chlorine (DPD method) measurements of the storm sewer discharge.

Letter to Ms. Katie Elder  
Engineering Department  
City of Kenosha  
April 20, 2016  
Page 3

- Complete the field screening form based on visual observation at the end of the pipe.
- Alert City staff immediately if a test parameter is detected above WDNR's action levels. In certain scenarios, City staff may ask Ruekert & Mielke, Inc. field personnel to track the discharge upstream to locate its source or to perform additional field or lab tests. If required, this additional work will be completed at our standard hourly rates.
- If additional testing is warranted, determine the laboratory test protocol based on visual cues of the discharge, the previously-completed in-field testing and the land use within the contributing drainage area. Coordinate this additional testing with the City's preferred testing laboratory. The actual cost of additional laboratory testing would be paid directly by the City and is not included in the fees outlined below.

#### Summary Report

- Prepare a summary report at the completion of the testing program.
- The report will include a written summary of the testing program, an exhibit documenting the location of the completed inspections, full color printouts of each inspection form and graphs for each outfall to summarize the 2010-2016 test results.
- Provide five bound copies and one digital copy of the report to the City.

#### GIS Capabilities

- Ruekert & Mielke, Inc (R/M) has developed an Illicit Discharge GIS tool which sits on top of R/M's ArcGIS Server platform. The tool, which can be accessed via desktop or mobile devices, only requires an internet web browser to function. By incorporating GIS functionality, the inspection reports can be available to all City staff instantly after completion of the inspection. Historic inspection reports are also maintained online, eliminating the hassle of searching through paper or digital records. Read-only access can also be provided to the Wisconsin Department of Natural Resources, reducing City Staff's workload during the WPDES annual reporting process. Although these GIS features are not specifically included in this proposal, the reports will be prepared in a manner to allow inclusion if the City decides to move forward with R/M's Illicit Discharge GIS tool at any point in the future.

Letter to Ms. Katie Elder  
Engineering Department  
City of Kenosha  
April 20, 2016  
Page 4

We propose to complete each outfall inspection where no flow is present for a lump sum cost of \$150 per outfall, and each outfall inspection where flow is present for a lump sum cost of \$325 per outfall, maintaining our costs from the 2013 through 2015 inspection programs.

We propose to complete the priority outfall identification and analysis for a lump sum cost of \$6,850 and the summary report preparation for a lump sum cost of \$2,900. These costs are based on a minimum of three inspections per trip. Total project costs will not exceed \$20,000 without prior authorization from the City.

In the event City staff is alerted of an illicit discharge in progress, the outfall inspection services listed above will be available on an emergency basis at a lump sum cost of \$500 per inspection. Under these emergency services, the outfall inspection, testing and grab sampling will be completed as soon as possible, and no later than within 18 hours (Monday through Friday) after notification. Under this scenario, Ruekert & Mielke, Inc. will also notify the Wisconsin Department of Natural Resources of the discharge within 24 hours after notification from the City. Notification received from the City on Saturday or Sunday will be addressed on a case-by-case basis.

This scope of work does not include agency or resident coordination, preparation of additional reports or figures, hazardous waste coordination, or hazardous sample disposal. If desired, these services may be performed at our standard hourly rates. This scope of work is also predicated on the City obtaining appropriate access for Ruekert & Mielke, Inc. inspectors to all discharge locations.

The above described professional services will be provided to you in accordance with the attached two page Standard Terms & Conditions dated June 17, 2014, which are made part of this agreement by reference. Please indicate your acceptance of this agreement by having the appropriate authorized official(s) affix their signature(s) where indicated and returning one fully executed copy to our office.

Letter to Ms. Katie Elder  
Engineering Department  
City of Kenosha  
April 20, 2016  
Page 5

If after reviewing the above information you should have any questions please feel free to contact me.

Very truly yours,

RUEKERT & MIELKE, INC.



Steven C. Wurster, P.E. (WI, IL)  
Senior Vice President/COO  
[swurster@ruekert-mielke.com](mailto:swurster@ruekert-mielke.com)

SCW:tag  
Enclosure(s)

cc: Kenneth R. Ward, P.E., Ruekert & Mielke, Inc.  
Michael T. Hallada, Ruekert & Mielke, Inc.  
File

Letter to Ms. Katie Elder  
Engineering Department  
City of Kenosha  
April 20, 2016  
Page 6

CLIENT NAME:

City of Kenosha

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ENGINEER:

Ruekert & Mielke, Inc.

By: John C. W...

