

SECTION 501 - SUPPLEMENTARY  
CONDITIONS

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## **Supplementary Conditions**

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract. All provisions which are not so amended or supplemented remain in full force and effect.

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

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.

**SC-2.02.A COPIES OF DOCUMENTS.** Delete Paragraph 2.02.A in its entirety and insert the following in its place:

- A. Owner shall furnish to Contractor two fully executed copies of the Contract; One copy is for the Contractor's bonding agency and one copy is for the Contractor's file. Additional printed copies will be furnished upon request at the cost of reproduction. One copy in electronic portable document format (PDF) will also be provided upon request.

**SC-2.03.A.2 Schedule of Submittals.** Delete Paragraph 2.03.A.2 in its entirety.

**SC-2.04. Preconstruction Conference; Designation of Authorized Representatives.** Add the following new paragraph after Paragraph 2.04.B:

- C. At this conference Owner may designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individual shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of Engineer.

**SC-2.05.A. Initial Acceptance of Schedules.** Delete the first sentence in Paragraph 2.05.A

**SC-2.05.A.2. Schedule of Submittals.** Delete Paragraph 2.05.A.2 in its entirety.

**SC-3.01. Intent.** Add the following new paragraph after the first paragraph in 3.01.C:

In case of discrepancy between documents, the governing order is as follows:

- 1.Addenda
- 2.Special Provisions (Section 600)
- 3.Plans
- 4.Wauwatosa Standard Specifications
- 5.All Other Specifications
- 6.Appendices and other documents intended to be incorporated into the contract

If there is a discrepancy on a drawing, the drawing dimension, unless obviously incorrect, govern over scaled dimensions. If there is a discrepancy in the plans, the typical sections or details govern over any standard detail drawing.

**SC-3.01. Intent.** Add a new paragraph immediately after Paragraph 3.01.H as follows:

- I. Some Specification and Drawing text is written in imperative and streamlined form. This imperative language is directed to Contractor, unless specifically noted otherwise. Include the words "shall be" by inference where a colon (:) is used within sentences or phrases.

**SC-4.01. A Commencement of Contract Times; Notice to Proceed.** Delete Paragraph 4.01.A in its entirety and insert the following in its place:

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

**SC-4.03.B – Reference Points.** Add the following new paragraph immediately after Paragraph 4.03.A:

- B. The Owner will furnish and set the survey stakes for the general location, alignment, grade, and other necessary points with proper notes thereon. The Contractor shall notify the City Engineer not less than seventy-two (72) hours or not less than three (3) working days, whichever is greater, in advance of when and where grade and points are desired.

The Contractor shall be responsible for the preservation of all stakes and marks, and if in the opinion of the City Engineer any of the survey stakes or marks have been carelessly or willfully destroyed or disturbed by the Contractor, the cost to the City of replacing them shall be charged against the Contractor and shall be deducted from the payment for the work.

**SC-4.04.C – Progress Schedule.** Add the following new paragraph immediately after Paragraph 4.04.B:

- C. In addition to submission of the progress schedule, the Contractor shall schedule weekly meetings with the Engineer. The agenda will include, but is not limited to, site safety, review of work progress to date, 3-week schedule, field observations, identified field issues and resolutions, delays, corrective measures to regain the progress schedule, and resident and business impacts.

The Contractor shall provide a 3-week schedule to the Engineer that shows the current week work schedule and proposed work schedule for the following two weeks at these meetings. The Contractor's project manager and project superintendent shall attend this meeting. A Subcontractor with work shown on the 3-week schedule shall have a representative knowledgeable of the project attend the meeting.

**SC-4.05. Abnormal Weather Conditions.** Add the following language to Paragraph 4.05.C.2:

- (1) The Engineer will award a time extension for severe weather on calendar day and completion date contracts. Submit a request for adverse weather days if the number of adverse weather days exceeds the anticipated number of adverse weather days tabulated below.

**TOTAL ANTICIPATED ADVERSE WEATHER DAYS FOR EACH CALENDAR MONTH**

Jan: 31<sup>[1]</sup> Feb: 28<sup>[1]</sup> Mar: 31<sup>[1]</sup> April: 5 May: 4 June: 4 July: 3  
Aug: 3  
Sep: 4 Oct: 5 Nov 1 thru 15: 2 Nov 16 thru 30: 15<sup>[1]</sup> Dec: 31<sup>[1]</sup>

<sup>[1]</sup> Includes an anticipated winter suspension from November 16 through March 31. Multi-year contracts will address the winter suspension dates within the special provisions.

- (2) Submit the request to the Engineer at the end of the month. Indicate the number of adverse weather days that occurred during that month. Provide progress schedule documentation to show that the controlling item of work was delayed. Show that the delay was beyond the control of the contractor. The Engineer will assess the contractor's submittal and indicate how many adverse weather days are confirmed.
- (3) For each calendar month, the Engineer will grant an adverse weather day for each confirmed adverse weather day that exceeds the number of anticipated adverse weather days. When the contractor requests adverse weather days, the Engineer will give the contractor a monthly written statement showing the number of days credited for adverse weather. At the end of the project, the Engineer will extend time on calendar day and completion date contracts for the cumulative number of severe weather days credited each month. On days where less than 4 hours of controlling items of work were or could have been performed, a full adverse weather day will be granted. On days where 4 or more hours but less than 8 hours of controlling items of work were or could have been performed a half adverse weather day will be granted. Days in which 8 hours or more of a controlling item of work were or could have been performed will not be granted an adverse weather day.

