

VIII

R. C. No. 198 - 21 - 22. By PUBLIC WORKS COMMITTEE. January 4, 2022.

Your Committee to whom was referred Res. No. 119-21-22 by Alderpersons Dekker and Perrella authorizing the appropriate City officials to enter into a contract with August Winter & Sons, Inc. to install an aeration blower at the Waste Water Treatment Plant, and to make related expenditures; recommends adopting the Resolution.

_____	_____
_____	_____
_____	_____
	Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk
Approved _____ 20____. _____, Mayor

Res. No. 119 - 21 - 22. By Alderpersons Dekker and Perrella.
December 20, 2021.

A RESOLUTION authorizing the appropriate City officials to enter into a contract with August Winter & Sons, Inc. to install an aeration blower at the Waste Water Treatment Plant, and to make related expenditures.

WHEREAS, in Res. No. 67-21-22, the Common Council authorized the appropriate City officials to enter into a contract with Lone Star Blower, Inc. ("Lone Star") to purchase an aeration blower for the Waste Water Treatment Plant; and

WHEREAS, the City of Sheboygan has advertised for bids to install the aeration blower (the "Project"); and

WHEREAS, the low bid was from August Winter & Sons, Inc. ("August Winter") in the amount of \$72,000; and

WHEREAS, City Staff has reviewed the bids and determined that the low bid met all of the specifications; and

WHEREAS, completion of the Project requires work to paint, install new doors, and complete the electrical installation of the aeration blower (the "Related Work") which are not included in the bid from August Winter or in the previous contract with Lone Star; and

WHEREAS, the estimated cost of the Related Work and contingency is \$71,432.

NOW, THEREFORE, BE IT RESOLVED: That the appropriate City officials are hereby authorized to enter into the attached Agreement with August Winter for installation of the aeration blower.

By
adopt

BE IT FURTHER RESOLVED: That the appropriate City officials are hereby authorized to draw funds, not to exceed \$143,432, which includes the cost of the Project and the Related Work, from Account No. 60138300-631100.

Dean Dekker

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

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

**AGREEMENT
BETWEEN THE CITY OF SHEBOYGAN, WISCONSIN AND
AUGUST WINTER & SONS, INC.**

**REGARDING INSTALLATION OF AN AERATION BLOWER
AT THE SHEBOYGAN WASTEWATER TREATMENT FACILITY**

This Agreement ("Agreement") is made and entered into effective this ____ day of _____, 2022 (the "Effective Date"), by and between the City of Sheboygan (the "City"), a municipal corporation, and August Winter & Sons, Inc. ("Contractor").

WITNESSETH:

WHEREAS, the City is the owner of the Wastewater Treatment Facility at 3333 Lakeshore Drive, Sheboygan, Wisconsin (the "Treatment Facility"); and

WHEREAS, the City has separately contracted with Lone Star Blower, Inc. to purchase an aeration blower; and

WHEREAS, the City wishes to have the aeration blower unit installed at the Treatment Facility; and

WHEREAS, the City issued Request for Bids 1998-21 to obtain bids from qualified providers of the services needed to complete the installation and other related work (the "Services"); and

WHEREAS, the City has opened the bids, and determined that the bid from Contractor ("Bid") is the lowest responsive and responsible bid for the Services; and

WHEREAS, Contractor desires to provide the City with the necessary Services under the terms set forth in this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

Article 1. Scope of Services

Contractor shall complete the Services necessary to install the aeration blower and associated piping and safety railings pursuant to the Project Manual, which is attached to this Agreement as Exhibit I. This includes the provision of all necessary labor, equipment, licenses, permits¹, and travel expenses.

Any quantities shown in the Project Manual are based on estimated needs. The City reserves the right to increase or decrease quantities to meet actual needs.

¹ Contractor shall be responsible for obtaining any and all applicable City permits and paying any and all applicable permit fees prior to beginning work.

For the avoidance of doubt, the City is responsible for purchasing the aeration blower to be installed, and will be responsible for: (1) setting the blower in position and levelling; (2) final connection to electrical power; and (3) purchase of an inlet silencer.²

Contractor shall provide an itemized material list to the City's Representative. The City will provide a tax-exempt certificate to Contractor for any approved purchase made by Contractor from vendors related to the Services.

Article 2. Standard of Care

Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The City's Representative shall be the sole judge of the adequacy of Contractor's work in meeting the Standard of Care; however, the City's Representative shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under this Agreement.

