

<p style="text-align: center;">AGENDA PUBLIC WORKS COMMITTEE</p>

**MONDAY, MAY 5, 2014
ROOM 202
5:30 P.M.**

**Eric Haugaard, Chairman
Jan Michalski, Vice Chairman
Steve Bostrom**

**Scott N. Gordon
Rhonda Jenkins
Patrick Juliana**

Approval of minutes of regular meeting held on April 21, 2014.

1. Award of Professional Service Contract for Project 14-1417 Parkway Tree Removal to Asplundh Tree Expert Co. (Schofield, Wisconsin) in the amount of \$110,000. *(Park Commission approved 5-0)*
2. By Finance Committee – Resolution To Amend the City of Kenosha Capital Improvement Program for 2013 by Increasing PK09-001 “Harbor Dredging” in the amount of \$410,000 and by Decreasing PK93-004 “Reforestation” for 2011 in the amount of \$24,500; for 2012 in the amount of \$72,000 and 2013 in the amount of \$123,600 and by Decreasing PK10-001 “Field Office Buildings” for 2013 in the amount of \$30,000 and by Decreasing PK96-001 “Equipment” for 2012 in the amount of \$9,900 with outside funding from a Coastal Management Grant in the amount of \$30,000 and a Recreational Boating Facilities Grant in the amount of \$120,000 for a Net Change of \$0. *(also referred to Finance Committee and Park Commission)*
3. Award of Contract for Project 14-2013 Southport Marina Dredging (97 57th Street) to Morrish Wallace Construction d/b/a Ryba Marine Construction Co. (Cheboygan, Michigan) in the amount of \$206,000. (Park Funds Only) **(District 2)** *(also referred to Park Commission)*
4. Approval of Settlement Agreement by and between the City of Kenosha, Wisconsin with Veit & Company, Inc.
CLOSED SESSION: The Public Works Committee may go into Closed Session regarding this item, pursuant to §19.85(1)(g), Wisconsin Statutes to confer with legal counsel regarding this matter. The Public Works Committee may or may not reconvene into open session.
(also referred to Stormwater Utility Committee and Finance Committee)
5. Ingress and Egress Easement for Simmons Island Boardwalk and Beach Planting Agreement by and between the Kenosha Water Utility and City of Kenosha.
6. Award of Contract for Project 13-1551 Fire Station #4 Administrative Addition Re-Bid (4810 60th Street) to Magill Construction Company, Inc. (Elkhorn, Wisconsin) in the amount of \$630,962. **(District 11)**

INFORMATIONAL: Project Status Report

CITIZENS COMMENTS/ALDERMAN COMMENTS RELATED ONLY TO
JURISDICTION OF PUBLIC WORKS COMMITTEE

IF YOU ARE DISABLED AND IN NEED OF ASSISTANCE CALL 653-4050 BEFORE NOON ON THE DATE INDICATED FOR
THIS MEETING.

NOTICE IS HEREBY GIVEN THAT A MAJORITY OF THE MEMBERS OF THE COMMON COUNCIL MAY BE PRESENT AT THE
MEETING, AND ALTHOUGH THIS MAY CONSITUTE A QUORUM OF THE COMMON COUNCIL, THE COUNCIL WILL NOT
TAKE ANY ACTION AT THIS MEETING.

PUBLIC WORKS COMMITTEE
- MINUTES -

MONDAY, APRIL 21, 2014
5:30 P.M.

Eric Haugaard, Chairman
Jan Michalski, Vice Chairman
Steve Bostrom

Scott N. Gordon
Patrick Juliana
Rhonda Jenkins

The regular meeting of the Public Works Committee was held on Monday, April 21, 2014 in Room 202 of the Municipal Building. The following members were present: Chairman Eric Haugaard, Vice Chairman Jan Michalski, Aldermen Steve Bostrom, Patrick Juliana, and Rhonda Jenkins. Alderman Scott Gordon was absent. The meeting was called to order at 5:30PM. Staff members in attendance were Mike Lemens, Shelly Billingsley, Jerry Koehler and Alderman Kurt Wicklund.

Approval of minutes of regular meeting held on April 7, 2014.

It was moved by Alderman Michalski, seconded by Alderman Jenkins to approve. Motion passed 5-0.

1. Approval of request for use of Celebration Place by Kiwanis Club of Western Kenosha for the Taste of Wisconsin event July 25 – 27, 2014. **(District 2)**
A public hearing was held. Candi Eisenhauer was present for questions. It was moved by Alderman Juliana, seconded by Alderman Michalski to approve. Motion passed 5-0.
2. Approval of Application of Sarah Smith for a Peddler Stand License to be located at the southwest corner of 54th Street and 6th Avenue. **(District 2)**
A public hearing was held. Sarah Smith was present and answered questions. It was moved by Alderman Juliana, seconded by Alderman Jenkins to approve. Motion passed 5-0.
3. Resolution by the Committee on Public Works – To Order the Cost of Public Sidewalk and/or Driveway Approach Construction and/or Replacement to be Specially Assessed to Abutting Property (Project 14-1208 Sidewalk & Curb/Gutter Program). **PUBLIC HEARING (All Districts)**
A public hearing was held. Harry Simons, 1845 19th Ave spoke on behalf of Holy Nativity Church's 2313 17th Ave special assessment. Michael Lemens answered questions. Gilbert Boucher, 7802 Sheridan Rd, Alan Skripski, 7703 23rd Ave, Patrick Skarda, 8437 15th Ave spoke. Michael Lemens answered questions. Leonard Hallgren, 8511 18th Ave, Mark Ball, 8528 17th Ave, Ellen Ganschaw, 2520 11th Pl Unit 204, Mark Sobczak, 6219 51st Ave, Robert Luedeck, 3607 10th Ave spoke. Alan Skripski spoke again. Michael Lemens answered questions. Patrick Skarda spoke again. The public hearing was closed at this time. After further discussion, it was moved by Alderman Bostrom, seconded by Alderman Juliana to open up to another public hearing. Alan Skripski, Patrick Skarda and Harry Simons spoke. Michael Lemens answered questions. It was moved by Alderman Michalski, seconded by Alderman Jenkins to approve. Motion passed 5-0.
4. Lease By and Between the City of Kenosha (a Wisconsin Municipal Corporation) and Coins Sports Bar, Inc. (a Wisconsin Corporation). **(District 7)**
A public hearing was held. Mark Gascoigne was available to answer questions. It was moved by Alderman Juliana, seconded by Alderman Michalski to amend page 3 item 7 by adding "and/or Lessee" after the Lessor. Motion passed 5-0. It was then moved by Alderman Juliana, seconded by Alderman Michalski to approve the amendment.

5. Award of Contract for Project 12-1424 Southport Park Trail Development (7501 2nd Avenue) to Parking Lot Maintenance (Pewaukee, Wisconsin) in the amount of \$115,000. **(District 12)**
A public hearing was held, no one spoke. It was moved by Alderman Michalski, seconded by Alderman Jenkins to approve. Motion passed 5-0.

6. Award of Contract for Project 14-1208 Sidewalk & Curb/Gutter Program (Citywide Locations) to A.W. Oakes & Son (Racine, Wisconsin) in the amount of \$842,000. (\$750,000 Sidewalk Funds Only) **(All Districts)**
A public hearing was held, no one spoke. It was moved by Alderman Jenkins, seconded by Alderman Juliana to approve. Motion passed 5-0.

7. Approval of Sidewalk Rates for 2014.
It was moved by Alderman Juliana, seconded by Alderman Jenkins to approve. Motion passed 5-0.

8. Resolution by the Mayor – To approve a two-lot Certified Survey Map for property at the northeast corner of 75th Street and 125th Avenue. (Hampton Inn) **(District 16)**
A public hearing was held. Jonah Hetland from Bear Development spoke. It was moved by Alderman Michalski, seconded by Alderman Juliana to approve. Motion passed 5-0.

INFORMATIONAL:

1. Website Update – *Michael Lemens spoke and Diane Hoff gave the presentation.*
2. Project Status Report – *Michael Lemens spoke. Alderman Michalski asked staff to investigate the concrete pillars at the end of 52nd St & 6th Ave, there is a need for more and better barricades. Michael Lemens responded that staff is looking at others.*

ADJOURNMENT - *There being no further business to come before the Public Works Committee, it was moved, seconded and unanimously approved to adjourn the meeting at 6:29PM.*



ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER

PARK DIVISION
JEFF WARNOCK
SUPERINTENDENT

FLEET MAINTENANCE
MAURO LENCI
SUPERINTENDENT

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT

WASTE DIVISION
ROCKY BEDNAR.
SUPERINTENDENT

DEPARTMENT OF PUBLIC WORKS

MICHAEL M. LEMENS, P.E., DIRECTOR
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April 16, 2014

To: Eric J. Haugaard, Chairman, Public Works Committee
Scott N. Gordon, Chairman, Park Commission

From: Shelly Billingsley, P.E. *Shelly Billingsley*
Director of Engineering /City Engineer

Subject: **Professional Service Contract for Parkway Tree Removal Project #14-1417**

BACKGROUND INFORMATION

The City of Kenosha Public Works – Park Division has received four proposals to complete the Parkway Tree Removal Contract for 2014. Staff has reviewed the proposals and has chosen Asplundh Tree Expert Co., Schofield, Wisconsin, based on their references, experience and standard quoted rates.

Contractor	Proposal Amount
Asplundh Tree Expert Co., Schofield, WI	\$99,850
Droprite Tree & Landscape, Somers, WI	\$103,747
Arbor Images, Inc	\$131,450
Trees "R" Us, Inc.	\$198,255

The 2014 tree removal list contract includes removing approximately 293 trees.

RECOMMENDATION

Approve the Agreement between the City of Kenosha and Asplundh Tree Expert Co., Schofield, Wisconsin, for \$110,000 to include their quote of \$99,850 with \$10,150 of contingency and authorize the Director to execute the contract. The funding for this work will be paid for out of CIP PK-93-004 Reforestation/Tree & Stump Removal.

SAB/kjb

CONTRACT TO REMOVE TREES

By And Between

**THE CITY OF KENOSHA, WISCONSIN,
A Municipal Corporation
[Through Its Department of Public Works]**

And

**Asplundh Tree Expert Co.
A Pennsylvania Corporation**

TOTAL CONTRACT AWARD NOT TO EXCEED \$110,000

CONTRACT AMOUNT: \$99,850

COMPENSATION FOR ADDITIONAL REMOVAL AS REQUIRED BY THE CITY OF KENOSHA: NOT TO EXCEED \$10,150

THIS AGREEMENT, Made and entered into by and between the **CITY OF KENOSHA, WISCONSIN**, a municipal corporation, duly organized and existing under the laws of the State of Wisconsin, through its Department of Public Works, hereinafter referred to as "**City**", and **ASPLUNDH TREE EXPERT CO.**, a Pennsylvania Corporation, with offices located at 5907 Municipal Street, Schofield, Wisconsin, 54476, hereinafter referred to as "**CONTRACTOR**".

WITNESSETH:

WHEREAS, CONTRACTOR has submitted to **CITY** a written Proposal to remove trees according to the Specifications and Special Conditions contained in the Request for Proposal; and,

WHEREAS, the **CITY** has accepted the Proposal, effective upon **CONTRACTOR** entering into and abiding by the terms and conditions of this Contract; and,

WHEREAS, the parties understand that this Contract is not a public construction contract under Wisconsin Law.

NOW, THEREFORE, in consideration of the mutual undertakings, promises, agreements, understandings hereinafter set forth, and good and valuable consideration, the sufficiency of which is hereby acknowledged, **CITY** and **CONTRACTOR** agree as follows:

1. DEFINITIONS.

a. "**CONTRACT**" means this executed Contract to Remove Trees. The following documents comprise the complete Contract: Request for Proposal, Proposal, Executed Contract, Specifications and Special Conditions, Certificates of Insurance, Affidavit of Organization and Authority and Careful Inspection of Site and Preparation of Proposal, List of Subcontractors and Major Suppliers, Determination of City Representative in Charge of Project, Change Orders, Affidavit Respecting Construction Lien Waivers/Releases, Contract notices and such other documents as are referenced herein. Any of such documents which are not physically attached to this Contract are on file in the Department of Public Works and Park Division, and are incorporated into this Contract by reference.

- b. **“CONTRACTOR”** shall mean **ASPLUNDH TREE EXPERT CO**, and any subcontractors approved by the **CITY**.
- c. **“FORESTER”** shall mean the Forester of the City of Kenosha within the Park Division, and includes designees.
- d. **“OVERPAYMENT”** means any money **CONTRACTOR** received which the **CONTRACTOR** was not entitled to receive under this Contract, including, but not limited to, excess payment made in error and payment for defective and/or rejected Work which was not redone or replaced and accepted by **CITY**.
- e. **“REMOVAL PROCESS”** means the systematic removal of the tree, commencing with the first cut or break by the **CONTRACTOR**, and including the trunk, stump, basal sprouts, brush, vines, weeds and debris removal within five feet (5') from outside of the trunk.
- f. **“STUMPING”** means either removal of a stump or grinding of a stump, as appropriate.
- g. **“WORK”** means any contractual endeavor undertaken by **CONTRACTOR**, or its approved subcontractors, to fulfill the terms of this Contract, including, but not limited to, the providing of labor, service, materials, the oversight of approved subcontractors, and the disposal and dumping of materials and debris arising out of the endeavor.
- h. **“WORKING DAY”** means a calendar day, excluding weekends and legal holidays.

2. WORK TO BE PERFORMED BY CONTRACTOR. The **CONTRACTOR**, for the sum of Ninety-Nine Thousand Eight Hundred Fifty (\$99,850), will perform and complete, or will cause to be performed and completed, all Work in a good and workmanlike manner, and will do so in accordance with and subject to the provisions of this Contract. In addition, **CONTRACTOR** will perform additional services as directed by the **CITY** and as otherwise authorized in the Proposal not to exceed an additional Ten Thousand One Hundred Fifty (\$10,150) In the event of a conflict between the Request for Proposal, the Proposal and this Contract, the terms and conditions of the Contract shall control and supersede the other documents. The Work comprises the removing of the trees specified in Instructions to Bidders in accordance with the Specifications and Special Conditions, which are attached hereto and incorporated herein by reference. The Specifications and Special Conditions will control and supersede an inconsistent provision in this Contract.

3. COMMENCEMENT AND DILIGENT PROSECUTION OF WORK. The **CONTRACTOR** will commence work within five (5) working days following execution of Contract and Notice to Proceed, and will prosecute Work diligently until fully complete in accordance with this Contract. The **CONTRACTOR** shall complete the Work within the Contract term.

The **CONTRACTOR** shall fully remove at least five (5) trees per week until the Contract is terminated. The **CONTRACTOR** shall complete the removal process with respect to each tree within five (5) working days of the start of the removal process.

The **CONTRACTOR**, in the event of a dispute respecting quantity or quality of the Work, shall not refuse to perform the Work and shall not delay the performance of the Work pending the resolution of said dispute.

The **CONTRACTOR** has the duty of requesting an extension of time to complete the Work from the **FORESTER**, in writing, prior to the time for Contract completion, where the progress of the Work was delayed, such that the Work will not be completed on time, and the **CONTRACTOR** was not responsible for such delay. Should the **FORESTER** grant an extension, the **CONTRACTOR** will not be liable for liquidated damages arising out of the delay. Should the **FORESTER** determine that

the Work will not be completed on schedule through normal methods and where no request for an extension has been requested, or if requested, such request was not justified, the **FORESTER** shall provide the **CONTRACTOR** with written notice requiring the **CONTRACTOR** to take such extraordinary measures as may be required to complete the Work on time, or as close to on time as possible. The failure of the **CONTRACTOR** to take such extraordinary measures shall be grounds for the **CITY** to suspend the Work by the **CONTRACTOR** and take such other measures as will assure completion of the Work within the Contract time, or if that is impossible, within a reasonable time. However, nothing contained herein shall prevent the **FORESTER** from stopping the **CONTRACTOR** from proceeding with the Work beyond the time set for the completion date where the completion date was not extended.

4. CONTRACT TERM. The term of this Contract shall be from the date of execution until each of the following:

- a. Respecting the Work, until completion and acceptance, or November 26, 2014, whichever is earlier.
- b. Respecting the warranty, until expiration of warranty term.
- c. Respecting the Indemnity and Hold Harmless Agreement and Liability Insurance, until claims filed, if any, are resolved, or expiration of the Statute of Limitations where no claims were filed.

5. TERMINATION FOR CAUSE. In the event either party should fail to fulfill in a timely manner its obligation under this Contract, the non-breaching party shall have the right to terminate this Contract by giving a ten (10) day written notice to the breaching party of such breach and specifying the date of the termination, if the breaching party has not timely rectified and remedied the purported breach to the satisfaction of the party that gave notice of the breach.