(4) Winter Suspension for Completion Date Contracts

- a) The Contractor may request a winter suspension for a completion date contract. If the Engineer determines that conditions do not allow for the completion of the remaining work, the Engineer may approve the Contractor's request and determine a start date of the winter suspension. The end date of the winter suspension is March 31 or a date mutually agreed upon by both parties. If weather conditions permit work to resume within the winter suspension period, the Engineer may direct the Contractor to resume all or specific work activities.

- b) During winter suspension, store all materials in a manner that does not obstruct vehicular and pedestrian traffic, plowing operations, and does not hinder visibility of drivers. The Contractor shall be responsible to protect all stored materials from damage and/or theft. Install traffic control and other safety devices necessary to protect the traveling public and pedestrians. Provide suitable drainage and install temporary erosion control where necessary. If the winter suspension begins when liquidated damages are being assessed, or when the work has not progressed as scheduled and would not have been completed prior to the completion date, the cost of necessary pre-suspension work is incidental. If the winter suspension begins prior to the contract completion date, and the work has progressed as scheduled and would have been completed prior to the completion date, the cost of pre-suspension work will be paid as specified under *SC-15.01.F*.
- c) For a winter suspension that begins prior to the contract completion date and the work has progressed as scheduled and would have been completed prior to the completion date, the Engineer will extend contract time to correspond to the end of the winter suspension and liquidated damages will not be assessed during the winter suspension.
- d) For a winter suspension that begins when liquidated damages are being assessed or when the work has not progressed as scheduled and would not have been completed prior to the completion date, the engineer will not extend contract time. Time will be suspended until the end of the winter suspension and no work will be permitted unless authorized by the Engineer in writing. Liquidated damages will not be assessed during the winter suspension when no work is occurring. Liquidated damages will resume at the end of the winter suspension and will resume during any calendar days the Engineer authorizes or directs the Contractor to perform contract work during the winter suspension period.

(5) Winter Suspension for Non-Completion Date Contracts

- a) The Contractor shall complete all work on Non-Completion Date Contracts prior to the Winter Suspension date of November 15<sup>th</sup>. If work is not complete prior to the Winter Suspension dates, the Contractor shall ready the project for Winter Suspension per *SC-4.05(4)b*. and all costs shall be incidental to the contract. If weather conditions permit work to resume within the winter suspension period, the Engineer may direct the Contractor to resume all or specific work activities.

***SC-4.05. Delays in Contractor's Progress.*** Add the following paragraph immediately following Paragraph 4.05.H:

- I. The Engineer shall have authority to suspend the work wholly or in part for such period or periods as they may deem necessary, due to unsuitable weather or such conditions as are considered unfavorable for the suitable prosecution of the work

or for such time as it is necessary due to the failure on the part of the Contractor to carry out orders given or perform any and all provisions of the contract.

**SC-5.01.C. Storage of Materials, Equipment, and Vehicles.** Add the following new language at the end of Paragraph 5.01.C.:

- C. Materials shall be so stored as to insure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, shall be inspected prior to their use in the work and shall meet the requirements of the specifications at the time it is proposed to use them. Stored materials shall be located so as to facilitate prompt inspection. That portion of the public streets or public lands not required for public use or travel may upon approval of the Engineer be used for storage purposes and for placing of the Contractor's plant and equipment, however, adequate storage space is not guaranteed and, additional space, if required, shall be provided by the Contractor at their own expense.

The Contractor's vehicles, equipment and materials shall not be left on the street except when work operations are actually in progress, unless otherwise authorized by the Engineer.

**SC-5.02.D. Loading of Structures.** Add the following new language at the end of paragraph 5.02.D:

- D. If the Contractor intends to store materials, equipment, or vehicles on a structure, at the Engineer's request, the Contractor shall provide a structural analysis stamped by a licensed Structural Engineer including calculations showing that the loading does not exceed the structural loading and will not endanger the structure or adjacent structures or land to stresses or pressures that will endanger them prior to storing materials, equipment, or vehicles on the structure.

**SC-5.03. Subsurface and Physical Conditions.** Add the following new paragraphs immediately after Paragraph 5.03.D:

- E. The following reports of explorations and tests of subsurface conditions at or contiguous to the Site are known to Owner: None.
- F. The following drawings and photographs of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) are known to Owner: None.
- G. The reports and drawings identified above are not part of the Contract Documents, but the "technical data" contained therein upon which Contractor may rely, as expressly identified and established above, are incorporated in the Contract Documents by reference. Contractor is not entitled to rely upon any other information and data known to or identified by Owner or Engineer.
- H. Copies of reports and drawings identified in SC-5.03.F and SC-5.03.G that are not included with the Bidding Documents may be examined at City of Wauwatosa's City Hall during regular business hours.

**SC-5.04.A. SC Differing Subsurface and Physical Conditions.** Delete Paragraph 5.04.A in its entirety and insert the following in its place:

- A. Notice: If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:
  - 1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
  - 2. is of such a nature as to require a change in the Contract Documents; or
  - 3. differs materially from that shown or indicated in the Contract Documents; or
  - 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then the Contractor shall immediately call the attention of the Engineer to such conditions, and, if Contractor finds that the materials differ from those shown on the drawings, or indicated in these specifications, Contractor shall at once make such changes in the drawings and/or specifications, as Contractor may find necessary.

**SC-5.05.B. Underground Facilities.** Delete Paragraph 5.05.B in its entirety and insert the following in its place:

B. Notice by Contractor:

- 1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown and indicated with reasonable accuracy in the Contract Documents Contractor shall, within two working days after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- 2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 12.01.