Article 3. City's Representative

The City designates Steve Jossart as its Representative for purposes of this Agreement. If the City's Representative deems it appropriate, the City's Representative may consult with other employees of the City, or may retain an appropriate outside expert to assist with the management of this Project.

If the City's Representative observes any work performed by the Contractor to not be in conformity with the Agreement, the City's Representative will report that to the Contractor. The City's Representative will have authority to stop any portion of the work not in conformity with the Agreement until the City has investigated and decided upon an appropriate procedure.

Article 4. Compensation

The City shall pay Contractor for the Services an amount not to exceed \$72,000.00 ("Contract Amount").

Contractor shall submit an invoice to the City on a monthly basis, which shall be based on the percentage of the Services described in Article 1 completed. Contractor shall provide sufficient information for the City to evaluate the percent of the Services completed. Invoices shall be sent via first class mail postage prepaid. Payment will be remitted to Contractor within forty-five (45) days of receipt of the invoice.

² These items may be done by the City or by another contractor. They are not the responsibility of Contractor under this Agreement.

The invoice shall be sent to:

Steve Jossart, Superintendent
City of Sheboygan Wastewater Facility
3333 Lakeshore Drive
Sheboygan, Wisconsin 53081

Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the City or its Representative prior to such work being performed, or expenses incurred. The City shall not make payment for any unauthorized work or expenses.

The City shall retain 10% of each invoice until Final Acceptance. Additionally, the City may withhold payment, in whole or in part, to the extent necessary to protect itself from a loss on account of any of the following ("Withheld Amounts"):

- Payments that may be earned or due for just claims for labor or materials furnished in and about the work.
- Defective work.
- The probable filing of claims by other parties against Contractor which may adversely affect the City.
- Failure of Contractor to make payments due to subcontractors, material suppliers, or employees.
- Damage to the City or a third party.
- Reasonable doubt that the Agreement can be completed for the balance then unpaid.
- Liquidated damages due to the City.

The City will disburse, and shall have the right to act as agent for Contractor in disbursing the Withheld Amounts to the party or parties who are entitled to payment. The City will provide the Contractor with a proper accounting of all such funds disbursed on behalf of the Contractor.

The submission of any request for payment shall be deemed a waiver and release by Contractor of all liens and claims with respect to the work and period to which such payment request pertains except as specifically reserved and noted on such request.

Contractor shall deliver to the City a complete release of all liens arising out of this Agreement before the retained percentage or Final Payment will be paid. If any lien remains unsatisfied after payments are made, Contractor shall refund to the City such amounts as the City may have been compelled to pay in discharging such liens, including all costs and fees.

Partial payment made under this Agreement is not evidence of the proper performance by Contractor either in whole or in part, and no payment made by the City shall be construed to be an acceptance of defective or improper work. Acceptance of the work by the City shall occur only upon Final Payment by the City which will occur after Final Acceptance. The Parties recognize that more than 45 days may elapse between the submission of the last invoice and Final Acceptance or Final Payment. The City agrees to make reasonable efforts to schedule its Final Inspection in a timely manner and to

process the Final Payment in a timely manner upon Final Acceptance. (For the avoidance of doubt, the warranties and guarantees in this Agreement shall continue to apply even after Final Payment by the City.)

Article 5. Appropriation of Funds

Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the City are at any time not forthcoming or are insufficient, through failure of any entity, including the City itself, to appropriate funds or otherwise, then the City shall have the right to terminate this Agreement without penalty.

Article 6. Performance and Payment Bond

Contractor shall, within 15 days of the approval of this Agreement by the Common Council of the City of Sheboygan, provide the City with a Performance Bond and a Payment Bond, in accordance with the EJCDC forms included with the bid documents, in the amount of 100% of the contract amount.

Failure by Contractor to perform the work in a timely or satisfactory fashion may result in forfeiture of Contractor's Performance Bond. Failure by Contractor to make necessary payments to suppliers or subcontractors may result in forfeiture of Contractor's Payment Bond.

If the Surety on any bond furnished by Contractor becomes a party to supervision or liquidation, or its right to do business in the State of Wisconsin is terminated, Contractor shall, within 30 calendar days thereafter, substitute another bond or surety, both of which must be acceptable to the City.

Article 7. Schedule

Contractor shall commence work after receiving a Notice to Proceed from the City's Representative. At that point, Contractor shall commence work promptly, and shall continue the prosecution of the Services as quickly as is practicable until the Services are completed.