The **CONTRACTOR** shall perform no new or additional Work upon receipt of a notice of termination without the advance, written permission of the **FORESTER**, except as necessary to cure the default, but not beyond the ten (10) day period to cure.

6. FORESTER'S DECISION FINAL. Should any dispute arise at any time between the **CONTRACTOR** and the **CITY** as to the true meaning or requirements of this Contract, or as to the manner of execution of the Work, or as to the quality of Work executed, or as to the quality or quantity of materials used, or as to the timely completion of the Work, the decision of the **FORESTER** shall be final and conclusive, until and unless set aside by a Court of Law.

The **CONTRACTOR** agrees that should any decision of the **FORESTER** be challenged in Court, the Court may only set aside a decision of the **FORESTER** if it is wholly arbitrary and capricious and/or made in complete disregard of undisputed facts.

7. METHODS, LABOR, EQUIPMENT, MATERIALS AND SUPPLIES. The **CONTRACTOR** shall select such methods and equipment for the performance of all operations connected with the Work and will assure professional quality of Work and a rate of progress which will assure the timely completion of the Work. The **CONTRACTOR** is responsible for furnishing all labor, equipment, material and supplies required to perform the Work.

8. SUSPENSION OF WORK BY CITY. The **FORESTER** shall have authority to suspend the Work where he/she believes that the **CONTRACTOR** is not performing the Work in accordance with this Contract. The **CONTRACTOR** shall have no right to additional compensation for delay or a right to an extension of time to complete the Work where the Work is suspended by the **FORESTER**.

9. INJUNCTIONS. Should a preliminary or temporary injunction suspend the Work for a period of time, the deadline for completion of the Work shall be extended by such time as the preliminary or temporary injunction was in effect. In the event a permanent injunction or Court order or judgment prohibits the Work, this Contract shall be null and void as of the date such injunction or Court Order or judgment becomes final, although the **CONTRACTOR** shall be entitled to reasonable compensation for the Work performed to that date. In the event a permanent injunction, Court order or judgment reduces the scope of the Work, this contract shall be deemed modified in accordance therewith and compensation of the **CONTRACTOR** shall be proportionately reduced to reflect the decrease in the scope of the Work.

10. CHANGE ORDERS FOR ADDITIONAL WORK, ADJUSTMENT IN PRICE. The **CONTRACTOR** does not have the discretion to refuse to comply with a Change Order to increase the scope of the Work identified in the **CITY** Request for Proposal. Increases in the scope of the Work shall result in a determination of the **CONTRACTOR'S** additional compensation based upon good faith negotiation, with the Contract as a guideline. Change Orders must be approved by the **FORESTER** on behalf of the **CITY**, and by the **CONTRACTOR**, and upon approval and execution, shall be considered a Contract amendment, to be kept on file in the **CITY** Department of Public Works and Park Division, and incorporated into this Contract by reference. Should the **CONTRACTOR** refuse to sign a Change Order under circumstances where there is no discretion to do so, said Change Order will be in full force and effect without said signature, provided the **FORESTER** attaches thereto a written report so indicating.

11. WAIVER OF RIGHTS. No failure to exercise, or delay in exercising, any right, power or remedy hereunder on the part of either party shall operate as a waiver thereof, nor shall any single or partial exercise of any other right, power or remedy preclude any other further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event of default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

12. SUBCONTRACTORS, MAJOR SUPPLIERS, AND DUMPING OR DISPOSAL SITES. The **CONTRACTOR** will only use subcontractors, major suppliers and dumping or disposal sites, which are listed in this Contract. Any changes in subcontractors, major suppliers and dumping or disposal sites must be approved by the **FORESTER**. The **CONTRACTOR** is responsible for the Work of subcontractors and for delays in the Work occasioned thereby. The **CONTRACTOR** has a duty to remove and replace subcontractors whose involvement in the Work will result in a breach of this Contract.

13. CONTROL AND PROTECTION OF WORK SITE. The **CONTRACTOR** shall be responsible for the control and protection of the work site from commencement of the Work until the Work is completed.

14. WARRANTY. The **CONTRACTOR** will replace any Work which is defective or not in conformity with this Contract at no cost to the **CITY** for a period of one (1) year after final acceptance of the Work by the **CITY**.

15. CITY COOPERATION. The **CITY** will reasonably cooperate with the **CONTRACTOR** to facilitate the **CONTRACTOR'S** performance of the Work. The **CITY** will physically mark trees to be removed and notify the **CONTRACTOR** of the nature of the markings. The **CONTRACTOR** will provide reasonable notice to the **CITY** when the assistance thereof is requested. However, the **CITY** has no obligation to supervise or perform any part of the Work.

16. GOVERNMENTAL PERMITS AND APPROVALS. The **CONTRACTOR** is authorized to perform the work under this Contract without obtaining a separate permit from the **FORESTER** or a Street Obstruction Permit.

17. LAWS, RULES AND REGULATIONS. The **CONTRACTOR** shall comply with all Federal, State and local laws, rules and regulations applicable to the performance of this Contract and the Work. This Contract shall be deemed made in and construed under the laws of the State of Wisconsin.

18. CONTRACTOR'S EMPLOYEES AND ON-SITE REPRESENTATIVES. Although the **CONTRACTOR** performs the Work as an independent Contractor, the **FORESTER** shall have the right to request the **CONTRACTOR** to remove and replace any of **CONTRACTOR'S** employees involved in the Work when said employee does not furnish quality workmanship or is uncooperative with or disrespectful to any **CITY** personnel associated with the Work. The **CONTRACTOR** will comply with any reasonable request.

The **CONTRACTOR**, at all times when the Work is being performed, shall assign an employee or agent on the work site to be the person to whom the **FORESTER** may furnish instructions or orders, or make inquiries of at all times when the Work is being performed. The name of such employee or agent shall be submitted to the **FORESTER** in writing, upon commencement of the Work.

19. SANITATION AND HEALTH. The **CONTRACTOR** has the obligation of arranging for drinking water and sanitary conveniences for employees, subcontractors, suppliers, and agents thereof and for taking work site precautions as will deter the spread of infectious diseases. The **CONTRACTOR** shall not use materials in such manner as to pose a health hazard. The **CONTRACTOR** shall obey all lawful orders received from a County Health Department Sanitarian, or from any duly authorized employee of any Federal or State agency having jurisdiction over employee or public health, safety or welfare.

20. INSPECTION. The **CITY** has the right, at its cost and expense, to assign or retain inspectors to determine that the Work is performed in conformance with this Contract. Only the **FORESTER**, can reject the Work. The use of inspectors by the **CITY** shall not relieve the **CONTRACTOR** of the duty of making its own inspections and of itself rejecting improper or defective Work, by its employees, subcontractors, suppliers and agents. The failure of a **CITY** inspector to notice or reject improper or defective Work shall not waive any rights of the **FORESTER** to have the **CONTRACTOR** take corrective action at the **CONTRACTOR'S** cost and expense to remedy such deficiencies or defects when discovered. The use of **CITY** inspectors shall not relieve the **CONTRACTOR** of its duty to maintain a safe workplace.

21. WORKMANSHIP. Workmanship shall conform to the best standard practice of a given trade in Southeastern Wisconsin. Equipment, procedures and materials used must be suitable to and compatible with the nature of the Work, the work site and prevailing year round weather conditions that affect the Work and the Work site.

22. UTILITIES. The **CONTRACTOR** has the obligation of contacting Digger's Hotline to obtain utility locations, clearances, hookups, or cutoffs prior to any stump removal.

23. CLEANUP. The **CONTRACTOR** shall at all times keep all areas related to the Work, including all right-of-ways, streets, highways, alleys and private or public property adjacent to the work site, in a clean and sanitary condition, free from any rubbish, debris, surplus or waste materials that have accumulated as a result of the Work.

Within two (2) hours after the completion of the Removal Process of a specified tree, the **CONTRACTOR** shall remove all surplus materials, tools, equipment or plants, leaving the work site and the sites of easements and areas related to the Work, unobstructed, clean and sanitary, ready for their intended use and in as safe a condition as their nature will reasonably permit. Should the **CONTRACTOR** neglect any such duty, the **FORESTER** may cause any such Work to be performed at the **CONTRACTOR'S** cost and expense.

24. PAYMENT OF EMPLOYEES, SUBCONTRACTORS AND SUPPLIERS. The **CONTRACTOR** shall promptly pay all employees, subcontractors and suppliers for all work, labor, services, supplies, or materials which they may directly or indirectly furnish in the fulfillment of this Contract and the **CONTRACTOR** shall secure, as soon as possible, a waiver of liens or the release of any and all liens which may attach as a result of the Work. The **CONTRACTOR**, as a condition of payment, shall execute an Affidavit Respecting Construction Lien Waivers/Releases and file such document with **CITY** Director of Public Works.

25. LIQUIDATED DAMAGES FOR DELAYS IN CONTRACT COMPLETION. In the event that the **CONTRACTOR** fails to fully and completely perform the Work within the Contract term, the **CONTRACTOR** shall pay to the **CITY** for such default the sum of One Hundred Dollars (\$100.00) per day, for each and every day's delay in the fulfillment of this Contract provision. This sum shall be considered and treated not as a penalty, but as fixed, agreed and liquidated damages due the **CITY** from the **CONTRACTOR**.

26. RIGHTS OF CITY UPON CONTRACTOR DEFAULT. The **CONTRACTOR** recognizes the right of the **CITY** to suspend the Work, to order the revision of nonconforming Work, to re-let all or part of the Work or to itself perform the Work as may be required to ensure the timely completion of the Work or to replace improper or defective Work, as determined necessary by the **FORESTER**. No provision of this Paragraph 26 may be construed to relieve the **CONTRACTOR** of its obligations under this Contract.

27. OVERPAYMENTS AND SETOFFS UNRELATED TO CONTRACT. The **CONTRACTOR** will promptly, upon receipt of written demand from the **CITY** Director of Public Works, refund any overpayments received thereby. Should the **CONTRACTOR** not comply with said request within thirty (30) days of receipt of written notice, the **CONTRACTOR** shall pay the **CITY** interest for said amount at the rate of one and one-half percent (1.5%) per month on the unpaid balance, until paid in full. Should the **CONTRACTOR** owe the **CITY** any money which is lawfully due and payable on any account receivable or on any personal property tax, forfeiture or fee, whether or not related to the Work under this Contract, the **CONTRACTOR** authorizes the **CITY** to deduct said amount from any payment due the **CONTRACTOR** hereunder.

28. SAFETY PRECAUTIONS. The **CONTRACTOR'S** Work shall conform to the most recent revision of the American National Standards Institute Standard Z-133.1 (Safety Requirements for Pruning, Trimming, Repairing, Maintaining, and Removing Trees and for Cutting Brush).

The **CONTRACTOR**, during the performance of the Work, shall assume control of the work site and put up and properly maintain, at the **CONTRACTOR'S** cost and expense, adequate barriers, warning signs, lights and such other devices and take such measures as will make the work site as safe as the nature of the premises will reasonably permit to protect frequenters as well as persons using abutting private or public property, from any and all dangers associated with the Work, during both day and night hours. The **FORESTER** may order the **CONTRACTOR**, by a time or date, to take designated safety measures and the failure of the **CONTRACTOR** to promptly obey said order shall result in liquidated damages of Five Hundred Dollars (\$500.00) per day for each day said order is not complied with. The **CONTRACTOR** shall be fully responsible for making the work site as

safe as its nature will reasonably permit and may not rely upon any inspections, instructions or orders of the **FORESTER** or the **CITY** inspectors or lack thereof, in this regard. The **CONTRACTOR** has an obligation to check warning and safety devices on a daily basis.

29. PAYMENT – ACCEPTANCE OF WORK. Payment shall be made by the **CITY** on a monthly basis upon submission of an invoice for completed Work to the **CITY** Director of Public Works, within fifteen (15) days after the **FORESTER** executed a document accepting the Work as being performed in accordance with this Contract, subject to the following.

a. The **CITY** may withhold payment if the **CONTRACTOR** is not in compliance with any order issued by the **FORESTER**. Payment will be reduced by the amount of any claim which the **CITY** may have against the **CONTRACTOR** for improper, defective, or rejected Work, liquidated damages due to delay in the schedule of time for the Work completion, or in taking safety precautions, by the amount of setoffs authorized by this Contract, or for any other primary liability of the **CONTRACTOR** which the **CITY** could be secondarily liable for, which secondary liability was not assumed by **CITY** under this Contract.

b. Work shall not be accepted by the **FORESTER** until all employees, subcontractors and suppliers have been fully paid for all work, labor, services, supplies or materials provided thereby, and affidavits, lien waivers or releases have been procured and filed with the **CITY** Director of Public Works.

30. INDEPENDENT CONTRACTORS, WORKERS AND UNEMPLOYMENT COMPENSATION. The **CONTRACTOR** acknowledges that it is an independent contractor and that its employees and agents are not the employees of the **CITY** for purposes of Workers' and Unemployment Compensation or any other purpose. The **CONTRACTOR** shall be responsible for Worker's and Unemployment Compensation with respect to its employees.

31. PROHIBITIONS AS TO ASSIGNMENT, SUBCONTRACTING AND JOINT VENTURES. The **CONTRACTOR** may not assign this Contract, enter into a joint enterprise or sublet any Work without the express written approval of the **FORESTER** and the **CITY** is not liable for any cost and expenses arising therefrom. Listed subcontractors, major suppliers, and dumping and disposal sites are exempt from this prohibition. An unlawful assignment, joint enterprise or subletting shall render this Contract voidable by the **FORESTER** as of the date thereof, and the **CITY** will not be obligated to pay to the **CONTRACTOR** any money for any Work performed by an unauthorized party. If this contract is voided, the **CONTRACTOR** will continue to be responsible for maintaining the safety of the work site until relieved of this obligation by the **FORESTER** or until another contractor take possession of the work site. The **CONTRACTOR** will be responsible for any cost, loss, expense, attorney fees, or damages the **CITY** may incur in enforcing this provision.

32. INDEMNITY AND HOLD HARMLESS AGREEMENT. The **CONTRACTOR** agrees that it will defend, indemnify and hold harmless the **CITY** and its officers, agents, employees and representatives, from and against any and all liability, loss, charges, damages, claims, judgments, costs, expenses or attorney fees, which they may hereafter sustain, incur or be required to pay as a result of any action taken or not taken by the **CITY** or its officers, agents, employees or representatives to supervise or oversee the adequacy of safety precautions taken by the **CONTRACTOR** or as a result of the willful or negligent act or omission of the **CONTRACTOR** and its subcontractors, suppliers, assigns, employees, officers, agents or representatives, or resulting from the **CONTRACTOR'S** failure to perform or observe any of the terms, covenants and conditions of this Contract, should any person or party, as a result thereof, suffer or sustain personal injury, death or property loss or damage, or a violation of any other right protected by law.

33. INSURANCE. The **CONTRACTOR** prior to performing the Work and during the Contract term, shall carry the insurance policies in the following minimum limits, which shall be written and enforceable in accordance with the laws of the State of Wisconsin.

Commercial General Liability:

\$1,000,000.00 each occurrence

General Aggregate –\$2,000,000.00 each occurrence

Automobile Liability:

Bodily Injury per Person –\$1,000,000.00

Bodily Injury per Accident –\$1,000,000.00

Property Damage – \$200,000.00; OR a combined single limit of \$1,000,000.00.

Worker's Compensation: Statutory limits.

Employer's Liability

\$100,000 Each Accident

\$100,000 Disease, Each Employee

\$500,000 Disease, Policy Limit

Umbrella Liability

\$2,000,000 over the primary insurance coverage listed.

Said insurance coverage shall be verified by a Certificate of Insurance issued to **CITY**, which shall provide that should any of the described policies be canceled or amended before the expiration date, the issuing company will endeavor to mail a thirty (30) day written notice to the certificate holder. The **CITY** shall be named as an additional insured with respect to the insurance coverages listed above and the **CITY** shall be provided with an additional insured endorsement certifying that the **CITY** is an additional insured with respect to the insurance coverages listed above.

34. COOPERATION. The **CONTRACTOR** shall permit **CITY** employees and representatives to have reasonable access to the work site at all times.

35. SEVERABILITY. It is mutually agreed that in case any provisions of this Contract is determined by a Court of Law to be unconstitutional, illegal or unenforceable, then it is the intention of the parties that all other provisions of this Contract shall remain in full force and effect.