Title: Senior Vice President/COO

Date: April 19, 2016

ATTEST:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Designated Representative:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Designated Representative:

Name: Michael T. Hallada

Title: Engineering Technician/Asst. Field  
Services Team Leader

Phone Number: (262) 542-5733

**A. Standards of Performance**

The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

**B. Authorized Representative**

With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and duties and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Assignment on behalf of the respective party whom the individual represents.

**C. Payments to Engineer**

Invoices will be prepared in accordance with Engineer's standard invoicing practices and will be submitted to Owner by Engineer monthly, unless otherwise agreed. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice therefore, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges.

**D. Ownership and Reuse of Documents**

All documents prepared or furnished by Engineer pursuant to this Agreement are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Engineer grants Owner a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the documents. Such limited license shall not create any rights in third parties. Reuse of any documents pertaining to this Agreement by Owner shall be at Owner's sole risk; and Owner agrees to indemnify, defend, and hold Engineer harmless from all claims, damages, and expenses including reasonable attorney's fees arising out of such reuse of documents by Owner or by others acting through Owner.

**E. Construction Review**

Engineer will observe the work as agreed to for general compliance with the construction documents. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with Laws and Regulations applicable to that contractor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any contractor. Engineer has no stop work authority.

**F. Environmental**

Engineer assumes no liability for the detection or removal of any hazardous substances found at or adjacent to the Project site.

**G. Owner Provided Information**

Engineer shall have the right to rely on the accuracy of any information provided by Owner. Engineer will not review this information for accuracy.

**H. Permits and Approvals**

It is the responsibility of the Owner to obtain all necessary permits and approvals for the Project. Engineer will assist the Owner in obtaining permits and approvals as mutually agreed to in writing.

**I. Access**

Owner shall arrange for safe access to and make all provisions for Engineer and Engineer's consultants to enter upon public and private property as required for Engineer to perform services under this Agreement.

**J. Limit of Liability**

To the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, partners, employees, agents, and consultants, or any of them to Owner and anyone claiming by, through, or under Owner, for any and all injuries, losses, damages and expenses, whatsoever arising out of, resulting from, or in any way related to this Agreement from any cause or causes including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract or warranty, express or implied, of Engineer or Engineer's officers, directors, partners, employees, agents, and consultants, or any of them, shall not exceed the total amount of \$2,000,000.

**K. Insurance**

Engineer will maintain insurance coverage for Workers' Compensation, General Liability, and Automobile Liability and will provide certificates of insurance to Owner upon request.

**L. Termination of Contract**

Either party may at any time terminate this Agreement with 7 days written notice for cause in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Owner may terminate this Agreement for convenience with 30 days written notice, or the Project may be suspended by Owner with 30 days written notice. In the event of suspension or cancellation for convenience by Owner, Owner shall pay to Engineer all amounts owing to Engineer under this Agreement, for all work performed up to the effective date of notice.

**M. Indemnification and Allocation of Risk**

1. To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, Owner's officers, directors, partners, and employees from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of Engineer or Engineer's officers, directors, partners, employees, and consultants in the performance of Engineer's services under this Agreement.

2. To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer, Engineer's officers, directors, partners, employees, and consultants from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of Owner or Owner's officers, directors, partners, employees, and consultants with respect to this Agreement.

3. To the fullest extent permitted by law, Engineer's total liability to Owner and anyone claiming by, through, or under Owner for any injuries, losses, damages and expenses caused in part by the negligence of Engineer and in part by the negligence of Owner or any other negligent entity or individual, shall not exceed the percentage share that Engineer's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

4. The indemnification provision of paragraph M.1. is subject to and limited by the provisions agreed to by Owner and Engineer in paragraph J. "Limit of Liability," of this Agreement.

**N. Independent Contractor**

All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either Owner or the Engineer. Engineer's services under this Agreement are being performed solely for the Owner's benefit, and no other entity shall have any claim against Engineer because of this Agreement or the performance or nonperformance of services hereunder. Owner agrees to include a provision in all contracts with contractors and other entities involved in this Project to carry out the intent of this paragraph.

**O. Force Majeure**

Engineer shall not be liable for any loss or damage due to failure or delay in rendering any service called for under this Agreement resulting from any cause beyond Engineer's reasonable control.

**P. Severability and Waiver of Provisions**

Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

**Q. Dispute Resolution**

Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in questions between them arising out or relating to this Agreement or the breach thereof ("disputes") to mediation as a condition precedent to litigation.

**R. Public Records**

Engineer agrees to comply with the requirements of Wisconsin Statutes Sections 19.32 to 19.39 and Sections 19.81 to 19.98 – Wisconsin Public Records Law and Open Meetings Law.

END OF DOCUMENT