Contractor shall complete the services by May 15, 2022, or within such extra time as may have been allowed by a mutually agreed extension (the "Deadline"). The City's Representative shall have the authority to consent to an extension of the Deadline on behalf of the City.

Failure of the Contractor to adhere to the schedule as specified or to promptly replace rejected materials shall render the Contractor liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs shall include the administrative costs and other costs attributable to the delay.

No work aside from that performed during the regular work week will be allowed unless prior notice is given to the City's Representative and the City's Representative consents to the work being performed during that time. Any work performed without prior notice and approval to do so may be required to be removed for inspection at Contractor's expense.

Article 8. Liquidated Damages

In the event that Contractor does not complete the Services by the Deadline, there shall be deducted from any monies due or that may become due to Contractor, for each and every calendar day that the work remains uncompleted, a sum of \$400.00 per calendar day.

This sum shall be considered and treated not as a penalty but as fixed, agreed, and liquidated damage due the City from Contractor by reason of inconvenience to the public, added cost of supervision, and other items which have caused an expenditure of public funds resulting from his failure to complete the work.

Permitting Contractor to continue and finish the work or any part of same after the time fixed for its completion, or after the date to which the time for completion may have been extended, shall in no way be construed as a waiver on the part of the City of any of its rights under the Agreement.

Article 9. Workmanship and Quality of Materials

Contractor's Warranty for the Services is set forth in the Project Manual.

All material shall be new, newest model year, and free from defects. Items which are used, demonstrators, obsolete, seconds, or which have been discontinued are unacceptable without prior written approval of the City's Representative.

Whenever, in any document, an article, material, or equipment is defined by describing a proprietary product, or by using the name of a manufacturer or vendor, the term "or equal" or the term "the equivalent" if not inserted, shall be implied, and it is done for the express purpose of establishing a basis of durability and efficiency and not for the purpose of limiting competition. Whenever material or equipment is submitted for approval as being equal to that specified, the submittal shall include sufficient information and data to demonstrate that the material or equipment conforms to all contractual requirements. The decision as to whether or not such material or equipment is equal to that specified shall be made by the City's Representative. The approval by the City's Representative of alternate material or equipment as being equivalent to that specified shall not in any way relieve Contractor of responsibility for failure of the material or equipment due to faulty design, material, or workmanship, to perform the function required by the contract documents. The City's Representative shall be the sole and final judge of equivalency.

Article 10. Safety Requirements

All materials, equipment, and supplies provided to the City must comply fully with all safety requirements set forth under state and federal law, including all applicable OSHA Standards.

Contractor shall be responsible for the safety of its employees at all times and shall provide all equipment necessary to insure their safety. Contractor shall ensure the enforcement of all applicable safety rules, regulations, ordinances and laws, whether federal, state, or local.

Contractor shall provide the necessary safeguards including, but not limited to, warning signs and barricades, to avoid all necessary hazards and protect the public, the work, and the property at all times, including on days when no work is being done. The City shall not be responsible for any loss

or damage to the project materials prior to their installation or to Contractor's tools and equipment from any cause whatsoever.

Contractor's Superintendent of Safety shall make daily inspections upon the arrival and leaving of the site at the close of each workday.

Article 11. Access to Records

Both parties understand that the City is bound by the Wisconsin Public Records Law and, as such, this contract is subject to that law. Contractor acknowledges that it is obligated to assist the City in retaining and producing records related to the contract, and that the failure to do so shall constitute a material breach of the contract, in which case Contractor must defend and hold the City harmless from liability under that law.

Contractor shall maintain all records related to this contract for a period of not less than 7 years after receipt of Final Payment under the Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case records shall be maintained until the later of 7 years after receipt of Final Payment under the Agreement or disposition of all such litigation, appeals, claims, or exceptions related thereto.

Article 12. Termination

The City may terminate or suspend performance of this Agreement at the City's prerogative at any time upon written notice to Contractor. The City's Representative shall have the authority to provide this written notice. Contractor shall terminate or suspend performance of the Services on a schedule acceptable to the City and the City shall pay Contractor for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to Contractor's compensation and the schedule of services.

If Contractor defaults or fails to fulfill in a timely and proper manner its obligations pursuant to this Agreement, the City may, 10 days after written notice has been delivered to Contractor, and without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due to Contractor. In the alternative the City may, at its option, terminate this Agreement and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor, and may finish the project by whatever method it may deem expedient. In case the expenses incurred by the City (including payments previously made to Contractor) shall be less than the sum which would have been payable under the Agreement if it had been completed by Contractor, Contractor shall be entitled to receive the difference. However, in case such expense shall exceed the sum which would have been payable under the Agreement, Contractor will be liable and shall pay to the City the amount of said excess. By taking over prosecution of the work, the City does not forfeit the right to recover damages from Contractor or its surety, for failure to complete the work or for defects in the work.