36. NONDISCRIMINATION. In the performance of the Work under this Contract, the **CONTRACTOR** agrees not to discriminate against any employee or applicant for employment contrary to any Federal, State or local law, rule or regulation, because of race, religion, marital status, age, creed, color, sex, handicap, national origin, or ancestry, sexual orientation, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, political beliefs, or student status. The Work is to be performed in accordance with the Federal Americans With Disabilities Act.

37. NO THIRD PARTY BENEFICIARIES. This Contract is intended to be solely for the benefit of the parties hereto.

38. FULL AGREEMENT – MODIFICATION. This Contract shall be the full and complete agreement and understanding of the parties and shall supersede all oral or written statements or documents, inconsistent herewith. This Contract can be modified, in writing, by the mutual agreement of the parties, said amendment to be attached and incorporated herein, it being expressly understood that the **CITY** Director of Public Works must approve any amendment of this Contract.

39. NOTICES. Notices required by or relevant to this Contract shall be furnished by the **CONTRACTOR** to the **CITY** by personal service or by certified mail with return receipt, sent or delivered to the **FORESTER**, Director of Public Works and the City Clerk at the Municipal

Building, 625 – 52nd Street, Kenosha, Wisconsin 53140, with a copy to the City Attorney at the foregoing address.

Notices required by or relevant to this Contract shall be furnished by the CITY to the CONTRACTOR by personal service or by certified mail with return receipt sent or delivered to:

Joseph Schneider
ASPLUNDH TREE EXPERT CO.
5907 Municipal Street
Schofield, Wisconsin 54476

40. EXECUTION AUTHORITY. The CITY and the CONTRACTOR each certify that they have authority under their respective organizational structure and governing laws to execute this Contract.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Contract on the dates given below.

**CITY OF KENOSHA, WISCONSIN,
A Municipal Corporation**

BY: _____
MICHAEL M. LEMENS, Director,
Department of Public Works
Date: _____

BY: _____
DIRK NELSON, City Forester
Date: _____

STATE OF WISCONSIN)

:SS.

COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2014 MICHAEL M. LEMENS, Director of Public Works, and DIRK NELSON, City Forester, of the CITY OF KENOSHA, WISCONSIN, a municipal corporation, to me known to be the persons who executed the foregoing instrument, and to me known to be such Mayor and City Clerk/Treasurer of said City, and acknowledged that they executed the foregoing instrument as such officers as the agreement of said City, by its authority.

Notary Public, Kenosha County, WI.
My Commission expires/is: _____

**ASPLUNDH TREE EXPERT CO.
A Pennsylvania Corporation**

BY: _____
Joseph B Schneider, Vice President

Date: _____

STATE OF _____)

:SS.

COUNTY OF _____)

Personally came before me this _____ day of _____, 2014,
Joseph B. Schneider, Vice President, of **ASPLUNDH TREE EXPERT CO.**, a Pennsylvania Corporation, to me known to be such Vice President of said company, and acknowledged to me that he executed the foregoing instrument as such officer as the agreement of said corporation, by its authority.

Notary Public, _____ City, _____ State.
My Commission expires/is: _____

AFFIDAVIT OF ORGANIZATION AND AUTHORITY
AND CAREFUL INSPECTION OF SITE
AND PREPARATION OF PROPOSAL OR BID

STATE OF WISCONSIN)

:SS.

COUNTY OF Marathon

Joseph B. Schaeider being first duly sworn, on oath, deposes and says that the Bidder on the attached Bid Proposal is organized as indicated below, and that all statements herein are made on behalf of such Bidder, and this deponent is authorized to make them.

[Fill Out Applicable Paragraph]

AA **CORPORATION.** The Bidder is a corporation incorporated and existing under the laws of the State of _____, and its President is George Graham its Secretary is Joseph Dwyer, and it does have a corporate seal.

The President is authorized to sign construction contracts and bids for the Company by action of its Board of Directors taken on _____, a certified copy of which is attached hereto. [Strike out the last sentence, if applicable.]

LIMITED LIABILITY COMPANY. The Bidder is a limited liability company organized and existing under the laws of the State of _____. Pursuant to its articles of organization, the Bidder may be bound by action of its managing member/members [strike one].

PARTNERSHIP. The Bidder is a partnership consisting of _____, General Partners, doing business under the name of _____.

SOLE PROPRIETOR. The Bidder is an individual; and, if operating under a trade name, such trade name is as follows: _____.

ADDRESS. The business address of the Bidder is as follows.

5907 MUNICIPAL STREET
SCHEFFIELD, WI
54476

TELEPHONE NUMBER: 715-241-8733

STATUTORY SWORN STATEMENT.

_____, also deposes and states that he/she has examined the Instructions to Bidders, has investigated site conditions; or, in the alternative, has waived such inspections at Bidder's peril, and has carefully prepared the Bid Proposal from the plans and specifications, and checked the same in detail before submitting this proposal or Bid. The undersigned also deposes and states that the statements contained in this Affidavit are true and correct.

[Corporate Seal]

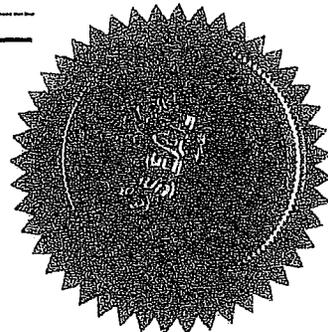
Signed: Joseph B. Schaeider
Typed Name: Joseph B. Schaeider
Title: V.P.
Date: 4/3/2014

STATE OF WISCONSIN)

:SS.

COUNTY OF _____

Subscribed and sworn to before me
This _____ day of _____, 2013.
Notary Public, _____ County, Wisconsin
My Commission Expires/is: _____



City of Kenosha
625 - 52nd Street, Room 305
Kenosha, Wisconsin 53140

Department of Public Works:

PROPOSALS DUE: April 9, 2014 by 2:00 P.M.

A representative of this organization has reviewed the proposal documents and inspected the trees noted in the Contract Specifications and Special Conditions, or waived said right, and hereby submits the following Proposal to remove said trees in accordance with City of Kenosha specifications and special conditions at the following prices, to be firm for sixty (60) days from date of Proposal, subject to Proposal being accepted within that time and a Contract entered into for that price.

Line 1: Estimated Number of Trees to 200 Trees (includes removal, stump grinding, topsoil & seed

Lump Sum	\$	99,800.00
Line 2 Street Occupancy Permit Allowance	\$	50.00
Total: (Line 1 + Line 2)	\$	99,850.00

All work shall be completed no later than November 26, 2014 subject to localized damages of One hundred (\$100.00) Dollars per day in the event of delay where no extension is granted.

Additional removals may be added to the list at the proposed price of

- * \$ 25.00 (per tree, top soil and seed)
- * \$ 14.00 per inch (from 1" to 15")
- * \$ 16.00 per inch (from 17" to 28")
- * \$ 18.00 per inch (from 30" to 35")
- * \$ 21.00 per inch (from 35" to 55")

Measure at fifty-four (54") inches above ground level.

The effective date of the contract will be the date of return of executed Contract to Contractor with notice to proceed. The Contractor shall furnish sufficient labor, material equipment and supervision to complete the work according to the above time schedule.

Cash Discount Terms:

% Days, Net

Net Days

Date:

Respectfully submitted,

Firm: Asplundh Tree Expert Co

Signature: Joseph Blumhardt

Title: Vice President

Address: 5907 Municipal St

Phone: (715) 241-8733

Fax: _____

Optional: (For informational purposes ONLY)



ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER

PARK DIVISION
JEFF WARNOCK
SUPERINTENDENT

FLEET MAINTENANCE
MAURO LENCI
SUPERINTENDENT

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT

WASTE DIVISION
ROCKY BEDNAR
SUPERINTENDENT

DEPARTMENT OF PUBLIC WORKS
MICHAEL M. LEMENS, P.E., DIRECTOR
SHELLY BILLINGSLEY, P.E., DEPUTY DIRECTOR

MUNICIPAL BUILDING · 625 - 52ND ST · RM 305 · KENOSHA, WI 53140
TELEPHONE (262) 653-4050 · FAX (262) 653-4056
EMAIL PUBLICWORKS@KENOSHA.ORG

April 30, 2014

To: Eric Haugaard, Chairman
Public Works Committee

From: Shelly Billingsley, P.E. *Shelly Billingsley*
Deputy Director of Public Works / City Engineer

Cc: Rhonda Jenkins
District 2

Subject: ***Resolution to Amend the City of Kenosha Capital Improvement Program for Dredging***

BACKGROUND INFORMATION

Staff received a grant to dredge the Southport Marina due to the effects of Hurricane Sandy after our last dredging project. However to complete the work we need to fund a 60% match. The City also will be receiving a Coastal Management Grant in the next month which will require a 50% match to complete the design funding based on the study recommendations when we are ready to move onto that section this fall.

Recreational Boating Facility Grant - \$300,000 (City \$180,000 and DNR \$120,000) – Dredge Southport Marina
Coastal Management Grant - \$60,000 (City \$30,000 and Coastal \$30,000)

The remaining funds will be used to fund staff engineers, professional services and additional dredging outside of the grant eligible areas.

RECOMMENDATION

Approve the Resoultion to Amend the City of Kenosha Capital Improvement Program for Dredging.

RESOLUTION NO. _____

BY: Finance Committee

To Amend the City of Kenosha Capital Improvement Program for 2013
By Increasing PK09-001 "Harbor Dredging" in the Amount of \$410,000 and By Decreasing
PK93-004 "Reforestation" for 2011 in the Amount of \$24,500; for 2012 in the Amount of \$72,000
and 2013 in the Amount of \$ 123,600 and By Decreasing PK10-001 "Field Office Buildings" for
2013 in the Amount of \$30,000 and By Decreasing PK96-001 "Equipment" for 2012 in the Amount
of \$9,900 With Outside Funding from a Coastal Management Grant in the Amount of \$30,000 and
a Recreational Boating Facilities Grant in the Amount of \$120,000 for a Net Change of \$0

WHEREAS, the City of Kenosha has been awarded a Coastal Management Grant to
provide design funding based on the study recommendations; and

WHEREAS, the City of Kenosha has been awarded a DNR Recreational Boating
Facilities Grant for dredging, plans, specifications and construction management of the Southport
Marina Harbor project; and

WHEREAS, funds are needed to dredge portions of Southport Marina that are not grant
eligible; and

WHEREAS, the above amendment to the Capital Improvement Program has been
approved by the Park Commission on May 5, 2014 and the Finance Committee on May 5, 2014;

NOW, THEREFORE BE IT RESOLVED, by the Common Council of the City of Kenosha,
Wisconsin that the Capital Improvement Program be, and hereby is amended as follows:

<i>Line Item</i>	<i>Description</i>	<i>Available Authorization</i>	<i>Authorization Adjustment</i>	<i>Amended Authorization</i>
PK09-001	Harbor Dredging (2013)	180,400	410,000	590,400
PK09-001	Harbor Dredging (2013) Outside Grant Funding	(80,400)	(150,000)	(230,400)
PK93-004	Reforestation (2011)	24,500	(24,500)	-0-
PK93-004	Reforestation (2012)	72,000	(72,000)	-0-
PK93-004	Reforestation (2013)	215,270	(123,600)	91,670
PK10-001	Field Office Buildings (2013)	30,000	(30,000)	-0-
PK-96-001	Equipment (2012)	9,900	(9,900)	-0-

Adopted this _____ day of _____ 2014

Approved:

KEITH G. BOSMAN, MAYOR

Attest:

DEBRA SALAS, CITY CLERK/TREASURER

(RES14/cipPK09-001.4.28.14)



ENGINEERING DIVISION
 SHELLY BILLINGSLEY, P.E.
 CITY ENGINEER

PARK DIVISION
 JEFF WARNOCK
 SUPERINTENDENT

FLEET MAINTENANCE
 MAURO LENCI
 SUPERINTENDENT

STREET DIVISION
 JOHN H. PRIJIC
 SUPERINTENDENT

WASTE DIVISION
 ROCKY BEDNAR.
 SUPERINTENDENT

DEPARTMENT OF PUBLIC WORKS

MICHAEL M. LEMENS, P.E., DIRECTOR
 SHELLY BILLINGSLEY, P.E., DEPUTY DIRECTOR

MUNICIPAL BUILDING · 625 - 52ND ST · RM 305 · KENOSHA, WI 53140
 TELEPHONE (262) 653-4050 · FAX (262) 653-4056
 EMAIL PUBLICWORKS@KENOSHA.ORG

May 1, 2014

To: Eric J. Haugaard, Chairman, Public Works Committee
 Scott N. Gordon, Chairman, Park Commission

From: Shelly Billingsley, P.E. *Shelly Billingsley*
 Deputy Director of Public Works /City Engineer

Subject: Project: 14-2013 Southport Marina Dredging
 Location: 97 57th Street

The Department of Public Works, Engineering Division has opened bids for the above referenced project. Engineer's Estimate was \$240,000. Budget amount is \$206,000 as amended by CIP Amendment.

This project consists of mechanical dredging of Southport Marina with disposal at Pennoyer Park with grading and restoration.

Following is the list of bidders:

Contractor	Ryba Marine Cheboygan, MI	Veit & Co. Rogers, MN	Luedtke Eng. Frankfort, MI	Marine Tech Duluth, MN	Groh Dredging Waukesha, WI
Base Bid	\$107,275	\$195,350	\$220,425	\$228,788.16	\$274,985
Alternate 1 Hauling to East of Maintenance Area	\$30,210	\$28,500	\$34,200	\$31,703.40	\$37,449
Alternate 2 Hauling to West of Maintenance Area	\$58,565	\$55,250	\$66,300	\$62,675.60	\$72,598.50
Total	\$196,050	\$279,100	\$320,925	\$323,167.16	\$385,032.50

It is recommended that this contract be awarded to Morrish Wallace Construction, Inc. d/b/a Ryba Marine Construction Co., Cheboygan, Michigan, for the base bid amount of \$107,275, \$30,210 for Alternate 1, \$58,565 for Alternate 2 plus \$9,950 in contingency for unforeseen conditions (if needed), for total award amount of \$206,000. Funding is from CIP Line Item PK-09-001.

SAB/kjb



ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER
CATHY AUSTIN, P.E.
ASSISTANT CITY ENGINEER
KILE KUHLMEY
SOIL EROSION SPECIALIST

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT

DEPARTMENT OF STORMWATER UTILITY

MICHAEL M. LEMENS, P.E., DIRECTOR
SHELLY BILLINGSLEY, P.E., DEPUTY DIRECTOR

MUNICIPAL BUILDING · 625 - 52ND ST · RM 305 · KENOSHA, WI 53140
TELEPHONE (262) 653-4050 · FAX (262) 653-4056
EMAIL SWU@KENOSHA.ORG

April 30, 2014

To: Patrick Juliana, Chairman
Stormwater Utility Committee

Eric Haugaard, Chairman
Public Works Committee

From: Shelly Billingsley, P.E. *Shelly Billingsley*
Deputy Director of Public Works / City Engineer

4-30-14

Subject: *Approval of Settlement Agreement by and between the City of Kenosha, Wisconsin with Veit & Company, Inc.*

BACKGROUND INFORMATION

Staff requested the project closeout and acceptance be turned over to the City Attorney's office. Through several negotiation efforts between, City Attorney's Office, Engineering Division and Veit & Company, Inc. the attached document has been drafted.

RECOMMENDATION

Approve the Settlement Agreement by and between the City of Kenosha, Wisconsin with Veit & Company, Inc.

SETTLEMENT AGREEMENT

This Settlement Agreement is made effective April ___, 2014, by and between the City of Kenosha, Wisconsin and Veit & Company, Inc. ("Veit").

- A. In 2011 Veit bid and was awarded by the City of Kenosha the Pennoyer Beach Outfall Infiltration Basin project. The original contract sum was \$316,742. Veit has performed work and has billed \$406,255. The City of Kenosha has objected to Veit's billing and workmanship and has paid \$237,507.72 to date.
- B. The City of Kenosha also has claimed that certain aquatic plantings have failed and should be replaced under warranty provisions of the contract as specified.
- C. To date, Veit has not paid the \$2,000.00 City Erosion Control Permit fee necessary to complete the contract work.
- D. The parties met in Kenosha on December 5, 2013, and, without either party admitting any liability, have agreed to a settlement as follows:

1. The City of Kenosha will pay Veit and Veit will accept as full satisfaction of the contract \$73,855.90. City shall return settlement funds within thirty (30) days of settlement approval by the Common Council.

2. This settlement is conditioned on the Common Council approving the payment. The Parties shall retain all claims absent such approval.

3. Upon payment of settlement, Veit will complete and return within thirty (30) days project closing affidavits attached hereto as **Attachment 1**.

4. The City of Kenosha will permit Veit to bid on future projects. City shall process all bids in ordinary course. Veit shall be subject to regular required statutory qualification procedures. City shall not unreasonably withhold qualification and shall not withhold qualification based upon the results of this project.