**SC-5.06(A)(3). Hazardous Environmental Conditions.** Add the following subparagraphs immediately after Paragraph 5.06(A)(3):

4. The following reports regarding Hazardous Environmental Conditions at the Site are known to Owner: None.

**SC-6.01.B. Performance, Payment, and Other Bonds.** Add the following new paragraphs immediately after Paragraph 6.01.B:

1. Labor and Material Bond. The Contractor shall furnish a surety bond in an amount at least equal to 100% of the full contract price, such bond to be executed by a surety company acceptable to the Owner. The labor and material bond shall serve as security for the payment of all persons performing labor and all persons furnishing materials in connection with this contract.
2. Premium Payment. The premiums on the performance bond and labor and material bond shall be paid by the Contractor.
3. If Section 71.80(16) Wisconsin Statutes is applicable, Contractor hereby agrees to comply with the requirements of such Section. This Section is applicable to Contractors who are nonresidents of Wisconsin when total contract price exceeds \$50,000.00.

**SC-6.01.D. Performance, Payment, and Other Bonds.** Replace in its entirety the language in Paragraph 6.01.D with the following:

All bonding companies and sureties issuing bonds and/or contract security to Contractor shall be licensed to perform business in the State of Wisconsin.

**SC-6.01. Performance, Payment, and Other Bonds.** Add the following language immediately following Paragraph 6.01.H.:

- I. Should any surety upon the bond for performance of this contract become unacceptable to the Owner, the Contractor must promptly furnish such additional security as may be provided from time to time to protect the interests of the Owner and of persons supplying labor or materials in the prosecution of the work contemplated by this contract.

**SC-6.03. Contractor's Insurance.** Add the following language immediately after paragraph 6.03.C:

- D. The Contractor and the Contractor's insurance company shall be held responsible for and shall save the Owner harmless from all liability for damages occasioned by the digging up, use or occupancy of the street, alley, highway, public grounds and private grounds, or which may result therefrom, or which may result in any way from the negligence or carelessness of the Contractor, their agents, employees or workmen; or by reason of the elements, unforeseen or unusual difficulties, obstructions, or obstacles encountered in the prosecution of the work; and they shall indemnify the Owner for and save it harmless from all claims and liabilities, actions and causes of action, and liens for materials furnished or labor performed in the construction or execution of the work, and from all

costs, charges and expenses incurred in defending such suits or actions, and from and against all claims and liabilities for injury or damage to persons or property emanating from defective or careless work methods, or from and against all claims or liabilities for royalties, license fees, actions, suits, charges and expenses or damage from infringement for reason of the use of any invention or improvement in tools, equipment or plant or any process, device or combination of devices used in the construction of the work.

The Contractor shall not commence work under a contract until they have obtained all insurance required under this paragraph and has filed certificates thereof with the Owner, nor shall the Contractor allow a subcontractor to commence work until all similar insurance required has been so obtained and filed. Contractor shall be required to maintain insurance throughout the duration of the contract until final acceptance of the project.

E . WORKMEN'S COMPENSATION INSURANCE Statutory coverage as required by Chapter 102 of the Statutes of the State of Wisconsin, as revised, and all acts amendatory thereof and supplementary thereto, and for all employees of the Contractor. All subcontractors and suppliers shall furnish to the Contractor and the Owner evidence of similar insurance for all of their respective employees unless such employees are covered by the protection afforded by the Contractor.

F. COMPREHENSIVE GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE

(1) COMPREHENSIVE GENERAL LIABILITY

The Contractor shall maintain during the life of this Contract, Comprehensive General Liability written in comprehensive form to protect the Contractor, the Owner and Engineer against all claims arising from injuries to members of the public or damage to property of others arising out of any act or omission of the Contractor or their agents, employees, or subcontractors. The policy shall be endorsed to include Notice of Cancellation Endorsement Form IL-7002 10-90 or equivalent endorsement language which is approved by the City Attorney. This endorsement shall be specifically reflected on the Certificate of Insurance form required by Section 6.02, and a copy of said endorsement shall be provided to the Owner when available. In addition, this policy shall specifically insure the contractual liability assumed by the Contract.

The scope of this coverage shall also include the Personal Injury Hazards, including "a", "b", and "c". "a" includes false arrest, malicious prosecution, and un-willful detention or imprisonment. "b" includes libel, slander, and defamation of character. "c" includes wrongful eviction, invasion of privacy and wrongful entry. Employee exclusion shall be removed. In addition, coverage will include broad form property damage, host liquor liability, advertising injury, additional persons insured, extended bodily injury, and incidental medical malpractice.

Comprehensive general liability coverage shall contain no exclusions for explosion, collapse, or underground work (X, C, or U).

The contractor shall also provide completed operation and product liability coverage for the life of the Contract and maintain such coverage for a period of 1 year after final acceptance of the work by the Owner.

The liability limits shall not be less than \$1,000,000 combined single limit per occurrence for personal injury, bodily injury and property damage if coverage written on 1973 I.S.O. form or \$1,000,000. combined single limit per occurrence with \$2,000,000. aggregate for personal injury, bodily injury or property damage if coverage is written on 1986 I.S.O. coverage form.

(2) UMBRELLA/EXCESS LIABILITY

The Contractor shall maintain during the life of this Contract, Umbrella/Excess Liability coverage totaling \$5,000,000. If primary comprehensive General Liability is written on a 1986 I.S.O. coverage form, Umbrella/Excess liability shall include a drop down provision to protect, on a primary basis, the contractor, the Owner and Engineer, in the case of exhaustion of the aggregate primary limits.