If the City fails to make payment through no fault of the Contractor for a period of 30 days after such payment is due in accordance with the Agreement, the Contractor may – upon 7 days written notice to the City – terminate the Agreement and recover from the City for all work executed and for any

proven loss sustained upon any materials, equipment, tools, and construction equipment and machinery including reasonable profit and damages.

For the avoidance of doubt, the specific remedies identified in this Article 12 are not exclusive.

Article 13. Default

If Contractor breaches this Agreement or fails to perform the work in an acceptable manner, it shall be considered in default. Any one or more of the following will be considered a default:

- Failure to begin the work under this Agreement within the time specified.
- Failure to perform the work with sufficient supervision, workers, equipment and materials to ensure prompt completion of said work within the time limits allowed.
- Unsuitable performance of the work as determined by City.
- Neglecting or refusing to remove defective materials or failure to perform anew such work as shall have been rejected.
- Discontinuing the prosecution of the work or any part of it.
- Inability to finance the work adequately.
- If, for any other reason, Contractor breaches this Agreement or fails to carry on the work in an acceptable manner.

The City shall send Contractor a written notice of default. If Contractor, within a period of 10 days after such notice, fails to remedy the default, then the City shall have full power and authority, without violation of the Agreement, to take the prosecution of the work out of the hands of Contractor, as set forth in this Agreement.

Article 14. Identity of Contractor

Contractor acknowledges that one of the primary reasons for its selection by the City to perform the Services is the qualifications and experience of Contractor. Contractor thus agrees that the Services to be performed pursuant to this Agreement shall be performed by Contractor. Contractor shall not subcontract any part of the Services without the prior written permission of the City³. The City's Representative shall have the ability to provide this written permission. The City reserves the right to reject any of the Contractor's personnel or proposed outside professional sub-consultants, and the City reserves the right to request that acceptable replacement personnel be assigned to the project.

Article 15. Independent Contractor Status

During the entire term of this Agreement, Contractor shall be an independent contractor, and in no event shall any of its personnel, agents or subcontractors be construed to be, or represent themselves to be, employees of the City. Contractor shall be solely responsible for the payment and reporting of

³ In the event that the City allows part of the Services to be subcontracted, Contractor shall still be fully responsible to the City for the acts or omissions of any subcontractor and anyone employed directly or indirectly by the subcontractor. This is in addition to any liability imposed by law upon the Contractor.

all employee and employer taxes, including social security, unemployment, and any other federal, state, or local taxes required to be withheld from employees or payable on behalf of its employees.

Article 16. Indemnification

Contractor is responsible to the City for the acts and omissions of its employees, subcontractors, and any other persons performing any of the work under a contract with Contractor.

As such, to the extent permitted by law, Contractor shall defend and hold the City—including its Officials, Agents, and Employees—harmless from all liability, including, but not limited to, claims, actions, causes of action, liens, losses, damages, costs, legal fees, expenses, or judgments resulting from claimed injury, death, damage to property, or loss of use of property or any person or legal entity arising out of or in any way connected with the performance of work or work to be performed under this Agreement.

Contractor shall reimburse the City for any costs, expenses, judgments, and legal fees paid or incurred, by or on behalf of the City, its Officials, Agents, or Employees, or paid for on behalf of the City, its Officials, Agents, or Employees by insurance purchased or self-insurance provided by the City.

For the avoidance of doubt, Contractor shall further hold the City, its Officials, Agents, and Employees harmless from liability or claims for any injuries to or death of Contractor's employees (or the employees of any authorized subcontractor) arising out of or in any way connected with the work or work to be performed under this Agreement, including protection against any claim of the contractor or subcontractor for any payments under any worker's compensation law or any expenses of or any payments made by any worker's compensation insurance carrier on behalf of said contractor or sub-contractor, and the contractor shall hold the City harmless from any costs, expenses, judgments, and attorney's fees with respect to any above referenced workers' compensation claims incurred or paid by the City or paid on its behalf or on behalf of its Officials, Agents, or Employees by insurance purchased or self-insurance provided by the City.

Article 17. Insurance

Contractor shall not commence work under this Agreement until it has obtained all insurance required under this Article. Additionally, Contractor shall not allow any approved subcontractor to commence work on its subcontract until the subcontractor has obtained all insurance required under this Article.