5. The parties agree that Veit's employees and the Kenosha Department of Public Works' employees will not disparage each other in the future to other bidders, to general contractors, to the Great Lakes Regional Office of the Environmental Protection Agency, or to any other persons.

6. Veit will arrange for its aquatic plant subcontractor to replant the areas identified as Bioswale 1, Bioswale 2, Bioswale 3 and Bioswale 4 in **Attachment 2** no later than June 1, 2014 and to maintain those plants pursuant to Section 32 93 10, Part 3.08 (Maintenance During Warranty Period) of the Contract between the parties, for a period of ninety (90) days.

7. No other warranty claims exist for plantings and after the plants are replaced pursuant to this Agreement and at the end of the ninety (90) day period, no further warranty shall exist for plantings. There are no other known warranty claims.

8. Veit will provide Post-Warranty Maintenance pursuant to Section 32 93 10, Part 3.09 (Post-Warranty Maintenance) of the Contract to the areas described in Attachment 2.

9. The parties agree that upon receipt of the payments and performance of the warranty, aquatic plant warranty work and required maintenance, they release each other of any claims arising out of the performance of Project No. 120091, Pennoyer Beach Outfall Infiltration Basin.

Dated: 4-1, 2014

Veit & Company, Inc.

Its 
PRESIDENT

By Greg Boelke, President

Dated: _____, 2014

City of Kenosha

Its _____

By _____

DRAFTED BY:

Matthew A. Knight
Deputy City Attorney
625 52nd Street, RM 201
Kenosha, Wisconsin 53140
Phone: 262-653-4170
Fax: 262-653-4176
mknight@kenosha.org

008606/312005/1812738_3



ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER

PARK DIVISION
JEFF WARNOCK
SUPERINTENDENT

FLEET MAINTENANCE
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DEPARTMENT OF PUBLIC WORKS
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TELEPHONE (262) 653-4050 · FAX (262) 653-4056
EMAIL PUBLICWORKS@KENOSHA.ORG

March 25, 2014

Veit & Company
2445 S. 179th Street, Suite E
New Berlin, WI 53146

Subject: Affidavits Required Prior to Final Payment

Project: #11-1125 Pennoyer Outfall Stormwater Infiltration Basin

Pursuant to your contract, you are required to pay your employees not less than the prevailing wage rate applicable in Kenosha at the time of contract signing. You are also required to promptly pay all subcontractors and suppliers for all labor, services, supplies or material which they may directly or indirectly furnish in the fulfillment of said contract and secure, as soon as possible, a waiver of lien or the release of any and all liens which may attach as a result of the work, to be furnished to the engineer before the final payment is made.

Please provide this office with the original of the attached affidavits:

1. Prime Contractor Affidavit of Compliance with Prevailing Wage Rate Determination listing all subcontractors.
2. Agent or subcontractor Affidavit of Compliance with Prevailing Wage Rate Determination
3. Affidavit Respecting Construction Lien Waivers/Releases – **this affidavit is not the same as a lien waiver**
4. **Your original lien waiver**

As a condition of the Affidavit respecting construction lien waivers/releases, also provide the original of the lien waivers or releases for ALL subcontractors and material suppliers involved in the project as listed below:

1. Applied Ecological Services
2. Any other subcontractor or supplier.

If any of the above were not used, please provide a letter so stating.

The above documents, Affidavits and Lien Waivers/Releases, are required as a condition of the city processing your request for final payment with respect to said project.

Sincerely,

A handwritten signature in cursive script that reads "Shelly Billingsley".
Shelly Billingsley, P.E.
Deputy Director of Public Works/City Engineer

cc: File

Agent or Subcontractor Affidavit of Compliance With Prevailing Wage Rate Determination

Authorization for this form is provided under Sections 66.0903(9)(b), 66.0904(7)(b) and 103.49(4r)(9b), Wisconsin Statutes. The use of this form is mandatory. The penalty for failing to complete this form is prescribed in Section 103.005(12), Wisconsin Statutes. Personal information you provide may be used for secondary purposes [Privacy Law, Section 15.04(1)(m), Wisconsin Statutes].

This form must **ONLY** be filed with the **Awarding Contractor** indicated below.

State Of _____))SS County Of _____)	Project Name	
	DWD Determination Number	Project Number (if applicable)
	Date Determination Issued	Date of Subcontract
	Awarding Contractor	
	Date Work Completed	

After being duly sworn, the person whose name and signature appears below hereby states under penalty of perjury that

- I am the duly authorized officer of the corporation, partnership, sole proprietorship or business indicated below. We have recently completed all of the work required under the terms and conditions of a subcontract with the above-named awarding contractor. We make this affidavit in accordance with the requirements set forth in Section 66.0903(9)(b), 66.0904(7)(b) or 103.49(4r)(b), Wisconsin Statutes and Chapter DWD 290 of the Wisconsin Administrative Code in order to obtain FINAL PAYMENT from such awarding contractor.
- I have fully complied with the entire wage and hour requirements applicable to this project, including all of the requirements set forth in the prevailing wage rate determination indicated above which was issued for such project by the Department of Workforce Development on the date indicated above.
- I have received the required affidavit of compliance from each of my agents and subcontractors that performed work on this project and have listed each of their names and addresses on page 2 of this affidavit.
- I have full and accurate records that clearly indicate the name and trade or occupation of every worker(s) that I employed on this project, including an accurate record of the hours worked and actual wages paid to such worker(s).
- I will retain the records and affidavit(s) described above and make them available for inspection for a period of at least three (3) years from the completion date indicated above at the address indicated below and shall not remove such records or affidavit(s) without prior notification to the awarding contractor.

Name of Corporation, Partnership, Sole Proprietorship, Business, State Agency or Local Governmental Unit				
Street Address or PO Box	City	State	Zip Code	Telephone Number ()
Print Name of Authorized Officer			Date Signed	
Authorized Officer Signature				

List of Agents and Subcontractors

Name			Name		
Street Address			Street Address		
City	State	Zip Code	City	State	Zip Code
Telephone Number ()			Telephone Number ()		
Name			Name		
Street Address			Street Address		
City	State	Zip Code	City	State	Zip Code
Telephone Number ()			Telephone Number ()		
Name			Name		
Street Address			Street Address		
City	State	Zip Code	City	State	Zip Code
Telephone Number ()			Telephone Number ()		
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Street Address			Street Address		
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Telephone Number ()			Telephone Number ()		
Name			Name		
Street Address			Street Address		
City	State	Zip Code	City	State	Zip Code
Telephone Number ()			Telephone Number ()		
Name			Name		
Street Address			Street Address		
City	State	Zip Code	City	State	Zip Code
Telephone Number ()			Telephone Number ()		
Name			Name		
Street Address			Street Address		
City	State	Zip Code	City	State	Zip Code
Telephone Number ()			Telephone Number ()		

If you have any questions call (608) 266-6861

Prime Contractor Affidavit of Compliance With Prevailing Wage Rate Determination

Authorization for this form is provided under Sections 66.0903(9)(c), 66.0904(7)(c) and 103.49(4r)(c) Wisconsin Statutes.

The use of this form is mandatory. The penalty for failing to complete this form is prescribed in Section 103.005(12), Wisconsin Statutes.

Personal information you provide may be used for secondary purposes [Privacy Law, s. 15.04(1)(m), Wisconsin Statutes].

This form must **ONLY** be filed with the **Awarding Agency** indicated below.

State Of)	Project Name			
		DWD Determination Number	Project Number (if applicable)		
County Of))SS	Date Determination Issued	Date of Contract	
		Awarding Agency			
		Date Work Completed			

After being duly sworn, the person whose name and signature appears below hereby states under penalty of perjury that

- **I am** the duly authorized officer of the corporation, partnership, sole proprietorship or business indicated below and have recently completed all of the work required under the terms and conditions of a contract with the above-named awarding agency and make this affidavit in accordance with the requirements set forth in Section 66.0903(9)(c), 66.0904(7)(c) or 103.49(4r)(c), Wisconsin Statutes and Chapter DWD 290 of the Wisconsin Administrative Code in order to obtain FINAL PAYMENT from such awarding agency.
- **I have** fully complied with all the wage and hour requirements applicable to this project, including all of the requirements set forth in the prevailing wage rate determination indicated above which was issued for such project by the Department of Workforce Development on the date indicated above.
- **I have** received the required affidavit of compliance from each of my agents and subcontractors that performed work on this project and have listed each of their names and addresses on page 2 of this affidavit.
- **I have** full and accurate records that clearly indicate the name and trade or occupation of every worker(s) that I employed on this project, including an accurate record of the hours worked and actual wages paid to such worker(s).
- **I will** retain the records and affidavit(s) described above and make them available for inspection for a period of at least three (3) years from the completion date indicated above at the address indicated below and shall not remove such records or affidavit(s) without prior notification to the awarding agency indicated above.

Name of Corporation, Partnership, Sole Proprietorship, Business, State Agency or Local Governmental Unit				
Street Address	City	State	Zip Code	Telephone Number
Print Name of Authorized Officer			Date Signed	
Signature of Authorized Officer				

List of Agents and Subcontractors

Name			Name		
Street Address			Street Address		
City	State	Zip Code	City	State	Zip Code
Telephone Number ()			Telephone Number ()		
Name			Name		
Street Address			Street Address		
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If you have any questions call (608) 266-6861

SECTION 32 91 10
BIOSWALE FACILITIES

PART 1 GENERAL

1.01 SUMMARY

A. Section includes:

1. Permanent drainage systems to enhance stormwater management by reducing discharge of stormwater pollutants, and decreasing runoff peak flow rates and volumes.

B. Measurement and Payment:

1. Pea Gravel:

- a. For unit price bid per ton of pea gravel furnish labor, materials, equipment, site preparation, placement and compaction of materials as specified, clean up, and incidentals necessary to complete the Work as specified. Furnishing and installing the 2-4 inches of sand below the pea gravel shall be incidental to this bid item.
- b. Measurement for payment shall be per ton of pea gravel furnished and installed.

2. Engineered Soil:

- a. For unit price bid per cubic yard of engineered soil furnish labor, materials meeting the specific requirements of this specification, equipment, site preparation, placement of materials as specified, clean up, and incidentals necessary to complete the Work as specified.
- b. Measurement for payment shall be per cubic yard of engineered soil furnished and installed.

3. Underdrain Pipe (6-inch Dia.)

- a. For unit price bid per linear foot of perforated and non-perforated underdrain pipe including filter sock furnish labor, pipe materials, pipe laying, fittings including bends, wyes, tees, and increasers, equipment, concrete pipe anchor, placement and compaction, cleanup, and incidentals necessary to complete the Work as specified.
- b. Measurement for payment shall be per linear foot of perforated pipe underdrain measured on straight horizontal line along centerline of sewer including fittings, but excluding storm drainage structures, furnished and installed.

4. PVC Cleanout (6-inch Dia.)

- a. For unit price bid per each cleanout furnish labor, equipment, materials, placement and compaction, cleanup, and incidentals necessary to complete the Work as specified.
- b. Measurement for payment shall be per each cleanout furnished and installed.

1.02 DEFINITIONS

- A. State Specifications: State of Wisconsin DOT, Division of Highways, "Standard Specifications for Highway and Structure Construction," 2012 Edition.
 - B. Standard Specifications: "Standard Specifications for Sewer and Water Construction in Wisconsin," Sixth Edition, December 22, 2003 with Addendum No. 1 dated December 22, 2004.
 - C. WDNR Standard: Wisconsin Department of Natural Resources Conservation Practice Standard 1004, "Bioretention for Infiltration."
- 1.03 SUBMITTALS
- A. Product Data:
 - 1. Filter fabric sample and manufacturer's literature.
 - 2. Engineered soil filter bed sample and manufacturer's literature, soil mix component percentages and installation recommendations.
 - 3. Perforated underdrain pipe manufacturer's product data.
 - 4. Pea gravel – location of source of pea gravel, and one sieve analysis
 - B. Test Results.
 - C. Miscellaneous Submittals:
 - 1. Test results to verify fill materials meet specifications.
 - D. Submit product information to OWNER a minimum of 14 days prior to placement and in accordance with section 01 33 13 of this Specification.

PART 2 PRODUCTS

2.01 ENGINEERED SOIL FILTER BED

- A. The soil shall be engineered to the following specifications:
 - 1. The planting mixture shall be, by volume: 75% sand and 25% compost, and must be well mixed prior to placement.
 - a. The mineral sand component shall meet the requirements of the WDNR Standard,, be pre-washed to remove clay and silt particles, and dried prior to mixing. Calcium carbonated, dolomitic, or manufactured sand, and other substitutions are not allowed.
 - b. The soil component shall be a USDA classified sandy loam, loamy sand or loam texture. The soil component textural class shall be verified by a laboratory analysis or a professional acceptable to the jurisdiction having authority.
 - c. The compost component shall meet the following specifications:
 - 1) Particle Size - 98% of the compost shall pass through a 0.75 inch screen.
 - 2) Physical Contaminants - Less than 1% combined glass, metal and plastic.
 - 3) Organic Matter/Ash Content - Compost shall have at least 40% organic matter and less than 60% ash content.
 - 4) Carbon to Nitrogen Ratio - The ratio shall be 10-20:1 C:N ratio.
 - 5) pH - The pH of the compost shall be between 6 and 8.
 - 6) Soluble salts – Electrical conductivity shall be below 10 dS m⁻¹ (mMhos cm⁻¹)
 - 7) Moisture Content - The compost shall have a moisture content between 35% and 50% by weight.

- 8) Maturity - The compost shall be resistant to further decomposition and free of compounds, such as ammonia and organic acids, in concentrations toxic to plant growth. (A Solvita Method Compost Maturity Index of 6-8 would be an indicator of mature compost. A seedling germination test of 88% or higher would be another indicator of mature compost.)
- 9) Residual Seeds & Pathogens - Pathogens and noxious seeds shall be minimized. (This may be achieved through a composting method that maintains a minimum critical temperature (55 degrees Celsius) for at least 3 consecutive days for compost piles and for at least 15 consecutive days for turned windrow systems.)
- 10) Other Chemical Contaminants - Concentrations of heavy metals such as arsenic, cadmium, copper, lead, mercury, molybdenum, nickel, selenium and zinc should be negligible and shall be in compliance with US EPA 503 regulations for Class A biosolids.

2. The engineered soil mix shall be free of rocks, stumps, roots, brush or other material over 1 inch in diameter. No other materials shall be mixed with the planting soil that may be harmful to plant growth or prove a hindrance to planting or maintenance.
3. The engineered soil mix shall have a pH between 5.5 and 6.5.
4. The engineered soil mix shall have adequate nutrient content to meet plant growth requirements.

2.02 UNDERDRAIN PIPE

- A. All perforated underdrain pipe shall meet the requirements Section 530 of "State Specifications" such as double walled and slotted N-12 Pipe as manufactured by Advanced Drainage Systems, Inc., or approved equal.
- B. All sewer fittings and joints used in conjunction with the underdrain shall be those manufactured for that purpose and meet the requirements of AASHTO M-252.
- C. Non-gasketed joints shall use internal or external couplers covering a minimum of two corrugations at each end.
- D. Provide special shapes and fittings in underdrain pipe as required for bends and other special conditions. Perforated pieces shall have positive coupling method; butted square cut ends not acceptable. Underdrain pipe shall be perforated and non-perforated as indicated on the Drawings.

2.03 PVC CLEANOUT

- A. PVC Pipe and Fittings: Perforated Schedule 40, Type 2, conforming to ASTM D1785. Perforation, size, and spacing shall conform to ASTM C444, Type 1. Pipe joints shall be solvent weld type. Solvent and procedure used shall be as recommended by pipe manufacturer.
- B. Cap shall be a screw-on water-tight cap recommended by pipe manufacturer.

2.04 PEA GRAVEL

- A. The pea gravel shall meet the gradation specified in ASTM D448 No. 6, and shall be double-washed naturally rounded non-fractured gravel.

2.05 FILTER SOCK

- A. The fabric of the filter sock shall have a flow rate capable of passing water at a rate equal to or greater than the perforations of the underdrain pipe. The fabric shall meet the requirements of Section 612 of the "State Specifications".

2.06 SAND

- A. The sand for the sand/native soil interface layer shall meet one of the following gradation requirements:
 - 1. USDA Coarse Sand (.02 - .04 inches)
 - 2. ASTM C33 (Fine Aggregate Concrete Sand)
 - 3. Fine Aggregate Concrete Sand as defined in the State Specifications Section 501.2.5.3.4

PART 3 EXECUTION

3.01 PREPARATION

- A. Notify corporations, companies, individuals or authorities owning conduit, wire or pipes running to property or encountered during excavating operations. Cap or remove services in accordance with instructions by OWNERS of said services. Protect, support, and maintain remaining conduits, drains, sewers, pipes, and wires.