G. COMPREHENSIVE AUTOMOBILE LIABILITY AND PROPERTY DAMAGE

Operations of owner, hired and non-owned motor vehicles.

Bodily Injury	\$ 500,000 per person
	\$1,000,000 per occurrence
Property Damage	\$ 500,000 per occurrence

The Contractor shall file with the Owner a certification of insurance containing a ten (10) day notice of cancellation.

NOTE: The required limits of liabilities may be obtained with primary liability policies or in combination with an umbrella excess third party liability policy.

H. ADDITIONAL INSUREDS All insurance coverages required pursuant to this contract shall name the following persons as additional insured parties:

The Owner and its boards, commissions, committees, authorities, employees, agencies and officers, voluntary associations, other units operating under the jurisdiction and within the appointment of its budget.

**SC-6.04.E. Property Insurance.** Immediately following paragraph 6.04.E, add the following paragraphs:

F. Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof. Contractor shall be responsible for any deductible or self-insured retention. This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, Engineer, and the officers, directors, partners, employees, agents, and other consultants and

subcontractors of any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or loss payee;

2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss and damage to the Work, temporary buildings, false work, and materials and equipment in transit and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by these Supplementary Conditions.
3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
5. allow for partial utilization of the Work by Owner;
6. include testing and startup;
7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued; and
8. include coverage for hazardous materials to comply with the requirements of Paragraph 5.06.C of the General Conditions.

**SC-7.02- Supervision and Superintendence.** Add the following new paragraphs immediately after Paragraph 7.02.B.:

- C. The work shall be under the charge and care of the Contractor until final acceptance by the City. The Contractor shall assume all responsibility for injury or damage to the work by action of the elements or for any cause whatsoever, whether arising from the execution or partial or complete failure in execution of the work. The Contractor shall rebuild, restore and make good, at their own expense, all injuries or damages to any portion of the work occasioned by any causes before its completion and acceptance.

**SC-7.03.A. Labor; Working Hours.** Add the following new paragraph immediately after Paragraph 7.03.A:

1. When a person employed by Contractor, or anyone for which Contractor is responsible, is abusive or disrespectful to the general public or to the Owner's representative, such employee shall, upon written request by Owner, be removed from the Work.

**SC-7.03.C. Work Hour Restrictions.** Delete Paragraph 7.03.C. in its entirety and insert the following in its place:

Work operations in residential areas, including daily startup activities under this contract, shall be limited to the period from 7 A.M. to 7 P.M. Monday thru Friday, during the life of the contract except those work operations identified in the special provisions, if any. If, in the opinion of the Engineer, or their authorized representative, unusual circumstances dictate work outside of these hours is warranted due to an emergency condition, or special circumstance, such authorization by the Engineer or their representative to extend the working hours beyond those stated herein, shall be given in writing and, if authorized, shall be on a single incidence basis for a specific day. For all other work that is not deemed an unusual circumstance, the Contractor shall follow the procedures outlined in the specifications to obtain written permission to perform work.

**SC-7.03- Holiday Work Hours.** Add the following new paragraph immediately after Paragraph 7.03.C:

- D. The Contractor shall not perform work on holidays observed by the Owner without written permission from the Engineer.

**SC-7.04 Services, Materials, and Equipment.** Add the following new paragraphs immediately after Paragraph 7.04.C.:

- D. Clean Up. The Contractor shall at all times keep the premises free from accumulations of waste material or rubbish caused by their employees or work and Contractor shall remove all their rubbish from and about the site and all their tools, equipment, scaffolding and surplus materials and shall leave the work clean and ready for use. In case of dispute, the Owner may remove the rubbish and surplus materials and charge the cost to the Contractor and the Contractor agrees to reimburse such cost to the Owner.
- E. Final Cleaning Up. Within fourteen (14) calendar days after the completion of the work and before acceptance and payment will be made, the Contractor shall clean and remove from the site of the work and adjacent property all surplus and discarded materials, rubbish and temporary structures, restore in an acceptable manner all property, both public and private, which has been damaged in the prosecution of the work and shall leave the site of the work in a neat and presentable condition.

**SC-7.05.A. Contractor's Request; Governing Criteria.** Delete SC 7.05.A. and replace with the following:

- A. Contractor's Request; Governing Criteria: Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
  - 4. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and

sufficiently similar so that no change in related Work will be required, Engineer may deem it an “or equal” item, subject to the following. For the purposes of this paragraph, a proposed item of equipment or material may be considered functionally equal to an item so named if:

- a. in the exercise of reasonable judgment Engineer determines that the proposed item:
  - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
  - 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
  - 3) has a proven record of performance and availability of responsive service; and
- 4) is not objectionable to Owner. Engineer may object on behalf of on behalf of Owner for any reason in Engineer’s discretion.
  - b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
    - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
    - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.

**SC-7.07.A. Concerning Subcontractors and Suppliers.** Add the following new paragraph immediately following Paragraph 7.07.A.:

1. The Contractor must perform with their own organization, work amounting to at least one-third of the original contract amount unless a differing portion is specified in the contract Special Provisions.