During the performance of any and all Services under this Agreement, Contractor shall maintain the following insurance in full force and effect, and shall provide proof of insurance to the City's Representative listing the City of Sheboygan as an additional insured:

- a. Unemployment and Social Security – Contractor shall acquire and maintain, for the duration of the Agreement, Unemployment and Social Security Insurance that meets all statutory requirements.
- b. Workers' Compensation Insurance – Contractor shall acquire and maintain, for the duration of the Agreement, Workers' Compensation Insurance that meets all statutory requirements.

- c. Commercial General Liability Insurance – Contractor shall acquire and maintain, for the duration of this Agreement, Commercial General Liability Insurance with a policy limit of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The Commercial General Liability Insurance shall include operations, contractor’s protective insurance, products coverage, completed operations, contractual coverage, underground coverage, and blasting, explosion, and collapse.
- d. Comprehensive Automobile Liability and Property Damage – Contractor shall acquire and maintain, for the duration of this Agreement, Comprehensive Automobile Liability and Property Damage Insurance that covers the operation of owned, hired, and non-owned motor vehicles with a policy limit – for liability, bodily injury, and property damage – of at least \$1,000,000 per occurrence and \$1,000,000 in the aggregate.

The proof of insurance referenced above shall require the insurance company to notify the City at least 30 days prior to the expiration, cancellation, non-renewal, or material change in the coverage. The Certificate Holder on the proof of insurance should be listed as:

City of Sheboygan, Wisconsin
828 Center Ave., Suite 110
Sheboygan, Wisconsin 53081

The proof of insurance must contain an original signature.

Approval of the insurance by the City’s Representative shall not relieve or decrease the extent to which Contractor may be held responsible for payment of damages resulting from Contractor’s provision of the Services or its operations under this Agreement. If Contractor fails or refuses to procure or maintain the insurance required by these provisions, or fails or refuses to furnish the City the required proof that the insurance has been procured and is in force and paid for, the City shall have the right at its election to terminate the Agreement.

Article 18. Conflict of Interest

Contractor declares that it has no present interest, nor shall it acquire any interest, direct or indirect, which would conflict with the performance of Services under this Agreement. Contractor agrees that no person having any such interest shall be employed in the performance of this Agreement.

Article 19. Waiver

No failure of either party to enforce a term of this Agreement against the other shall be construed as a waiver of that term, nor shall it in any way affect the party’s right to enforce that term. No waiver by any party of any term of this Agreement—which may only occur in writing—shall be considered to be a waiver of any other term or breach thereof.

Article 20. Severability

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be

deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced as if it did not contain the particular provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

Article 21. Assignment

Neither the City nor Contractor shall assign any rights or duties under this Agreement without the prior written consent of the other party. Such written approval by the City shall not relieve the Contractor of the obligations incurred by the Contractor under the terms of this Agreement.

Article 22. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and Contractor.

Nothing in this Agreement shall create any contractual relationship between any subcontractor and the City. Contractor agrees to bind every approved subcontractor (and every subcontractor of a subcontractor) by the terms of this Agreement as far as applicable to that subcontractor's work, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the City. The City's Representative shall have the authority to consent to a subcontract as being adequate.

Article 23. Governing Law and Venue

This Agreement shall be governed by the laws of the State of Wisconsin. Venue of any disputes arising under this Agreement shall be in the Sheboygan County Circuit Court, Wisconsin.

Article 24. Non-Discrimination and Equal Opportunity

In connection with the performance of work under this Agreement, Contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, disability, developmental disability (as defined in Wis. Stat. 51.01(5)), sexual orientation (as defined in Wis. Stat. 111.32(13m)), gender identity, or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Contractor further agrees to take affirmative action to ensure equal employment opportunities.

Article 25. Compliance with Laws

In performing the Services under this Agreement, Contractor shall comply with any and all applicable federal, state, and local statutes, ordinances, plans, and regulations.

The City reserves the right to cancel this Agreement if Contractor fails to follow the requirements of Wis. Stat. 77.66 and related statutes regarding certification for collection of sales and use tax. The City also reserves the right to cancel this Agreement with any state or federally debarred contractor.

Contractor shall have any and all licenses and permits required to perform the work specified, and shall furnish proof of such licensing authorization and permits upon request.