3.02 INSTALLATION

- A. Excavate and prepare bioswale in accordance with Sections 31 22 00.
- B. Compaction and smearing of the soils beneath the floor and side slopes of the bioretention area, and compaction of the soils used for backfill in the soil planting bed shall be minimized. During site development, the area dedicated to the biofiltration swale shall be cordoned off to prevent access by heavy equipment. Acceptable equipment for constructing the bioswale includes excavation hoes, light equipment with turf type tires, marsh equipment or wide-track loaders.
- C. Three inches of sand shall be placed below the pea gravel storage area and vertically mixed with the native soil interface to a depth of 2-4 inches.
- D. Lay pipe to lines and grades shown on pea gravel and surrounded on side and top with pea gravel.
- E. Place filter sock in accordance with manufacturer's written recommendations over perforated underdrain pipe.
- F. The engineered soil shall be pre-mixed and the moisture content shall be low enough to prevent clumping and compaction during placement. The engineered soil lifts shall be placed in multiple lifts, each approximately 12 inches in depth, unless the total engineered soil depth is less than 18 inches.
- G. Steps may be taken to induce mild settling of the engineered soil bed as needed to prepare a stable planting medium and to stabilize the ponding depth. Vibrating plate style compactors shall not be used to induce settling. If the final top surface of the engineered soil is compacted, mitigation measures such as roto-tilling or raking shall be taken.
- H. If possible, settling of the planting bed should be accomplished naturally by allowing the filled bed to sit for several months. This will require over-filling the planting area so that after settling, the proper ponding depth is achieved. Watering each lift of the planting bed to induce settling is not recommended unless water can be gently applied and the watered lift is allowed sufficient time (at least 24 hours) to thoroughly drain prior to adding the subsequent lift and at least 48 hours prior to adding mulch.

3.03 SEDIMENTATION AVOIDANCE

- A. Construction site runoff from disturbed areas shall not be allowed to enter the bioswale device. Runoff from pervious areas shall be diverted from the device until the pervious areas have undergone final stabilization.
 - B. Construction shall be suspended during periods of rainfall or snowmelt. Construction shall remain suspended if the ponded water is present or if residual soil moisture contributes significantly to the potential for soil smearing, clumping or other forms of compaction.
- 3.04 ADJUSTMENT AND CLEANING
- A. Dispose of materials not suitable for bioswale off-site.

*** END OF SECTION ***

PART 2 PRODUCTS

2.01 PLANT SPECIMENS

A. General:

1. Plant material shall be nursery grown unless otherwise specified or approved in writing by ENGINEER. Plants shall be grown within USDA Plant Hardiness Zones 4-5. CONTRACTOR shall submit purchase orders to ENGINEER which indicate location of grower and plants purchased prior to commencing work.
2. Unless specifically noted otherwise, plants shall be of selected specimen quality; have normal habit of growth; and be sound, healthy, vigorous plants with well-developed root systems. Plants shall be free of disease, insect pests, their eggs or larvae, and injuries.
3. See Section 2.01 C Plants, mix, quantity and species according to locations shown on drawings

B. Plants (Designated Container or Pot):

1. Container grown plants shall have heavy fibrous root system, or well-developed tap root, developed by proper horticultural practice including transplanting and root pruning.
2. Root system shall have developed sufficiently long for new fibrous roots to develop so root mass will retain its shape and hold together when removed from container.
3. Bare root plants are unacceptable except for beach grasses.
4. All plant material shall meet the requirements and specifications of the American Association of Nurserymen, American Standard for Nursery Stock (ANSI Z60-1990). Non-conforming plant material may be rejected by the ENGINEER any time prior to final acceptance.
5. All plant material shall conform to Subsection 632.2 of the State Specifications.

C. Infiltration Basin and Bioswale Plants Mixes

Dune Zone plugs	(12 inch spacing)	
<i>Latin Name</i>	Common Name	% of Mix
<i>Ammophila breviligulata*</i>	Beach Grass	100%

*Each plug (plant) shall contain at least 2 stems.

Wet Native plugs	(18 inch spacing)	
<i>Latin Name</i>	Common Name	% of Mix
<i>Mimulus ringens</i>	Monkeyflower	10%
<i>Allium cernuum</i>	Nodding Wild Onion	10%
<i>Liatris pycnostachya</i>	Prairie Blazing Star	10%
<i>Eupatorium perfoliatum</i>	Boneset	10%
<i>Aster novae-angliae</i>	New England Aster	15%
<i>Carex vulpinoidea</i>	Fox Sedge	15%
<i>Zizia aurea</i>	Golden Alexander	10%
<i>Penstemon digitalis</i>	Bearded Foxglove	10%
<i>Iris versicolor</i>	Blue Flag Iris	10%

Mesic Native plugs	(18 inch spacing)	
<i>Latin Name</i>	Common Name	% of Mix
<i>Petalostemum purpureum</i>	Purple Prairie Clover	15%
<i>Ratibida pinnata</i>	Yellow Coneflower	15%
<i>Rudbeckia hirta</i>	Black-eyed Susan	20%
<i>Monarda fistulosa</i>	Bergamot	20%
<i>Ammophila breviligulata</i>	Beach Grass	30%

Bioswale Sun plugs (For Bioswale 3)	(12 inch spacing)	
Latin Name	Common Name	% of Mix
<i>Bouteloua curtipendula</i>	Sideoats Grama	10%
<i>Carex lupulina</i>	Hop Sedge	10%
<i>Carex vulpinoidea</i>	Fox Sedge	10%
<i>Echinacia pallida</i>	Pale Purple Cone Flower	10%
<i>Eupatorium perfoliatum</i>	Boneset	10%
<i>Gentiana andrewsii</i>	Bottle Gentian	10%
<i>Iris versicolor</i>	Blue Flag Iris	10%
<i>Lobelia cardinalis</i>	Cardinal Flower	10%
<i>Tradescantia ohionsis</i>	Spiderwort	10%
<i>Bouteloua curtipendula</i>	Sideoats Grama	10%

Bioswale Shade plugs (For Bioswales 1, 2, and 4)	(12 inch spacing)	
Latin Name	Common Name	% of Mix
<i>Allium cernuum</i>	Nodding Wild Onion	10%
<i>Aquilegia canadensis</i>	Wild Columbine	10%
<i>Aster lateriflorus</i>	Calico Aster	10%
<i>Carex lupulina</i>	Hop Sedge	15%
<i>Carex muskingumensis</i>	Palm Sedge	15%
<i>Iris versicolor</i>	Blue Flag Iris	10%
<i>Lobelia cardinalis</i>	Cardinal Flower	10%
<i>Mertensia virginicus</i>	Virginia Bluebell	10%
<i>Zizia aurea</i>	Golden Alexander	10%

2.02 PLANT SUPPLIERS

- A. At CONTRACTOR'S option, CONTRACTOR may contact following companies for plant, tree, and shrub supplies:

American Natives
c/o Prairie Nursery
P.O. Box 306
Westfield, WI 53964

Prairie Ridge Nursery
9738 Overland Road
Mt. Horeb, WI 53572

Wildlife Nurseries
P.O. Box 2724
Oshkosh, WI 54903-2724

Taylor Creek Restoration Nursery
17921 Smith Road, P.O. Box 256
Brodhead, WI 53520

Spence Restoration Nursery
2220 E. Fuson Road
Muncie, Indiana 47302

Bioretention For Infiltration (1004)

Wisconsin Department of Natural Resources
Conservation Practice Standard

I. Definition

A bioretention device is an *infiltration device*¹ consisting of an excavated area that is back-filled with an engineered soil, covered with a mulch layer and planted with a diversity of woody and herbaceous vegetation. Storm water directed to the device percolates through the mulch and engineered soil, where it is treated by a variety of physical, chemical and biological processes before infiltrating into the *native soil*.

II. Purpose

A bioretention device may be applied individually or as part of a system of stormwater management practices to support one or more of the following purposes:

- Enhance storm water *infiltration*
- Reduce discharge of storm water pollutants to surface and ground waters
- Decrease runoff peak flow rates and volumes
- Preserve base flow in streams
- Reduce temperature impacts of storm water runoff

III. Conditions Where Practice Applies

Bioretention devices are suitable for small drainage areas where increased urban storm water pollutant loadings, thermal impacts, runoff volumes and peak flow discharges are a concern and the area is suitable for infiltration. Bioretention devices are best suited to providing on-site stormwater management opportunities adjacent to *source areas* such as landscaped areas, rooftops, parking lots and streets.

Bioretention devices are not suitable for controlling construction site erosion. These devices will not treat chlorides, and will be damaged by heavy loading of salt-based deicers.

IV. Federal, State and Local Laws

Users of this standard shall be aware of applicable federal, state and local laws, rules, regulations or permit requirements governing bioretention devices. This standard does not contain the text of federal, state or local laws.

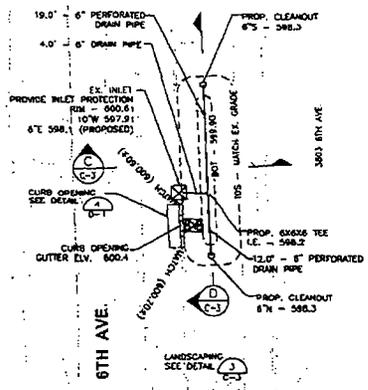
V. Criteria

A. Site Criteria

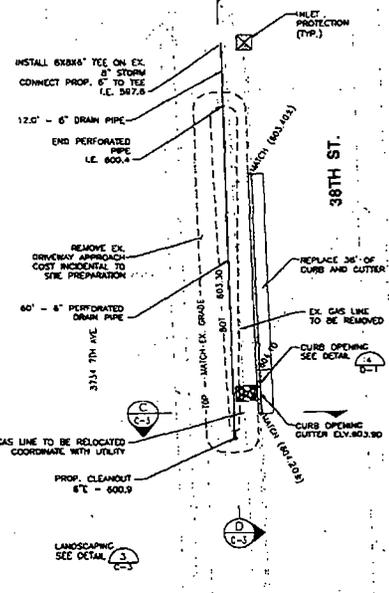
1. A site selected for construction of a bioretention device shall be evaluated in accordance with the WDNR Conservation Practice Standard 1002, "Site Evaluation for Stormwater Infiltration" and shall meet the site requirements of that standard.
2. The following site criteria shall also be met:
 - a. Private Onsite Wastewater Treatment System (POWTS) – The bioretention device shall be located a minimum of 50 feet from any POWTS and shall not be *hydraulically connected* to the POWTS dispersal cell or cause negative impacts such as cross contamination.
 - b. Foundations – The bioretention device shall not be hydraulically connected to building or pavement foundations or cause negative impacts to structures.
 - c. Slopes – Sloped areas immediately adjacent to the bioretention device shall be less than 20% but greater than 0.5% for pavement and greater than 1% for vegetated areas to ensure positive flow towards the device.
 - d. Maximum Drainage Area – The area draining to the bioretention device shall not exceed 2 acres. The drainage area shall not contain significant sources of soil erosion.

¹ Words in the standard that are shown in italics are described in X. Definitions. The words are italicized the first time they are used in the text.

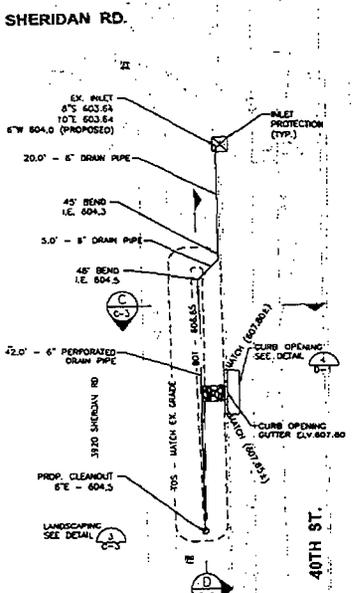
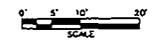
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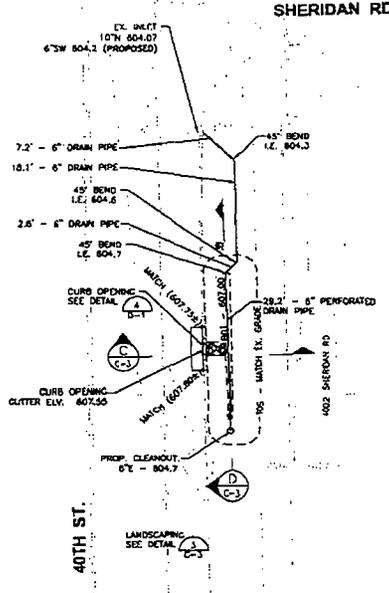
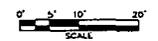
BIOSWALE 4



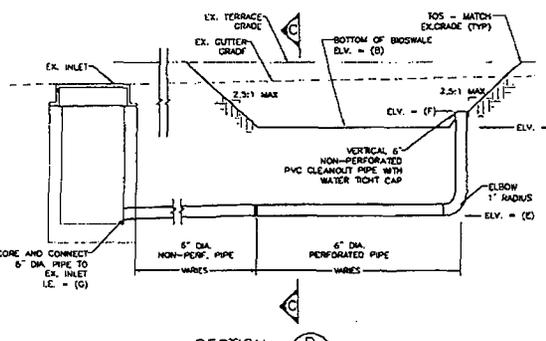
BIOSWALE 3



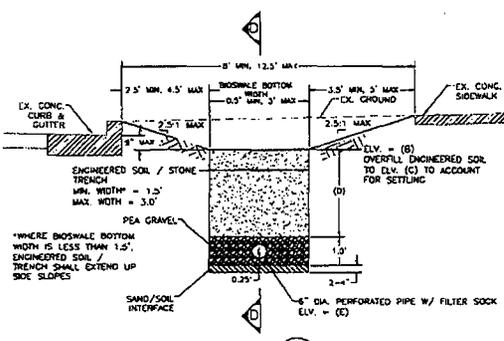
BIOSWALE 2



BIOSWALE 1



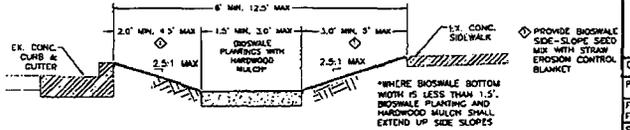
BIOSWALE TYPICAL SECTIONS
(NTS)



SECTION C

BIOSWALE CELL ELEVATIONS

(A)	(B)	(C)	(D)	(E)	(F)	(G)
BIOSWALE ID	BOTTOM ELEV.	ENGINEERED SOIL OVERFILL ELEV.	FINAL ENGINEERED SOIL DEPTH FEET	UNDERDRAIN INVERT ELEV.	CLEANOUT TOP ELEV.	EX. INLET UNDERMIN CONNECTION INVERT ELEV.
1	607.00	607.10	1.50	604.70	607.75	604.20
2	606.85	606.95	1.60	604.50	607.60	604.00
3	603.30	603.40	1.65	600.90	604.05	597.60
4	599.90	600.00	0.65	598.30	600.65	598.10



DETAIL 3 - BIOSWALE LANDSCAPING

<p>REVISIONS</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> <tr> <td>1</td> <td>DEC 2011</td> <td>CONTRACT</td> </tr> <tr> <td>2</td> <td>DEC 2011</td> <td>DESIGN</td> </tr> <tr> <td>3</td> <td>DEC 2011</td> <td>CONTRACT</td> </tr> <tr> <td>4</td> <td>DEC 2011</td> <td>DESIGN</td> </tr> <tr> <td>5</td> <td>DEC 2011</td> <td>CONTRACT</td> </tr> <tr> <td>6</td> <td>DEC 2011</td> <td>DESIGN</td> </tr> </table>	NO.	DATE	DESCRIPTION	1	DEC 2011	CONTRACT	2	DEC 2011	DESIGN	3	DEC 2011	CONTRACT	4	DEC 2011	DESIGN	5	DEC 2011	CONTRACT	6	DEC 2011	DESIGN	<p>DATE: _____</p> <p>BY: _____</p> <p>REVISIONS: _____</p>
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<p>PREPARED BY:</p> <p>AECOM</p> <p>1000 INDUSTRIAL PARKWAY, SUITE 1000, WILSONVILLE, IN 46094</p>																						
<p>CITY OF KENOSHA</p> <p>FENNOYER BEACH STORMWATER IMPROVEMENTS</p> <p>KENOSHA, WISCONSIN</p> <p>BIOSWALES</p>																						
<p>DATE: JANUARY, 2012</p> <p>PROJECT NO: 60213575</p> <p>FILE NO: _____</p> <p>SHEET NO: 3</p> <p>DRAWING NO: C-3</p>																						



ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER

PARK DIVISION
JEFF WARNOCK
SUPERINTENDENT

FLEET MAINTENANCE
MAURO LENCI
SUPERINTENDENT

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT

WASTE DIVISION
ROCKY BEDNAR.
SUPERINTENDENT

DEPARTMENT OF PUBLIC WORKS

MICHAEL M. LEMENS, P.E., DIRECTOR
SHELLY BILLINGSLEY, P.E., DEPUTY DIRECTOR

MUNICIPAL BUILDING · 625 - 52ND ST · RM 305 · KENOSHA, WI 53140
TELEPHONE (262) 653-4050 · FAX (262) 653-4056
EMAIL PUBLICWORKS@KENOSHA.ORG

April 30, 2014

To: Eric Haugaard, Chairman
Public Works Committee

From: Shelly Billingsley, P.E. *Shelly Billingsley*
Deputy Director of Public Works / City Engineer

Cc: Rhonda Jenkins
District 2

Subject: *Ingress and Egress Easement for Simmons Island Boardwalk and Beach Planting Agreement by and between the Kenosha Water Utility and City of Kenosha*

BACKGROUND INFORMATION

Staff is requesting an easement from the Kenosha Water Utility to install and maintain the boardwalk and plantings that will be installed with Project #12-1421 Simmons Island Boardwalk Phase 1A Development in the amount of \$1.00.