**SC-7.16.B.2. Samples.** Delete Paragraph 7.16.B.2 in its entirety and replace with the following new paragraphs:

- A. The Contractor shall provide such facilities as the Engineer may require for collecting and forwarding samples, and shall not make use of or incorporate in the work any material represented by these samples until the tests have been made and the material found to be acceptable in accordance with the requirements of the specifications. The Contractor shall furnish without charge all samples required.
- B. When required by the Engineer, representative preliminary samples of the character and quality prescribed shall be submitted by the Contractor or producer for examination and shall be tested in accordance with the methods referred to herein. The acceptance of preliminary sample, however, shall not be construed as acceptance of the material from the same source delivered later. Only the materials actually delivered for the work will be considered and their acceptance or rejection will be based solely on the results of the

tests prescribed in these specifications. All samples shall be submitted before shipment of the material to the site of the work and in ample time to permit making tests or examinations before incorporating the material into the work.

- C. All tests shall be made in accordance with the methods described in these specifications. If any specifications are inadvertently omitted, those of the A.S.T.M. or other recognized societies for such materials will be used. References to A.S.T.M. or other recognized societies, specifications shall be understood to mean the latest revision of the standard specifications. Laboratory tests shall be made by a recognized laboratory acceptable to the Engineer. Reports of tests provided by the Contractor shall be submitted promptly to the Engineer.
- D. The Contractor shall give timely notice to the Engineer of the place and time of the test to be made, to permit the Engineer to witness the test if they should so desire. All tests shall be made at the sole expense of the Contractor.

**SC-7.07. Concerning Subcontractors, Suppliers, and Others.** Add new paragraphs immediately after Paragraph 7.07.M:

- N. Contractor shall, to the extent practicable, maintain a list of all Subcontractors, Suppliers, and service providers performing, furnishing or procuring labor, services, materials, plans or specifications for the performance of the Work.

**SC-7.09.A. Utility Charges.** Amend the fourth sentence of Paragraph 7.09.A to read as follows:

Contractor shall pay all charges of utility owners for connections for providing permanent service to the Work.

**SC-7.11. Laws and Regulations.** Add the following paragraph after Paragraph 7.11.C:

- D. Contractor shall assist and cooperate fully with Owner in meeting any obligations under the Wisconsin Public Records law. In the event that Contractor withholds records, for any reason, and said withholding is found to be in violation of the law or a Court Order, Contractor shall indemnify and hold harmless Owner for any and all costs related to the withholding of those records, including, but not limited to, monetary damages of any kind, actual attorney's fees, and litigation costs of any kind.
- E. Owner and Contractor recognize that applying applicable Wisconsin public records laws to particular records requests can be difficult in light of copyright and other confidentiality protections. To ensure that applicable laws are followed, both with regard to private rights, and with regard to public records laws, Owner and Contractor agree as follows. When Owner receives public records requests for matters that Owner believes might be proprietary or confidential information. Owner will notify Contractor of the request. Within three (3) days of such notification (subject to extension of time upon mutual written agreement). Contractor shall either provide Owner with the record that is requested for release to the requester or Contractor shall advise Owner that Contractor objects to the release of the requested information and the basis for the objection. If for any reason Owner concludes that Owner is obligated to provide a record to a requester that is in Contractor's possession. Contractor shall provide such records to Owner immediately upon Owner's request. Contractor shall not charge for work performed under this

paragraph except for the "actual, necessary and direct" charge of responding to the records request as that is defined and interpreted in Wisconsin law.

In addition to and not to the exclusion or prejudice of any provisions of this agreement or documents incorporated herein by reference, Contractor shall indemnify and save harmless and agrees to accept tender of defense and to defend and pay any and all legal, accounting, consulting, engineering and other expenses relating to the defense of any claim asserted or imposed upon the Owner, its officers, agents, employees and independent contractors growing out of Owner's denial of a records request, based upon objections made by Contractor; or (ii) Contractor's failure to provide records to Owner upon Owner's request; or (iii) Owner's charges made to a records requester based upon reimbursement of costs Contractor charged to Owner in responding to a records request; or (iv) Owner's lack of timely response to a records request, following Contractor's failure to timely respond to Owner as required herein; or (v) Owner's provision of records to a requester that were provided to Owner by Contractor in response to a records request. Contractor's claims of proprietary rights, or any other copyright or confidentiality claims, shall be waived such that Owner may provide all requested documents, programs, data, and other records to the requestor, upon failure by Contractor to defend, indemnify or hold harmless the Owner as required herein, and/or upon judgment of a court having jurisdiction in the matter requiring release of such records.

- F. In carrying out any of the provisions of this contract or in exercising any power or authority granted to the Contractor hereby, there shall be no personal liability upon the Engineer or their authorized assistants, it being understood that in such matters they act as agents and representatives of the Owner.

**SC-7.15. Emergencies.** Add a new paragraph immediately after Paragraph 7.15.A as follows:

- B. In the event it becomes necessary for the Owner to perform emergency maintenance and protection which are the responsibility of Contractor under the Contract Documents, the costs incurred will be charged against Contractor, a Change Order will be issued, and Owner shall be entitled to an appropriate decrease in the Contract Price.

**SC-7.16.G. Shop Drawings and Samples.** Add the following paragraphs immediately after Paragraph 7.16.F:

- G. If Contractor requests a change of a previously approved item, Contractor shall reimburse Owner for Engineer's charges for its review time unless the need for such change is beyond the control of Contractor.

**SC-10.03. Resident Project Representative.** Add the following new paragraph immediately after Paragraph 10.03.B:

- C. The Resident Project Representative (RPR) will have same authority and responsibilities as Engineer.