Article 26. Notices

Any notice required by this Agreement shall be made in writing to the individuals/addresses specified below:

City:

Contractor:

City Clerk		
City of Sheboygan		
828 Center Ave.		
Sheboygan, Wisconsin 53083		

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the City and Contractor.

Article 27. Intent to be Bound

The City and Contractor each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners to the other party to this Agreement, and to the successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.

Article 28. Force Majeure

Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In every case, the failure to perform must be beyond the reasonable control and without the fault or negligence of the party.

Article 29. Integration and Modification

This Agreement may be modified only by a written amendment signed by both parties hereto.

This Agreement consists of the following parts, each of which is as fully a part of this Agreement as if fully set out herein:

1. This Agreement and its Exhibit 1
2. Any Written Amendment to the Agreement which may be delivered or issued after the Effective Date of the Agreement (including Change Orders)
3. The Request for Bids (including all attachments)
4. All Addenda to the Request for Bids
5. All Other Submittals by Contractor
6. The Performance and Payment Bonds

(collectively “the Contract”).

This Contract is the entire and integrated agreement between the City and Contractor regarding the subject matter of this Contract. It supersedes all prior and contemporaneous communications, representations and agreements that are not part of this Contract.

In resolving conflicts, errors, discrepancies and disputes concerning the Scope of Work to be performed by Contractor, the document expressing the greater quantity, quality, or other scope of work in question, or imposing the greater obligation upon Contractor and affording the greater right or remedy to the City shall govern. Otherwise, the documents shall be given precedence in the order set forth above.

Article 30. Non-Collusion

Contractor is certifying, under penalty of perjury, that to the best of its knowledge and belief:

1. The prices in its bid were arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restricting competition as to any other matter relating to such prices with any other bidder, or with any other competitor.
2. The prices quoted in its bid were not knowingly disclosed—directly or indirectly—by the bidder prior to bid opening.
3. No attempt was made to induce any other person, partnership, or corporation to submit or not submit a bid for the purpose of restricting competition.

Article 31. Other Provisions

1. Material Safety Data Sheet. If any item(s) on an order(s) resulting from this Agreement is a hazardous chemical, as defined under 29 C.F.R. 1910.1200, Contractor shall provide one (1) copy of a Material Safety Data Sheet for each item with the shipped container(s) and one (1) copy with the invoice(s).
2. Advertising and News Releases. Reference to or use of the City, or any of its departments, officials, or employees, for commercial promotion is prohibited. News releases pertaining to this procurement shall not be made without prior approval of the City’s Representative. Release of broadcast e-mails pertaining to this procurement shall not be made without prior written authorization of the City’s Representative.
3. Foreign Corporation. A foreign corporation (any corporation other than a Wisconsin corporation) which becomes a party to this Agreement is required to conform to all the requirements of Wis. Stat. 180 relating to a foreign corporation, and must possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority.

4. Authority. Each person executing this Agreement on behalf of a party hereto represents and warrants to the other party: That the execution and delivery of this Agreement has been duly authorized, that the person or persons executing this Agreement have the full power, authority, and right to do so, and that such execution is sufficient and legally binding on such party to enable this Agreement to be enforceable in accordance with its terms.
5. Intellectual Property. Contractor shall pay for any royalties and license fees associated with intellectual property used in the completion of the Services. Contractor shall defend any suits or claims for infringement of any intellectual property rights related to the completion of the Services, and shall hold the City harmless from any liability associated with any such suit or claim.
6. Intent of Contract Documents.
 - a. The intent of this Agreement is to include in the contract price the cost of all labor and materials, water, fuel, tools, plants, equipment, light, transportation, and any other expenses that may be necessary for the proper execution and completion of the work included in the Agreement.
 - b. In interpreting the Agreement, words describing materials that have a well-known technical or trade meaning shall be construed in accordance with such well known meanings unless otherwise specifically defined.
7. Definitions.
 - a. Final Acceptance: The event that occurs when the City issues to Contractor a written statement that Contractor has completed all Punch List items, has made all necessary submittals to the City, and has satisfied all of its obligations under the Agreement.
 - b. Final Inspection: The inspection conducted by the City to determine what work must still be completed by Contractor in order for Completion of the Services to occur. After the Final Inspection, the City shall provide Contractor with a Punch List that Contractor must complete in order for Completion of the Services to occur.

- c. Final Payment: Payment by the City to Contractor after Completion of the Services the result of which is Contractor receiving all payments due under the terms of the Agreement for performing and completing the Services.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first written above.