RECOMMENDATION

Approve the Ingress and Egress Easement for Simmons Island Boardwalk and Beach Planting Agreement by and between the Kenosha Water Utility and City of Kenosha and approval of payment.

INGRESS AND EGRESS EASEMENT FOR
SIMMONS ISLAND BOARDWALK AND BEACH
PLANTING AGREEMENT BY AND BETWEEN
THE KENOSHA WATER UTILITY AND
CITY OF KENOSHA

Document Number

Document Title

This space is reserved for recording data

Return to:

Office of the City Attorney
City of Kenosha
625 52nd Street, Room 201
Kenosha, WI 53140

12-223-32-201-022

Parcel Identification Numbers

INGRESS AND EGRESS EASEMENT FOR SIMMONS ISLAND BOARDWALK AND
BEACH PLANTING AGREEMENT

By and Between

KENOSHA WATER UTILITY
A Municipal Water Utility

And

THE CITY OF KENOSHA
A Wisconsin Municipal Corporation

This Ingress and Egress Easement for Simmons Island Boardwalk and Beach Planting Agreement (this "Easement and Agreement") made by and between the Kenosha Water Utility, a municipal water utility existing under the laws of the State of Wisconsin, hereafter referred to as "Grantor" and the City of Kenosha, a Wisconsin municipal corporation, hereafter referred to as "Grantee".

The Grantor is the owner of real estate legally described on Exhibit A situated in the City of Kenosha, County of Kenosha, State of Wisconsin, hereafter referred to as the "Real Estate."

Grantor, in consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions below provided, does hereby grant to Grantee a permanent easement in, to, under and across that certain portion of the Real Estate legally described on Exhibit B, and as shown on Exhibit C, hereafter referred to as the "Easement Area," to install, construct, expand, reconstruct, repair, remove, replace, inspect, maintain and operate a walkway/boardwalk and appurtenances, which appurtenances include the fence described below, together with beach plantings all of which is hereafter referred to as the "Permitted Work", for the purposes of providing pedestrian and bicycle access over, across, and through the Real Estate, together with the right to, within the Easement Area, excavate and shape the beach planting area, install selected plantings, and the further right to, within the Easement Area, maintain plants as necessary to provide beach stabilization and stormwater runoff quality.

Grantee shall install, at Grantee's cost, security fencing and swing gate between the walkway/boardwalk and the Grantor's facilities located west of the walkway/boardwalk. The location of the security fencing, swing gate and the walkway/boardwalk within the Easement Area is shown on Exhibit D. The security fencing shall be of a style and type to match existing facility fencing; said style and type must be approved in advance of the installation by the Grantor.

Grantee shall maintain and manage all landscaping installed east of the security fence in a clean and orderly fashion. Grantee shall maintain walkway/boardwalk in a safe condition and materially in conformance with the original design as shown in Exhibit E.

Grantee shall develop a sand management plan to insure that sand does not accumulate along either side of the security fence and shall remove any such accumulation prior to it reaching a

height of eighteen inches (18") above the bottom of the fence at any point within five feet (5') of the fence anywhere along the entire length of the fence. Within sixty (60) days of notification by the Grantor that the walkway/boardwalk, associated landscaping or accumulation of sand is not in an acceptable condition, Grantee shall perform any required maintenance so as to comply with the requirements of this Easement and Agreement.

In addition, Grantee shall be responsible for all sand and snow management within the Grantor's cul-de-sac at the eastern terminus of 51st Place and adjoining roadway for the six hundred feet (600') west of the mouth of the cul-de-sac.

Should Grantor require removal of the walkway/boardwalk for Utility purposes, Grantor shall give Grantee notice six months in advance. Within six(6) months of the notification, Grantee shall remove the walkway/boardwalk.

For the purpose of performing Permitted Work, Grantee shall have the right, upon reasonable notice to Grantor (except in case of emergency in which event Grantee shall provide such notice to Grantor as Grantee is reasonably able to provide under the circumstances), to enter and pass over the Real Estate in order to use the Easement Area and the lands of Grantor reasonably adjacent thereto for the temporary transportation, laying down and storage of non-hazardous materials, backfill, tools and equipment, the depositing and removal of excavated materials, and for other purposes incidental to the Permitted Work. Upon completion of Permitted Work, restoration of the Easement Area by the Grantee shall include, but not limited to backfilling excavations, topsoil, seeding and debris removal. Upon completion of Permitted Work, Grantee, at Grantee's cost and expense, shall be responsible for all other restoration, including restoration of any fencing, any concrete and asphalt surfaces or any other improvements within the Easement Area and surrounding property to the condition prior to such Permitted Work, if required.

Subject to statutory immunities, limits of liability, monetary liability limitations and/or notice requirements, the parties shall indemnify each other. The indemnitor shall indemnify the indemnitee's officers, members, shareholders, directors, employees, agents, contractors, subcontractors, invitees, and successors and assigns for the respective acts of negligence and intentional acts of the indemnitor and its respective officers, employees, agents, contractors, and subcontractors; provided, however, with respect to intentional acts, indemnification hereunder extends only to such intentional acts as are otherwise the liability of the indemnitor under prevailing statutory and common law obligations of other municipalities or municipal utilities, as appropriate, when exercising indemnitor's rights in connection with this Easement and Agreement. Nothing herein is intended to abrogate the provisions of Wisconsin Statutes Sections 345.05(3), 893.80, or 895.04(4), and parties' liability hereunder shall be expressly limited thereby.

This Easement and Agreement shall run with the land and be binding upon the heirs, successors and assigns of the parties hereto. This Easement and Agreement shall not take effect until it is fully executed by the Grantor and Grantee. Each person who executes this Easement and Agreement certifies that they are acting within the scope of their respective authority in doing so.

This Easement and Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. Grantor, Grantee, and their respective successors and assigns shall have all rights to enforce this Easement and Agreement at law or in equity.

GRANTOR:

KENOSHA WATER UTILITY
A Wisconsin Municipal Water Utility

BY: _____
JAN MICHALSKI, Chair
Board of Water Commissioners

Date: _____

BY: _____
EDWARD ST. PETER,
General Manager, Kenosha Water Utility

Date: _____

STATE OF WISCONSIN)
 :SS.
COUNTY OF KENOSHA)

Personally came before me this _____ day of _____, 2014, JAN MICHALSKI, Chair of the BOARD OF WATER COMMISSIONERS, and EDWARD ST. PETER, General Manager of the KENOSHA WATER UTILITY, a Wisconsin municipal water utility, to me known to be such Chair and General Manager of said municipal water utility, and acknowledged to me that they executed the foregoing instrument as such officers as the agreement of said municipal water utility, by its authority.

Notary Public, Kenosha County, WI.
My Commission expires/is: _____

EXHIBIT A

KWU PROPERTY DESCRIPTION

That part of Lots 26 through 32 of Washington Island Subdivision located in the Northwest $\frac{1}{4}$ of Section 32, Town 2 North, Range 23 East of the Fourth Principle Meridian in the City of Kenosha, Kenosha County, Wisconsin, together with that part of 51st Place right-of-way previously vacated and described in Document 1543093 recorded with the Kenosha County Register of Deeds on December 21, 2007 AND the parcel of land described in Document 1544209 and recorded with the Kenosha County Register of Deeds on January 8, 2008 and being more particularly described as follows: Commencing at the southwest corner of said Quarter Section and running thence N. $2^{\circ} 01' 58''$ W. along the west line of said quarter 292.70 feet to the westerly extension of the north line of 51st Place; thence N. $88^{\circ} 04' 23''$ E. along said north line and westerly extension thereof 290.04 feet to the southeast corner of the parcel of land described in Document 1186418 being a quit claim deed to the State of Wisconsin Building Commission and recorded with the Kenosha County Register of Deeds on June 30, 2000; thence continuing N. $88^{\circ} 04' 23''$ E. along said north line 10.00 feet to the point of beginning; thence continuing N. $88^{\circ} 04' 23''$ E. along said north line 1,123 feet more or less to the shoreline of Lake Michigan; thence southerly along said shoreline 99 feet more or less to the north line of the government pier on the north entrance of the Kenosha Harbor and as shown on the plat of survey dated August 21, 2007 by Wisconsin Registered Land Surveyor Ken Kanyuh and filed with the Kenosha County Land Information Office; thence S. $84^{\circ} 12' 29''$ W. along the north line of said government pier 458 feet more or less to the westerly terminus of said government pier; thence S. $84^{\circ} 29' 42''$ W. 682.45 feet to a point which is 166.87 feet S. $1^{\circ} 55' 37''$ E. of the point of beginning; thence N. $1^{\circ} 55' 37''$ W. 166.87 feet to the point of beginning.

EXCEPT therefrom the following described parcels:

Excepted Parcel 1: Commencing on the west line of said Quarter Section at a point N. $2^{\circ} 01' 58''$ W. 292.70 feet from the southwest corner of said Quarter Section; thence N. $88^{\circ} 04' 23''$ E. along the westerly extension of the north line of 51st Place 132.56 feet to a point of curve in said north line and the point of beginning of the parcel to be described herein; thence continuing N. $88^{\circ} 04' 23''$ E. along the north line of said 51st Place 157.48 feet; thence N. $1^{\circ} 56' 32''$ W. 71.62 feet; thence S. $88^{\circ} 03' 28''$ W. 59.43 feet; N. $1^{\circ} 56' 32''$ W. 40.11 feet; thence S. $88^{\circ} 07' 08''$ W. 135.14 feet; S. $2^{\circ} 04' 58''$ E. 104.79 feet to a point on the north line of 51st Place which is on the arc of curve concave to the northeast; thence easterly along the arc of said curve, having a radius of 100.00 feet and a chord which bears S. $81^{\circ} 07' 16''$ E. 37.50 feet to the point of beginning.

Excepted Parcel 2: Commencing on the west line of said Quarter Section at a point N. $2^{\circ} 01' 58''$ W. 404.59 feet from the southwest corner of said Quarter Section; thence N. $88^{\circ} 07' 08''$ E. 32.77 feet to the east line of 4th Avenue and the point of beginning of the parcel to be described herein; thence S. $1^{\circ} 54' 17''$ E. along said east line of 4th Avenue 11.82 feet to the start of a curve in said east line; thence southeasterly along the arc of said curve 119.40 feet, said curve having a radius of 100.00 feet and chord which bears S. $36^{\circ} 06' 36''$ E. 112.43 feet to a point on the north line of 51st Place; thence N. $1^{\circ} 52' 52''$ W. 100.00 feet; thence S. $88^{\circ} 07' 08''$ W. 100.00 feet to a point on the east line of 4th Avenue; S. $1^{\circ} 52' 52''$ E. 100.00 feet to the point of beginning.

EXHIBIT B

DESCRIPTION OF EASEMENT PROPERTY

That part of Lots 26 through 32 of Washington Island Subdivision located in the Northwest $\frac{1}{4}$ of Section 32, Town 2 North, Range 23 East of the Fourth Principle Meridian in the City of Kenosha, Kenosha County, Wisconsin described as follows: Commencing at the northwest corner of said Lot 26 and running thence N. $88^{\circ} 04' 23''$ E. along the north line of said Lot 26 579.42 feet to the point of beginning; thence S. $27^{\circ} 24' 08''$ E. 36.80 feet; thence N. $88^{\circ} 09' 36''$ E. 38.34 feet; thence S. $23^{\circ} 46' 12''$ E. 94.61 feet; S. $02^{\circ} 40' 45''$ E. 10.70 feet; thence N. $88^{\circ} 00' 46''$ E. 0.39 feet; thence S. $1^{\circ} 59' 14''$ E. 121.57 feet; thence N. $87^{\circ} 59' 18''$ E. 121.61 feet; thence S. $45^{\circ} 04' 24''$ E. 16.83 feet; thence S. $2^{\circ} 19' 12''$ E. 102.70 feet; thence S. $2^{\circ} 27' 52''$ E. 71.26 feet; thence N. $88^{\circ} 41' 44''$ E. 48.51 feet; thence S. $0^{\circ} 10' 48''$ W. 110.11 feet; thence N. $89^{\circ} 52' 49''$ E. 130.80 feet; thence N. $0^{\circ} 26' 47''$ W. 410.73 feet; thence N. $39^{\circ} 54' 12''$ W. 182.33 feet to a point on said north line of Lot 26; thence S. $88^{\circ} 04' 23''$ W. along said north line 301.79 feet to the point of beginning.

EXHIBIT D

KENOSHA WATER UTILITY FENCE AT SIMMONS ISLAND

12' WIDE SWING GATE

BOARDWALK
INSTALLED
BY OTHERS

TOTAL FENCE LENGTH = 324'

10
PNT
592.92

11
PNT
592.17

13
PNT
591.61

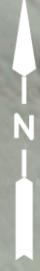
14
PNT
590.61

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PNT
590.59

16
PNT
591.92

17
PNT
590.80

18
PNT
589.62





ENGINEERING DIVISION
SHELLY BILLINGSLEY, P.E.
CITY ENGINEER

PARK DIVISION
JEFF WARNOCK
SUPERINTENDENT

FLEET MAINTENANCE
MAURO LENCI
SUPERINTENDENT

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT

WASTE DIVISION
ROCKY BEDNAR.
SUPERINTENDENT

DEPARTMENT OF PUBLIC WORKS

MICHAEL M. LEMENS, P.E., DIRECTOR
SHELLY BILLINGSLEY, P.E., DEPUTY DIRECTOR

MUNICIPAL BUILDING · 625 - 52ND ST · RM 305 · KENOSHA, WI 53140
TELEPHONE (262) 653-4050 · FAX (262) 653-4056
EMAIL PUBLICWORKS@KENOSHA.ORG

May 2, 2014

To: Eric J. Haugaard, Chairman,
Public Works Committee

From: Shelly Billingsley, P.E. *Shelly Billingsley*
Deputy Director of Public Works /City Engineer

Subject: Project: 13-1551 Fire Station #4 Administrative Addition Re-Bid
Location: 4810 60th Street

Public Works Department staff received the bids and contract from City Administration and City Attorney's office for Project 13-1551 Fire Station #4 Administrative Addition Re-Bid.

It is recommended that this contract be awarded to Magill Construction Company, Inc. (Elkhorn, Wisconsin) for \$630,962. Funding is from CIP Line Item FI-13-003.

SAB/kjb

AIA[®] Document A101[™] – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the
Thousand Fourteen
(In words, indicate day, month and year.)

day of May in the year Two

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

City of Kenosha
625 - 52nd Street, Room 300
Kenosha, Wisconsin 53140
Telephone Number: 262.653.4000

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

Magill Construction Company, Inc.
977 Koopman Lane
Elkhorn, Wisconsin 53121
Telephone Number: 262.723.2283

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

Addition to Kenosha Fire Station No. 4
4810 - 60th Street
Kenosha, Wisconsin 53140
Approximately 2,560 square foot steel framed, single story slab-on-grade addition to Fire Station No. 4 to accommodate Fire Department Administration.