**SC-11.05(A) Amending and Supplementing the Contract.** Add the following new paragraphs immediately after Paragraph 11.05(A):

1. INCREASED OR DECREASED QUANTITIES OF WORK. If the Engineer deems it proper or necessary in the execution of the work to make changes which will increase or



decrease the quantity of labor or material or the expense of the work, such changes shall not annul nor violate the contract or agreement hereby entered into nor release the surety thereon, and the Contractor shall furnish the necessary labor and material to complete the contract as changed.

Items for which quantities change are categorized as major or minor items. A major item shall be considered to be any item whose total cost, determined by multiplying the original quantity and the contract unit price, is equal to or greater than five percent of the total amount of the original contract. A minor item is one of which total cost, determined, as above, is less than five percent of the total amount of the original contract.

When the actual quantity of any major item required to complete the work is increased or decreased, payment for the quantity of work actually performed for such item will be made in accordance with the table below:

**Increased or Decreased Quantities of Work**

Item	Actual Quantity as % of Contract Quantity	Basis of Payment
Major ( $\geq 5\%$ of Total Contract)	75% - 125%	Contract Unit Prices
Major ( $\geq 5\%$ of Total Contract)	<75%	Adjusted Unit Prices (not to exceed cost for 75% of contract quantity times the contract unit price)
Major ( $\geq 5\%$ of Total Contract)	>125%	Adjusted Unit Prices for units >125% of contract quantity. (Contract Unit Prices for all units up to 125% of contract quantity).
Minor (<5% of Total Contract)	All	Contract Unit Prices

The adjustment or revision of unit prices shall be negotiated on the basis of actual cost for the entire item plus a reasonable allowance for profit and applicable overhead.

If such changes cause an increase or decrease in the time required for its performance, an equitable adjustment shall be made and a Change Order effectuating the change shall be executed. .

No changes shall be made without first obtaining the approval in writing of the Engineer or their duly authorized representative. Any claim for adjustment under this section must be asserted within ten (10) days from the date the change is ordered, unless the Engineer shall for proper cause extend such time. Nothing provided in this section shall excuse the Contractor from proceeding with the prosecution of the work so changed.

2. EXTRA WORK. The Contractor may be ordered by the Engineer to perform additional work and furnish materials which do not appear in the proposal or contract as a specific item accompanied by a unit price, or lump sum price, and which are not included under

the price bid for other items in the contract. All such work and materials shall be designated as extra work. The Contractor shall perform extra work whenever it is deemed necessary or desirable by the Engineer to fully complete the project as contemplated and it shall be done in accordance with the intent of these specifications.

Extra work shall be done under the supervision of the Engineer and their decision shall be final and binding. The plan of the work to be followed, the equipment to be used and the amount and character of labor to be employed shall meet with the approval of the Engineer. Authorization for extra work shall be given by the Engineer in writing in the form of a Change Order. The Contractor shall perform the extra work by force account when so ordered by the Engineer. Work performed on a cost-plus-limited basis shall have itemized statements submitted in accordance with 109.4.5.1(3) of the State Specs. Claims for extra work which have not been authorized by the Engineer will be rejected.

**SC-13.02.B. Cash Allowances.** Delete Paragraph 13.02.B.1.in its entirety and insert the following in its place:

1. The cash allowances include the cost to Contractor (less any applicable trade discounts) of materials, equipment, and services required by the allowances to be delivered at the Site, or for the Project, and all applicable taxes; and

**SC-14.02.B.1 Inspections, Tests, and Approvals.** Add the following new paragraphs immediately following Paragraph 14.02.B.:

- H. Inspectors, employed by the Owner, shall be authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication or manufacture of the materials to be used. The inspector is not authorized to revoke, alter, or waive any requirements of the specifications. Inspector is authorized to call the attention of the Contractor to any failure of the work or material to conform to the specifications and the contract and shall have authority to reject materials or suspend the work until any questions at issue can be referred to and decided by the Engineer.

The inspector shall in no case act as foreman or perform other duties for the Contractor nor interfere with the management of the work by the latter. Any advice which the inspector may give the Contractor shall in no way be construed as binding the Engineer in any way or releasing the Contractor from fulfilling any of the terms of the contract.

If the Contractor refuses to suspend operations on verbal order, the Engineer or inspector shall issue a written order giving the reason for shutting down the work. After placing the order in the hands of the Project Manager, Project Superintendent , or Foreman on-site , the inspector shall immediately leave the job. Work done after the inspector leaves the job will not be accepted or paid for.

**SC-14.03. Defective Work.** Add the following new paragraph immediately following Paragraph 14.03.G.:

- H. Failure or neglect on the part of the Engineer to condemn or reject bad or inferior work or materials shall not be construed to imply an acceptance of such work or materials, if it becomes evident at any time prior to the final acceptance of the work by the Owner. Neither shall it be construed as barring the Owner, at any subsequent time, from the

recovery of damages or of such a sum of money as may be needed to build anew all portions of the work in which fraud was practiced or improper materials hidden, wherever found.

**SC-15.01.B.1. Applications for Payments.** Delete paragraph 15.01.B.1. in its entirety and insert the following in its place:

1. At least forty days before the date established for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Contractor shall submit three documents: an invoice from the material or equipment supplier which states item's cost; an item-specific invoice, bill of sale, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein; all of which will be satisfactory to Owner.

Requests for payment for materials and equipment not incorporated in the Work shall not be made.

**SC-15.01.D. Payment Becomes Due.** Delete paragraph 15.01.D. in its entirety and insert the following in its place:

- D. Within fifteen days after presentation of the Application for Payment to Owner, with the Engineer's recommendation, the amount recommend will (subject to the provisions of paragraph 14.02.D and calendar placement on the next available Board of Public Works Agenda) become due, and when due will be paid by Owner to Contractor.