CITY OF SHEBOYGAN, WISCONSIN

CONTRACTOR

BY: _____
Ryan Sorenson, Mayor

BY: _____

ATTEST: _____
Meredith DeBruin, City Clerk

ATTEST: _____

DATE: _____

DATE: _____

Approved by Res. No. ____-21-22.

1.1 PROTECTION OF PERSONS

- A. Work shall be executed in compliance with the Federal Occupational Safety and Health Act and the Wisconsin Administrative Code, Chapter 35, Safety in Construction.

1.2 APPLICATION OF THIS DIVISION OF THE SPECIFICATIONS

- A. The work is subject to the requirements of the Instructions to Bidders and this Division 1.
- B. The Contractor is fully responsible for seeing that no work shown is inadvertently left out.

1.3 INTENT OF CONTRACT DOCUMENTS

- A. The Sections of the Contract Document and the Contract Drawings are complementary and what is called for by any one shall be binding as if called for by all. The intention of the Contract Document is to include in the contract price the cost of all labor and materials, water, fuel, tools, plants, equipment, light, transportation, and all other expenses as may be necessary for the proper execution and completion of the work included in the Contract.
- B. In interpreting the Contract Documents, words describing materials which have a well-known technical or trade meaning unless otherwise specifically defined in the Contract Documents, shall be construed in accordance with such well known meanings recognized by Architects, Engineers, and the trade.
- C. Any work shown on the Contract Drawings and not covered in the Contract Specifications, or included in the Contract Specifications and not shown on the Contract Drawings, shall be executed by the Contractor as though both shown on the Contract Drawings and included in the Contract Specifications. If the Contract Drawings and the Specifications should be contradictory in any part, the Contract Specifications shall govern.

1.4 SCOPE OF WORK

- A. The Contract work shall include the furnishing of all labor, materials, equipment, transportation, appliances and services necessary to complete all work shown or reasonably inferred on the drawings and/or as described in the specifications.
- B. The City of Sheboygan will be responsible for:
- Setting the new blower in position and levelling.
 - Final Connection to electrical power.
 - Purchase of an inlet silencer.
- C. The Contractor will be responsible to:
- Supply and install all necessary piping materials including hangers, supports, fasteners;
 - Supply and install all materials and labor to fabricate and install safety handrails in accordance with the specifications;
 - Make up and install discharge piping and isolation valves in accordance with the plans and specifications including the discharge line through the roof and connection to the main header;
 - All piping to be fabricated out of Schedule 10, 304 Stainless Steel with painted carbon steel backing flanges.
 - There is an existing roof penetration which may need to be modified by the Contractor during installation.

- The Contractor will work with Operations Staff to isolate the header during installation.
- Contractor will be responsible to make up and install all inlet piping in accordance with the drawings. All inlet piping to be Schedule 10, 304 Stainless Steel with painted carbon steel backing flanges.
- Installation will require cutting of a new penetration through the East wall and routing the inlet piping to the roof. Resealing of the opening following installation is the responsibility of the Contractor.
- All piping supports will be fabricated from 304 Stainless Steel and attached with Stainless Steel Hardware.
- The Contractor will be responsible to install the owner-provided inlet silencer.
- The contractor will be responsible to modify and re-seal the roof penetration following installation.

1.5 OWNER'S REPRESENTATIVE

- A. All work under this Contract will be regularly viewed by the Owner's Representatives. Owner's Representatives will regularly visit the site of the project and observe the work for conformity with the Contract Documents, and will immediately report any lack of conformity to the Contractor.
- B. The Owner's Representatives will have authority to stop any portion of the work not in conformity with the Documents until the Owner has investigated and decided upon procedure.
- C. No work aside from that performed during the regular work week will be allowed unless prior due notice is given to the Owner or to the Owner's Representatives. Any work performed without prior notice and approval to do so may be required to be removed for inspection at Contractor's expense.

1.6 SUPERINTENDENCE

- A. The Contractor will give personal superintendence to the work, or have at the site of the work, at all times, a competent foreman, superintendent, or other representative, satisfactory to the Owner and having the authority to act for the Contractor.
- B. Insofar as is practicable, and excepting in the event of discharge by the Contractor, or in the event of proven incompetence, the individual who has been accepted by the Owner to represent the contractor shall so act, and shall follow without delay instructions of the Engineer in the completion of the work in conformity with the contract.