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

Partners in Design Architects, Inc.
600 - 52nd Street, Suite 220
Kenosha, Wisconsin 53140
Telephone Number: 262.652.2800

The Owner and Contractor 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[™]-2007, 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

- 1 THE CONTRACT DOCUMENTS**
- 2 THE WORK OF THIS CONTRACT**
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**
- 4 CONTRACT SUM**
- 5 PAYMENTS**
- 6 DISPUTE RESOLUTION**
- 7 TERMINATION OR SUSPENSION**
- 8 MISCELLANEOUS PROVISIONS**
- 9 ENUMERATION OF CONTRACT DOCUMENTS**
- 10 INSURANCE AND BONDS**

ARTICLE 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. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

May 28, 2014, weather permitting, if contract has been executed by all parties no later than May 11, 2014.

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than Two hundred and ten (210) days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Portion of Work

Substantial Completion Date

, subject to adjustments of this Contract Time as provided in the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

Two Hundred Fifty Dollars (\$250.00) per calendar day for each day of delay from the date of Substantial Completion in the Contract to the actual Date of Substantial Completion.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be Six hundred thirty thousand, nine hundred sixty two and 00/100 (\$630,962.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

Alternate No. 1 and Alternate No. 2.

§ 4.3 Unit prices, if any:
(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit (\$0.00)
------	-----------------------	-------------------------

§ 4.4 Allowances included in the Contract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
------	-------

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

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

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

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the first day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the fifteenth day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than forty five (45) days after the Architect receives the Application for Payment.

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

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract

Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 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.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Ten percent (10.00 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Ten percent (10.00 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.5 of AIA Document A201-2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

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

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

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

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as 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.)*

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, 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.)

- Arbitration pursuant to Section 15.4 of AIA Document A201–2007
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 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.)

1.00 % monthly

§ 8.3 The Owner’s representative:
(Name, address and other information)

Frank Pacetti
625 - 52nd Street, Room 300
Kenosha, Wisconsin 53140
Telephone Number: 262.653.4000

§ 8.4 The Contractor's representative:
(Name, address and other information)

Matt Magill
977 Koopman Lane
Elkhorn, Wisconsin 53121
Telephone Number: 262.723.3873

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
00 73 00	Supplementary Conditions	August 19, 2013	9

§ 9.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Title of Specifications exhibit: Exhibit A, attached hereto.

Section	Title	Date	Pages
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§ 9.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Title of Drawings exhibit: Exhibit B, attached hereto.

Number	Title	Date
--------	-------	------

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
Re-Bid Addendum No. 1	August 29, 2013	2

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

Init.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

- .1 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

- .2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Magill Construction Construction Company, Inc. Bid Break-down. See Exhibit C.

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of insurance or bond	Limit of liability or bond amount (\$0.00)
Workers Compensation	\$1,000,000.00 Each accident
	\$1,000,000.00 Disease, policy limit
	\$1,000,000.00 Disease, each employee
Commercial General Liability	\$1,000,000.00 Each Occurrence
	\$2,000,000.00 General Aggregate
	\$1,000,000.00 Personal and Advertising Injury
	\$2,000,000.00 Products-Completed Operations Aggregate
Automobile Liability	\$1,000,000.00 Each Accident
Umbrella or Excess Liability	\$3,000,000.00 Over primary insurance
	\$10,000.00 Retention for self-insured hazards, each occurrence

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

OWNER *(Signature)*

Michael M. Lemens, P.E., Director of Public Works
(Printed name and title)

CONTRACTOR *(Signature)*

Matt R. Magill, Vice President
(Printed name and title)

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General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Addition for Kenosha Fire Station No. 4
4810 - 60th Street
Kenosha, Wisconsin 53140

THE OWNER:

(Name, legal status and address)

City of Kenosha
625 - 52nd Street
Kenosha, Wisconsin

THE ARCHITECT:

(Name, legal status and address)

Partners in Design Architects, Inc.
600 - 52nd Street, Suite 220
Kenosha, Wisconsin 53140

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.

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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 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 and certify termination of the Agreement under Section 14.2.2.

§ 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.

§ 1.2.2 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 will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment 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 this 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 material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them 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 material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

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 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor 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. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or

the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 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.

§ 2.2.3 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.

§ 2.2.4 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.

§ 2.2.5 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.

§ 2.3 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.

§ 2.4 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 written 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 deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor 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. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

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 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 2.2.3, 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 make 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 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, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and 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 written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required 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 authorized by the Architect in accordance with Sections 3.12.8 or 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

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.

§ 3.6 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 21 days after first observance of the conditions. 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 an equitable adjustment 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 in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed 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 furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply 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 SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be 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, 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 maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be 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 the way by which 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 requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing 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 written 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. 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 cause such services or certifications to be provided by a properly 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, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, 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. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 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, and 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 and patching shall be restored to the condition existing prior to the cutting, fitting and 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 such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's 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 or 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 Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect 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 such 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 the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such 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 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.

§ 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.

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

§ 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, except as provided in Section 3.3.1.

§ 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 report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) 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 FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 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 13.5.2 and 13.5.3, whether or not such 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, material and equipment 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, unless otherwise specifically stated by the Architect, 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 authorize 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 duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 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 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 or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply 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 previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, 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, which the Contractor, by these 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 in writing; 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 such 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 Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 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 other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the 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, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor 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 report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report 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, except as to defects not then reasonably discoverable.

§ 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 the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 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, and the Contractor shall proceed promptly, 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 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 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.

§ 7.3.6 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.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and 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 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .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 related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 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 has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

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.

§ 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, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 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 an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order 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

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.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's 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. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material 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 material 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, material suppliers, or other persons or entities making a claim by reason of having 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 issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part 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 comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. 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. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. 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 material 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 for labor, materials or equipment;
- .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 the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 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 material or equipment suppliers 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 Architect will reflect such payment on the next Certificate 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 material and equipment 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 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, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment 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 and 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, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 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' written 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 shut-down, 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, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall 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 such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such 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 as required under Section 11.3.1.5 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 written 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 and, 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 terms and conditions of 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 and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial 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 and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, 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. If such lien 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 such lien, 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 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 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; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material 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 or the Contractor's Subcontractors or Sub-subcontractors; 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 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 owners and users of adjacent sites and utilities.

§ 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, except damage or loss 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, written notice of such 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

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. 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 report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written 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 such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will 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 in the amount of the Contractor's reasonable additional costs of shut-down, 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 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 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 indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance 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 indemnify 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 LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction

of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents 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 Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or

otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 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, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

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, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, 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 covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance 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 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the

Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 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.

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, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after 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 an 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 written 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 2.4.

§ 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, whether completed or partially completed, of the Owner or separate contractors 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 except that, 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 such 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 such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 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.

§ 13.4.2 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 there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 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 (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 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 13.5.1, 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 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 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.

§ 13.5.4 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.

§ 13.5.5 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.

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

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may 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.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time 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 13.7.

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 or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, 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 promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, 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' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor 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' written 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 for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .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 above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, 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' written 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 as described in 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 written 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 Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

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, 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.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written 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 must 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 CONTINUING CONTRACT PERFORMANCE

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. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein 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.

§ 15.1.5.2 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.

§ 15.1.6 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 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, 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 arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no 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 such 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 an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 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 15.1.6 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 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. 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 Either party, at its sole discretion, 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 Either party, at its sole discretion, 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 the Owner and Contractor under this Agreement.

SECTION 00 73 00

SUPPLEMENTARY CONDITIONS

PART 1 - GENERAL

1.1 GENERAL CONDITIONS

- A. The "General Conditions" of this contract is the American Institute of Architects (AIA) Document A201, the "General Conditions of the Contract for Construction," 2007 Edition, hereinafter referred to as the AIA General Conditions.
- B. Copies of the AIA General Conditions are on file and may be referred to at the office of the Architect. Copies of AIA Document A201, may be purchased from local Chapters of the American Institute of Architects.

1.2 PURPOSE

- A. The following supplements modify the AIA General Conditions. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect.

1.3 MODIFICATIONS TO AIA GENERAL CONDITIONS

A. Article 1: General Provisions

- 1. Add the following sentence to the end of Subparagraph 1.1.1:
"The Contract Documents executed in accordance with Subparagraph 1.5.1 shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations involving computers."
- 2. Add the following to the first sentence of Subparagraph 1.1.3:
"and shall include labor, materials, equipment and services provided by subcontractors, sub-subcontractors, material suppliers or any other entity for whom the Contractor is responsible under or pursuant to the Contract Documents."
- 3. In Subparagraph 1.2.1 delete the following:
" performance by the Contractor shall be required only to the extent required by the Contract Documents and reasonably inferable from them as being necessary to produce the intended results."
- 4. Add the following to Subparagraph 1.2.1:
".1 Where conflicts exist within or between parts of the Contract Documents, or between the Contract Documents and the applicable standards, codes and ordinances, the more stringent, or higher quality or greater quantity requirements shall apply. Large scale drawings take precedence over smaller scaled drawings, figured dimensions over scaled dimensions and noted materials over graphic representations. Whenever such a conflict is discovered, the Architect shall be immediately notified.
.2 The specifications are of the abbreviated type and include incomplete sentences. Omission of phrases such as "The Contractor shall," or "conforming to the requirements of" are intentional; omitted words or phrases shall be supplied by inference in the same manner as they are when a "Note" occurs on the drawings. Words in the singular shall include a plural whenever applicable, or the context so indicates."
- 5. Add the following to Paragraph 1.4:
Further, the singular shall include the plural and vice versa when appropriate.

6. Add the following Subparagraph 1.6.1 to Paragraph 1.6:

1.6.1 Contractor's Use of Instruments of Service in Electronic Form.

1.6.1.1 The Architects may, with the concurrence of the Owner, furnish to the Contractor versions of Instruments of Service in electronic form. The Contract Documents executed or identified in accordance with Subparagraph 1.1.1 shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations involving computers.

1.6.1.2 The Contractor shall not transfer or reuse Instruments of Service in electronic or machine readable form without the prior written consent of the Architect.

B. Article 2: Owner

1. Delete Subparagraph 2.2.1 in its entirety.
2. Add the following at the end of Paragraph 2.3.

"This right shall be in addition to and not in restriction or derogation of the owner's rights under Article 14 hereof."

C. Article 3: Contractor

1. Add the following Subparagraph 3.2.5 and 3.2.6 to Paragraph 3.2:

3.2.5 The Architect and the Contractor hereby jointly specifically acknowledge and declare that the Contract Documents are full and complete, and are sufficient to have enabled the Contractor to determine the cost of the Work therein and that the Drawings, the Specifications, and all Addenda are sufficient to enable the Contractor to construct the Work outlined therein in accordance with applicable laws, statutes, building codes and regulations, and otherwise to fulfill all his obligations hereunder. The Contractor further acknowledges that having carefully examined all Drawings, Specifications and documents that there are no discrepancies or omissions in the Contract Documents.

3.2.6 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

2. Delete Subparagraph 3.4.2 in its entirety.
3. Add the following Subparagraphs 3.4.4 and 3.4.5 to 3.4:

3.4.4 After the Contract has been executed, the Owner and the Architect will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in the General Requirements - Division 1 of the Specifications.

3.4.5 By making requests for substitutions based on Subparagraph 3.4.4 above, the Contractor:

- .1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;
- .3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent;

4. will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

3.4.6 Contractor, in accordance with Section 66.0903, Wis. Stats., and Section 5.10 of the City of Kenosha's Code of General Ordinances, as applicable, shall not pay its employees less than the acceptable prevailing wage rate, which is on file in the Office of the City of Kenosha's Department of Public Works, and incorporated herein by reference. One (1) copy of the prevailing wage rate, when and as applicable, shall be posted by Contractor on the Work site. Prior to final payment Contractor must provide Architect the Prime Contractor Affidavit of Compliance with Prevailing Wage Rate Determination. Contractor, within five (5) working days of written request shall furnish Architect with payroll data, certified under oath, showing the wage rate paid for every position engaged in the Project.

3.4.7 In the performance of the Work under this Contract, Contractor agrees not to discriminate against any employee or applicant for employment contrary to any Federal, State or local law, rule or regulation, because of race, religion, marital status, age, creed, color, sex, handicap, natural origin, or ancestry, sexual orientation, income level or source of income, arrest record or conviction records, less than honorable discharge, physical appearance, political beliefs or student status. Work is to be performed in accordance with the Federal Americans With Disabilities Act.

4. In Paragraph 3.5., delete the words "except for those inherent in the quality of the work the Contract Documents require or permit."
5. In Subparagraph 3.7.1, replace the words "the building permit" in line 2 and insert "all building permits" in lieu thereof.
6. Add the following two sentences to Subparagraph 3.7.1
The Owner shall pay fees for public or private water, gas, electrical, and other utility extensions at the site. The Contractor shall secure and arrange for all necessary utility connections.
7. Delete Subparagraphs 3.10.1, 3.10.2, and 3.10.3 in their entirety and substitute the following:

3.10.1 The Contractor shall prepare at least monthly a schedule summary report in a form and of sufficient detail and character as approved by the Owner. The report at a minimum shall specify whether the Project is on schedule, and if not, the reasons therefor and the new schedule.

The Contractor shall also prepare a report not later than thirty (30) calendar days after the contract is awarded which shall include a complete list of suppliers, items to be purchased from the suppliers or fabricators, time required for fabrication and the scheduled delivery dates for each item. As soon as available, copies of purchase orders shall be furnished to the Owner.

The Contractor shall prepare a monthly report in a form and of sufficient detail and character as approved by the Owner. Accompanying the report shall be an updated current project schedule, the updated report hereinabove described, a listing and status of all change requests, bulletins, modifications, etc.

The Contractor shall hold weekly meetings at the Job Site, or at such other time and frequency as are acceptable to the Owner. Progress of the Work shall be reported in detail with reference to construction schedules. Each interested Subcontractor shall have present a competent representative to report the condition of his work and to receive information.

8. Add Subparagraph 3.12.11 to Paragraph 3.12:

3.12.11 The Architect's review of Contractor's submittals will be limited to examination of an initial submittal and two (2) resubmittals. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional resubmittals.

9. Add the following Subparagraph 3.18.3 to Paragraph 3.18:

3.18.3 None of the foregoing provisions shall deprive the Owner or the Architect of any action, right or remedy otherwise available to them or either of them at common law.

D. Article 4: Administration of the Contract:

1. Add the following to the end of Subparagraph 4.2.8:

No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Contract Sum or a change in the Contract Time unless and until such alteration or addition has been authorized by a Change Order executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents. Any claim for increased cost for delay shall be asserted in accordance with the provisions of Article 15 unless the time is extended in writing by the Owner. This requirement is of the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Contract Sum or change in the Contract Time.

E. Article 6: Construction by Owner or by Separate Contractors

1. In Subparagraph 6.2.4, delete the word "wrongfully" in lines 1 and 2.

F. Article 7: Changes in the Work

1. Add the following Subparagraph 7.1.4 to Paragraph 7.1:

7.1.4 The combined overhead and profit included in the total cost to the Owner of a change in the Work shall be based on the following schedule:

.1 For the Contractor, for Work performed by the Contractor's own forces, ten percent (10%) of the cost.

.2 For the Contractor, for Work performed by the Contractor's Subcontractors, five percent (5%) of the amount due the Subcontractors.

.3 For each Subcontractor involved, for Work performed by that Subcontractor's own forces, ten percent (10%) of the cost.

.4 For each Subcontractor involved, for Work performed by the Subcontractor's Sub-subcontractors, five percent (5%) of the amount due the Sub-subcontractor.

.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.1.

.6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials, Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are

Subcontracts, they shall be itemized also. In no case will a change involving over \$250.00 be approved without such itemization."

2. Add the following Subparagraph 7.1.5 to Paragraph 7.1:

7.1.5 Except as permitted in Section 7.3, a change in the Stipulated Lump Sum Fee due Architect under Section 11.1 of the attached AIA B108 Agreement or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor expressed or implied acceptance of alterations or additions to the Work, and no claim the Owner has been unjustly enriched by any alteration of or addition to the Work, shall be the basis of any claim to an increase to the Contract Sum or Contract Time.

G. Article 9: Payments and Completions

1. Add the following to Subparagraph 9.3.1:

The form of Application for Payment, duly notarized, shall be current authorized edition of AIA Document G702, Application and Certificate for Payment, supported by a current authorized edition of AIA Document G703, Continuation Sheet.

9.3.1.3 The Contractor's Application for Payment shall be made monthly.

9.3.1.4 Submit all payment requests to the Architect for all Work completed during the previous time period in accord with the schedule set forth in the General Requirements - Division 1 of the specifications. Requests submitted late will not be processed until the following month.

.1 The Contractor's partial waiver of lien, for the full amount of the payment, shall accompany the first payment application. Each subsequent payment application shall be accompanied by the Contractor's partial waiver of lien, and by partial waiver of lien from all Subcontractors and suppliers who were included in the immediately preceding payment application, to the extent of that payment, including any retainage paid to the subcontractor or supplier.