**SC-15.01.F. Payment for Extra, Additional, or Omitted Work.** Add the following new paragraphs immediately following Paragraph 15.01.E.:

- F. The Owner upon proper action by its governing body, may authorize changes in, additions to, or deductions from the work to be performed or the material to be furnished pursuant to the provisions of the contract or any other contract documents.

Adjustments, if any, in the amounts to be paid to the Contractor by reason of any such change, addition or deduction shall be determined by one or more of the following methods:

- (a) By unit prices contained in the Contractor's original bid and incorporated in the construction contract.
- (b) By a supplemental schedule of prices contained in the Contractor's original bid and incorporated in the construction contract.
- (c) By an acceptable lump sum proposal from the Contractor not to exceed fifteen (15%) percent of the original contract price for all extra, additional or omitted work to comply with Section 62.15(1c) of the Wisconsin Statutes. For lump sum proposals

submitted by a subcontractor, the Owner will allow the contractor a markup on work the subcontractor performs as follows:

- Use a markup of 10% for the first \$10,000 of work.
  - Use a markup of 2% for work in excess of \$10,000.
- (d) On a cost-plus-limited basis not to exceed fifteen percent (15%) of the original contract price to comply with Section 62.15 (1c) of the Wisconsin Statutes. A cost-plus-limited basis is defined as the cost of labor, materials and insurance, plus fifteen percent (15%) of the said cost to cover superintendence, general expense, overhead, and profit. Equipment necessary to complete work on a cost-plus-limited basis will be paid as an hourly rate and shall include no mark-up above the hourly rate.
1. Labor – The Owner will pay the contractor's labor costs at the contractor's personnel actual wage rates or wage rates previously agreed upon with the Owner, in writing, for personnel directly involved in producing and supervising the cost-plus-limited basis work. The Owner will only pay for hours that personnel are actually engaged in cost-plus-limited basis work. The Owner will also reimburse the contractor based on actual costs paid to, or on behalf of, workers for subsistence and travel benefits, health and welfare benefits, pension fund benefits and other contractor-paid benefits. The Owner will pay no part of wages or benefits for personnel connected with the contractor's forces above the classification of foreman and having only general supervisory responsibility for the cost-plus-limited basis work.
  2. Materials – The Owner will pay the Contractor based on actual invoiced costs, including applicable taxes and actual freight charges, for Engineer-approved materials the contractor uses in force account work. If the contractor uses materials from the contractor's stock, the Owner and the contractor will agree on the price. Do not incorporate materials into the work without agreement. The Owner reserves the right to furnish materials as it deems appropriate. Make no claims for the costs, overhead, or profit on materials that the Owner provides.
  3. Insurance – The Owner will pay the contractor based on actual invoiced costs for property damage, liability and workers compensation insurance premiums, unemployment insurance contributions and social security taxes on work performed on a cost-plus-limited basis. The contractor shall furnish satisfactory evidence of the rates actually paid.
  4. Equipment – The Owner will pay for the use of contractor-owned equipment the Engineer approves for work on a cost-plus-limited basis only during the hours that it is operated to the nearest half hour. Contractor-owned equipment expense rates will be paid as given in EquipmentWatch Cost Recovery (formerly Rental Rate Blue Book). Base all rates on revisions effective January 1 for all equipment used in that calendar year and provide the Engineer with a copy of the rate sheet for each piece of equipment used.

<http://equipmentwatch.com/estimator/>

For equipment not listed in EquipmentWatch, provide an expense rate and furnish cost data to support that rate.

Rental equipment will be paid at the rental cost as invoiced by the rental company.

The Owner will not pay rental for tools or equipment with a replacement value of \$500 or less.

The Engineer may reject equipment not in good working condition or not properly sized for efficient performance of the work.

If a subcontractor performs work on a cost-plus-limited basis, the Owner will allow the contractor a markup on work the subcontractor performs as follows:

- Use a markup of 10% for the first \$10,000 of work.
- Use a markup of 2% for work in excess of \$10,000.

No claim for an addition to the contract sum shall be valid unless authorized in writing by the Engineer pursuant to section SC-11.05(A). Final proposed costs, including all back-up documentation, for authorized changes performed on a cost-plus-limited basis shall be submitted to the Engineer within 45 days of completing the authorized work.

**SC-15.03. Substantial Completion.** Add the following paragraph immediately following Paragraph 15.03.F.:

- G. The Contractor, upon receipt of the punch list, shall submit all missing documentation and perform all work enumerated on the punch list within 14 calendar days from the date the Engineer issues the punch list.

If missing documentation and incomplete or unacceptable work remain after the 14 calendar days, the Engineer may restart contract time unless the Engineer and the Contractor mutually agree to extend this 14 calendar day requirement.

**SC-15.06.A.3 Alternatives to Waivers of Liens.** Delete Paragraph 15.06.A.3. in its entirety.

**SC 15.06.D. Completion of Work.** Delete Paragraph 15.06.D. in its entirety and insert the following in its place:

- D. Completion of Work: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment, the Common Council, if applicable, has approved of the work and final payment, and the Board of Public Works has ratified final payment, and issuance of notice of the acceptability of the Work has been made.