.2 If the Contractor does not submit the next payment application 30 days after the date the Owner issues the payment on the immediately preceding application, the Contractor shall submit partial waivers of lien from all Subcontractors and suppliers who were included on the immediately preceding application, to the extent of that payment, including any retainage paid to the Subcontractor or supplier, within 30 days after the Contractor receives the immediately preceding payment from the Owner.

2. Add the following to subparagraph 9.3.3:

The Contractor shall indemnify and hold the Owner harmless from any liens, claims, security interest or encumbrances filed by the Contractor, Subcontractors, or anyone claiming by, through or under any of them.

3. Delete Subparagraph 9.5.3 and add the following new Subparagraph 9.5.3:

9.5.3 Payments to Subcontractors by the Owner.

.1 If the Owner fails to approve a Contractor's Application for Payment for a cause which the Owner determines is the fault of the Contractor and not the fault of a particular Subcontractor, or if the Contractor fails to make a payment which is properly due to a particular Subcontractor, the Owner may pay such Subcontractor directly, less the amount to be retained under his subcontract. Any amount so paid by the Owner shall be repaid to the Owner by the Contractor in the manner set forth in Paragraph 2.4.

.2 The Owner shall have no obligation to pay, or see to the payment of, any monies to any Subcontractor. Nothing contained in Subparagraph 9.5.3 shall be

deemed to create any contractual relationship between the Owner and any Subcontractor or to create any rights in Subcontractor against the Owner.

4. In Paragraph 9.7, delete the words "or awarded by binding dispute resolution" in the first sentence, and add the following to the end of the subparagraph:

Notwithstanding the foregoing where there exists a bona fide dispute between Owner and Contractor, Contractor must continue to work if the money in dispute is either put in escrow or the lender agrees to set aside funds and pay such funds, if necessary, when the dispute is resolved.

5. Add the following Clause 9.8.3.1 to Subparagraph 9.8.3:

9.8.3.1 Except with the consent of the Owner, the Architect will perform no more than three (3) inspections to determine whether the Work or a designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections.

6. Add the following Clause 9.10.1.1 to Subparagraph 9.10.1:

9.10.1.1 Except with the consent of the Owner, the Architect will perform no more than three (3) inspections to determine whether the Work or a designated portion thereof has attained Final Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for any additional inspections.

7. Add the following after "liens" and before "claims" in 9.10.2(5):

Affidavits of Compliance with Prevailing Wage Determination (both for CONTRACTOR and all subcontractors)

8. Add the following Paragraph 9.11 to Article 9:

9.11 Liquidated Damages

9.11.1 The General Contractor is solely responsible for substantially completing the Work of the project by the scheduled Substantial Completion Dates. This responsibility includes all Work including that of the General Contractor's forces, assigned Contractors, Subcontractors and suppliers. The General Contractor acknowledges that the Owner will suffer significant financial loss if the project is not Substantially Complete on the date set forth in the Contract Documents. The General Contractor further acknowledges that the measure of such loss would not be susceptible to precise calculation. To protect the Owner against said loss, the Owner and the General Contractor hereby agree that the General Contractor and the General Contractor's surety, if any, shall be liable for and shall pay to the Owner liquidated damages as follows:

Two Hundred Fifty Dollars (\$250.00) per calendar day for each day of delay from the Date of Substantial Completion in the Contract to the actual Date of Substantial Completion."

9. Add the following Paragraph 9.12 to Article 9:

CONTRACTOR shall promptly, upon receipt of written demand from Owner or Architect, refund any overpayments received thereby. Should Contractor not timely comply with said request, Contractor shall pay Owner interest for said amount at the rate of one percent (1%) per month on the unpaid balance, until paid in full. Should Contractor owe Owner any money which is lawfully due and payable on any account receivable or on any personal property tax, forfeiture or license or permit fee, whether or not related to the Project, Contractor authorizes Owner to set off and deduct said amount from any payment due Contractor hereunder.

- H. Article 10: Protection Of Persons And Property Add to Subparagraph 10.2.7 the following:

1. " for persons and property."
2. Add the following Subparagraph 10.2.9 to paragraph 10.2:

10.2.9 The Contractor, prior to commencing the Work, shall submit to the Architect, in writing, a statement certifying that he is familiar with the Manual of Accident Prevention in Construction by the Associated General Contractors of America, current edition, and further that he will maintain at the Project a copy of said publication and will strictly enforce the applicable requirements of same. Contractor will also state the name of the Contractor's Safety Engineer who will be responsible for enforcing all Safety Requirements.

I. Article 11: Insurance And Bonds

1. Modify Subparagraph 11.1.1 as follows: In the first line following the word "maintain" insert the words:

in a company or companies to which the Owner has no reasonable objection and is

2. Add the following new clauses to Subparagraph 11.1.1:

.9 The Contractor shall also purchase and maintain such insurance as will protect the Owner and the Architect and their agents and employees from and against all claims, damages, losses, and expenses including Attorney's fees arising out of or resulting from the performance of the Work provided that such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, or Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party to whom insurance is afforded pursuant to this subparagraph.

.10 In any and all claims against the Owner or the Architect or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the insurance obligation under this Subparagraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Workmen's Compensation Acts, disability benefit acts or other employee benefit acts.

.11 The insurance obligations of the Contractor under this subparagraph shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

.12 Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis including:

1. Premises Operations, including X (explosion), C (collapse), and U (underground) coverage as applicable.
2. Independent Contractor's Protective.
3. Products and Completed Operations.
4. Personal Injury Liability with Employment Exclusion deleted.
5. Contractual, including specified provision for Contractor's obligation under Paragraph 3.18.

- 6. Owner, non-owned and hired motor vehicles.
- 7. Broad Form Property Damage including Completed Operations.
- .13 If the General Liability coverage is provided by a Commercial General Liability Policy on an occurrence basis, the policy date or Retroactive Date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after final payment, certified in accordance with Subparagraph 9.10.2.
- .14 The policy shall name the Owner as an additional insured. Further, Contractor shall provide Owner with a copy of the endorsement naming the Owner as an additional insured.
- 3. Add the following to Subparagraph 11.1.2:

All insurance to be provided by the architect shall be written by companies with a current A.M. Best rating of at least A-/X and/or otherwise reasonably acceptable to Owner.
- 4. Add the following Clause 11.1.2.1 to 11.1.2.4 to Subparagraph 11.1.2:
 - 11.1.2.1 The limits for Worker's Compensation and Employers' Liability insurance shall meet statutory limits mandated by State and Federal Laws. If (1) limits in excess of those required by statute are to be provided or (2) the employer is not statutorily bound to obtain such insurance coverage, or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

\$1,000,000.00	Each accident
\$1,000,000.00	Disease, policy limit
\$1,000,000.00	Disease, each employee
 - 11.1.2.2 The limits for Commercial General Liability insurance including coverage for Premises-Operations, Independent Contractor's Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards) shall be as follows:

\$1,000,000.00	Each Occurrence
\$2,000,000.00	General Aggregate
\$1,000,000.00	Personal and Advertising Injury
\$2,000,000.00	Products-Completed Operations Aggregate

 - .1 The policy shall be endorsed to have the General Aggregate apply to this Project only.
 - .2 The Contractual Liability insurance shall include coverage sufficient to meet the obligations in AIA Document A201-1997 under Paragraph 3.18.
 - .3 Products and Completed Operations insurance shall be maintained for a minimum period of at least three (3) year(s) after either 90 days following Substantial Completion or final payment, whichever is earlier.
 - 11.1.2.3 Automobile Liability insurance (owned, non-owned and hired vehicles) for bodily injury and property damage shall be as follows:

\$1,000,000.000	Each Accident
-----------------	---------------
 - 11.1.2.4 Umbrella or Excess Liability coverage shall be as follows:

\$3,000,000.00	Over primary insurance
\$10,000.00	Retention for self-insured hazards, each occurrence

5. Add the following sentences to Subparagraph 11.1.3:
 If this insurance is written on the Comprehensive General Liability policy form, the Certificates shall be AIA Document G715, Certificate of Insurance. If this insurance is written on a Commercial General Liability policy form, ACORD form 25S will be acceptable. A copy of each Certificate of Insurance shall be furnished to the Architect. The Certificates shall indicate OWNER as an additional insured.
 6. Add the following sentence to Clause 11.3..1.1:
 The form of policy for this coverage shall be Completed Value.
 7. Add the following sentence to Clause 11.3..1.3:
 The property insurance is written with a deductible of \$1,000.00 per occurrence.
 8. Add the following Clause 11.3.1.6 to Subparagraph 11.3.1:
 11.3.1.6 The insurance required by Paragraph 11.3 is not intended to cover machinery, tools or equipment owned or rented by the Contractor that are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment, which shall be subject to the provisions of Subparagraph 11.3.7.
 9. Add the following sentence to Subparagraph 11.3.7:
 In waiving rights of recovery under terms of the subparagraph, the term "Owner" shall be deemed to include his employees as the Owner's representatives as provided for in the Contract Documents. Further, the waiver of subrogation shall apply only to the extent of actual recovery of insurance proceeds.
 10. Delete Subparagraph 11.4.1 and substitute the following:
 11.4.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Contractor's usual source and cost thereof shall be included in the Contract Sum. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum.
 11.4.1.1 The Contractor shall deliver required bonds to the Owner not later than three (3) days following the date the Agreement is entered into, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.
 11.4.1.2 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.
- J. Article 12 - Uncovering and Correction of Work
1. In Clause 12.2.2.1 of Subparagraph 12.2.2, delete the words "unless the Owner has previously given the Contractor a written acceptance of such condition" in lines 5 and 6.
 2. In the second sentence of Subparagraph 12.2.5 "Section 12.2.2" shall be corrected to read "Section 12.2.2."
- K. Article 13 - Miscellaneous Provisions
1. 13.3 shall be deleted and replaced with the following:
 Any notice required to be given pursuant to this Contract shall be in writing and delivered by hand, courier service providing proof of delivery or certified mail return receipt requested, to the addresses indicated below, or such address as the parties

indicate in writing. Notice shall be effective as of the date of delivery if by hand or courier service, or mailing, if by certified mail, return receipt requested.

If to Owner: City Clerk/Treasurer
625 52nd Street, RM 105
Kenosha, Wisconsin 53140

Copy to: Director of Public Works
625 52nd Street, RM 305
Kenosha, Wisconsin 53140

If to Architect: Thomas J. O'Connell, Jr.
Partners in Design Architects
600 52nd Street, Suite 220
Kenosha, Wisconsin 53140

If to Contractor: Magill Construction Company, Inc.
977 Koopman Lane
Elkhorn, WI 53121

2. Add Subparagraph 13.4.3 as follows:

13.4.3 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder other Contract Documents.

3. In Paragraph 13.6, delete the words "legal rate prevailing from time to time at the place" in lines 4 and 5, and insert "specified from time to time by statute to be paid on money judgements awarded by the Federal Courts" in lieu thereof.

L. Article 14 – Termination or Suspension of the Contract

1. Delete 14.1.4.

2. Add 14.2.1.5 and 14.2.1.6 as follows:

.5 failure to provide notice of subcontractors pursuant to 5.2.1 or uses a subcontractor to which Owner objects (5.2.2).

.6 utilizes employees that are uncooperative with or disrespectful to Owner's employees or Architect.

M. Article 15 Claims and Disputes

1. Delete the following in 15.3.2:

"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."

2. Add the following after the first sentence in 15.3.2:

The parties shall mutually agree upon a mediator.

3. Delete the following in 15.4.1:

"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."

4. Add the following after the first sentence in 15.4.1:

Owner and Contractor will each select an arbitrator within ten (10) days of selecting arbitration. The arbitrators shall have ten (10) days thereafter to mutually agree upon a third arbitrator. None of the arbitrators shall have a financial interest in the contract or the business of either party. The decision of the majority of the arbitrators shall be determinative of the Claim(s).

END OF SECTION 00 73 00

TO: Michael M. Lemens, P.E.
Director of Public Works

FROM: Shelly Billingsley, P.E.
Deputy Director of Public Works / City Engineer

SUBJECT: Public Works Project Status Report

- Project # 08-1443 Bike and Pedestrian Connections** - Plans have begun but a major focus on bike paths has been to complete the Bike Path crossing at Washington Road and the extension through Nash Park. Once these projects have been bid, design will be completed on this third phase. (Citywide)
- Project #09-1121 - Forest Park Evaluation** – [Strand] Staff is meeting with consultant and working on final comments. (1)
- Project #10-1126 - Wetland Mitigation Bank** - [Wetlands and Waterways Consulting LLC] Monitoring wells have been installed on-site. Currently in the process of further field testing and observations. (16)
- Project #10-1131 - River Crossing Swale Restoration** – [Applied Ecological Services] Maintenance has been performed. (17)
- Project #11-1128 - Multi-Plate Pipe Storm Sewer Inspection and Evaluation** – [Ruekert-Mielke] Staff is working with consultant on recommendations. (2 and 7)
- Project #11-1125 - Pennoyer Beach Outfall Stormwater Infiltration Basin (GLRI Grant)** – Pending settlement agreement (1 and 6)
- Project #11-2013 - Harbor and Marina Dredging** – [Shoreline Builders] Waiting for close out documents (2).
- Project #12-1430 - Alford Park Warehouse Demolition** – [Earth Construction] Close out documents were sent to Contractor. (1)
- Project #11-1025 - 122nd Avenue – 71st Street to 74th Street** – [AW Oakes] Final items remain. (Stormwater Utility funding also) (16)
- Project #13-1012 - Resurfacing I** – [Stark] Saw cutting, storm sewer, removals, curb & gutter and binder are complete on all roads. Pending approval of a change order extending the completion date for this project to June 12th, 2014, surface asphalt will be completed on all streets in the spring of 2014. [Lincoln Road intersection at 28th Avenue, Lincoln Road intersection at 22nd Avenue, 70th Street from 39th Avenue to 40th Avenue] (Stormwater Utility funding also) (13, 15)
- Project #13-1013 -CDBG Resurfacing** – [Stark] Saw cutting, storm sewer, removals, curb & gutter and pavement are complete on all roads. Restoration will be completed in the spring of 2014. [13th Court from Washington Road to 43rd Street, 41st Street from 22nd Avenue to 350 ft. east of 21st Avenue] (Stormwater Utility funding also) (6)
- Project #13-1016 Resurfacing III** – [Cicchini] Punch list items remain on 40th Street. [34th Ave from 86th Place to 88th Place, 44th Avenue Cul-de-Sac south of 87th Place, 87th Place Cul-de-Sac west of 42nd Avenue, 26th Avenue from 34th Street to 31st Street, 40th Street from Sheridan Road to 8th Avenue] (Stormwater Utility funding also) (1, 6, 9, 14)
- Project #13-1024 – 60th Street Resurfacing – 39th Avenue to 30th Avenue** – [Cicchini] Punch list items remain. (Stormwater Utility funding also) (3, 11, 15)
- Project #13-1025 56th Street Resurfacing** – [Cicchini] Concrete removals have begun on the south side of the roadway. [56th Street from Sheridan Road to 13th Avenue] (Stormwater Utility funding also) (2)
- Project #13-1208 - Sidewalk and Curb and Gutter** – [AW Oakes] Project is complete. Punch list items remain. (Stormwater Utility funding also) (Citywide)
- Project #13-1412 - Simmons Field** – [Camosy] Temporary occupancy has been issued. Camosy will complete work in the spring. (12)
- Project #14-1012 – Resurfacing Phase I** – Staff is evaluating roadways due to extreme weather this winter the focus will be on main arterials. (Citywide)
- Project #14-1015 – 39th Avenue – Washington Rd to 45th Street Resurfacing** – [Clark-Dietz] Consultant is currently working on design, plans, and specifications. (10)
- Project #14-1019 – Crackfilling** – Staff is evaluating roadways due to extreme weather this winter.
- Project #14-1208 – Sidewalk Repair Program** –Project is anticipated to begin May 19. (Stormwater Utility funding also) (Citywide)
- Project #14-2002 Overpass Painting** – Staff is completing specifications for this project.
- Project 14-1027 Pavement Markings** – Staff is completing specifications for this project. (Citywide)
- Project 14-1025 56th Street Phase Lighting** – The project is currently out for bid. The bid opening is May 14. (2)
- Project 14-1026 56th Street Phase Sidewalk Project** – Staff is completing plans and specifications for the sidewalk repairs. (2)
- Project #14-1209 Emergency Vehicle Preemption – Traffic Signals** – Staff is currently working on signal locations and proposal quantities. (Citywide)
- Design Work (Public Works)** – Staff is working on the following projects: Website Design, GPS Data Forms, 56th Street Phase II, Equipment Specifications, and SWU Projects and Parks Projects.