**SC-15.07.A. Waiver of Claims.** Delete Paragraph 15.07.A. in its entirety and insert the following in its place:

- A. The Owner shall not be precluded or estopped by any measurements, estimate or certificate made either before or after the completion and acceptance of the work and payment therefore, from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that any measurement, estimate or certificate is untrue or incorrectly made, or that the work or materials do not conform in fact to the contract. The Owner shall not be precluded or estopped, notwithstanding any such measurement, estimate, certificate and payment in accordance therewith, from recovering from the Contractor and their sureties such damage as it may sustain by reasons of the Contractor's failure to comply with the terms of the contract. Neither the acceptance by the Board of Public Works and/or Common Council, nor any representative of the Board of Public Works and/or Common Council, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Owner shall operate as a waiver of any portion of the contract or of any power herein reserved, or any right to damages herein provided. A waiver of breach of the contract shall not be held to be a waiver of any other or subsequent breach.

**SC-15.08. Correction Period.** Delete paragraphs 15.08.A. and 15.08.D in their entirety and insert the following in their place:

- A. If within one year after the date of final payment (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in paragraph 7.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
1. correct the defective repairs to the Site or such adjacent areas;
  2. correct such defective Work, or
  3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
  4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Engineer's recommendation of final payment, the correction period for that item may start to run from an earlier date if so provided in the Specifications.

**SC-15.08. A Correction Period.** Add the following new paragraph immediately after paragraph 15.08.A.4:

5. If Contractor cannot correct defective work within thirty days due to prevailing manufacturing or repair time, Contractor shall promptly provide temporary Work, satisfactory to Owner, until Work can be permanently corrected.

**SC-15.06.A.2. Application for Payment.** Add the following paragraph immediately after Paragraph 15.06.A.2.e :

f. List of all Subcontractors, Suppliers, and service providers required by SC-7.07.N.

**SC-17.20. Substance Abuse Prevention Program.** Add the following paragraphs immediately following Paragraph 17.19:

The contractor shall develop, implement and maintain a Substance Abuse Prevention Program as established by Section 103.503 of the Wisconsin State Statutes, and all acts amendatory thereof and supplementary thereto. This statute establishes certain prohibitions against the use and distribution of drugs and alcohol by employees of contractors and subcontractors that have been awarded contracts for or are performing work on public works projects subject to Wisconsin's prevailing wage requirements.

The program must cover all union and non-union employees who work on the Owner's construction sites. Failure to implement such a program prior to award shall result in the Bidder being held to be non-responsible. Following award of the Contract if the Contractor breaches the District Policy by failing to have or to effectively implement the policy, the Owner shall consider this a breach of the Contract by the Contractor and may terminate the Contract. This requirement shall be applicable to all subcontractors with subcontracts in excess of one percent (1%) of the bid.

The act specifically provides that effective May 1, 2007, contractors, subcontractors and their respective employees must comply with the following requirements:

1. Employees on covered public works projects are prohibited from (a) using, possessing, attempting to possess, distributing, delivering or being under the influence of drugs while performing work on covered public works projects, and (b) using or being under the influence of alcohol while performing work on covered public works projects.
2. Before a contractor or subcontractor begins a covered public works project, the contractor or subcontractor must have a written program for the prevention of substance abuse, including:
  - (a) A prohibition against the use of drugs or alcohol while working on covered public works projects.
  - (b) A requirement that contractor's or subcontractor's employees submit to random, reasonable suspicion and post-accident drug and alcohol tests.
  - (c) A requirement that contractor's and subcontractor's employees submit to drug and alcohol tests before beginning work on covered public works projects, unless those employees have been participating in a random testing program during the preceding 90 days.
  - (d) A procedure for notifying employees that fail a test or refuse to submit to testing that they may not perform work on covered public works projects until they submit to and pass drug and alcohol tests.
3. Each contractor and subcontractor is required to pay for the development, implementation and enforcement of its own substance abuse program. These costs cannot be passed on to covered public works projects.

4. Contractors and subcontractors cannot allow employees that fail a test or refuse to submit to substance abuse tests to work on covered public works projects.
5. All substance abuse testing must be conducted in accordance with guidelines for laboratory testing procedures and chain of custody procedures established by the Substance Abuse and Mental Health Services Administration of the Federal Department of Health and Human Services.

**SC-18.01.A.2. Giving Notice.** Delete Paragraph 18.01.A.2 in its entirety and insert the following in its place:

2. Delivered at or sent to the last business address known to the giver of the notice by United States Postal Service First-Class or Priority Mail, postage prepaid, or by United Parcel Service of America, Inc. UPS shipping service.

**SC-18.11. Covenant Against Contingent Fees.** Add the following new paragraph immediately after Paragraph 18.10:

18.11 Covenant Against Contingent Fees.

- A. The Contractor warrants that they have not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage or contingent fees. Breach of this warranty shall give the Owner the right to terminate the contract, or in its discretion to deduct from the contract price or consideration the amount of such commission, percentage, brokerage or contingent fees. This warranty shall not apply to commission payable to Contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Contractor for purposes of securing business.

**SC-18.12. Officials Not to Benefit.** Add the following new paragraph immediately after Paragraph 18.11

18.12. Officials Not to Benefit

- A. No member of the Public Body shall be admitted to any share or part of this contract or to any benefit that may arise there from but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

**SC-18.13. Other Contracts.** Add the following new paragraph immediately after Paragraph 18.12

18.13 Other Contracts.

- A. The owner may award other contracts for additional work and the Contractor shall fully cooperate with such Contractors and carefully fit work within the contract including additional work added to the contract to that provided under other contracts as may be directed by the Owner. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other Contractor.

END OF SUPPLEMENTARY CONDITIONS