1.7 LABOR

- A. The Contractor shall employ none but competent and skilled workmen and foremen in the prosecution of work on this Contract. The Owner shall have the authority to order the removal from the work any Contractor's employee who refuses to or neglects to obey any of its instructions or those of the Engineer or Inspectors, relating to the carrying out of the provisions and intent of the provisions of the Contract, or who is incompetent, unfaithful, abusive, threatening or disorderly in his conduct, and any such person shall not again be employed on this project.

1.8 FIRE PROTECTION

- A. The Contractor shall provide and maintain an adequate number of hand fire extinguishers and take all other precautions necessary to prevent fires, and shall conform to local Fire Department regulations.

1.9 LAWS, REGULATIONS, FEES AND PERMITS

- A. The Contractor shall comply with all laws, ordinances, rules and regulations of the local Building Inspection Department, Fire Department, Health Department, Department of Water Supply, Gas and Electricity, Department of Highways and all State and Federal agencies having jurisdiction.
- B. Contractor shall obtain and pay for all necessary permits, fees and inspections required by such agencies. **Note: City Building Inspection does not waive permit fees for other City Departments.**
- C. Contractor shall pay for legitimate costs required by private utility and communication companies.

1.10 WATCHMEN AND OTHER SAFEGUARDS

- A. The Contractor shall provide the necessary safeguards including, but not limited to, warning signs and barricades to prevent accidents, to avoid all necessary hazards, and protect the public, the work and the property at all times, including Saturdays, Sundays, holidays and other times when no work is being done.
- B. Neither the Owner nor the Engineer shall be responsible for any loss or damage to the project materials, tools, equipment, etc., from any cause whatsoever.

1.11 CODES AND STANDARDS

- A. All materials and workmanship shall comply with all applicable codes, specifications, local ordinances, industry standards and utility company regulations.
- B. In case of difference between building codes, specifications, state laws, local ordinances, industry standards and utility company regulations and the Contract Documents, the most stringent shall govern. The Contractor shall promptly notify the Engineer in writing of any such difference.
- C. Non-compliance: Should the Contractor perform any work that does not comply with the requirements of the applicable building codes, state laws, local ordinances, industry standards and utility company regulations, he shall bear all costs arising in correcting the deficiencies.
- D. Applicable Codes and Standards shall include all state laws, local ordinances, utility company regulations, and the applicable requirements of the following nationally accepted Codes and Standards:
 - 1. Building Codes:
 - a. ICC Codes.
 - b. National Electrical Code.
 - c. Wisconsin Administrative Code.
 - d. National fire Code
 - 2. Industry Standards, Codes and Specifications:
 - a. AIEE- American Institute of Electrical Engineers
 - b. ANSI -American National Standards Inst.
 - c. ASME- American Society of Mechanical Engineers
 - d. ASTM- American Society of Testing Materials
 - e. IPCEA- Insulated Power Cable Engineers Assoc.
 - f. NBS- National Bureau of Standards
 - g. NEMA- National Electrical Manufacturers Assoc
 - h. NFPA- National Fire Protection Assoc.
 - i. OSHA- Occupational Safety and Health Act
 - j. UL- Underwriters Laboratories
 - k. MSS - Manufacturers Standardization Society

- l. AISC -American Institute of Steel Construction
- m. AWS -American Welding Society
- n. ACCA- Air Conditioning Contractors of America
- o. Air Conditioning and Refrigeration Institute
- p. American Society of Heating, Refrigerating and Air Conditioning Engineers
- q. SMACNA- Sheet Metal and Air Conditioning Contractors National Association

1.12 CUTTING AND PATCHING

- A. The Contractor shall be responsible for all required cutting, etc., and shall make all required repairs thereafter to satisfaction of the Engineer, but in no case shall the Contractor cut into any major structural element, beam or column without the written approval of the Engineer.

1.13 INSURANCE AND LIABILITY

- A. The Contractor and the Surety will 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, his 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.
- B. The Contractor shall not commence work under a Contract until he has 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.
- C. Workmen's Compensation
 - 1. Statutory coverages as required by chapter 102 of the Revised Statutes of the State of Wisconsin and all acts amendatory thereof and supplementary thereto, for all employees of the contractor. All subcontractors shall furnish to the Contractor and to the Owner, evidence of similar insurance for all of their respective employees unless such employees are covered by the protection afforded by the contractor.
- D. Comprehensive General Liability and Property Damage Insurance
 - 1. Coverage to include operations; contractor's protective insurance, products coverage and completed operations; contractual coverage; underground coverage; blasting, explosion and collapse; all subject to the following limits:
 - 2. Bodily Injury \$1,000,000 per Person
\$2,000,000 Aggregate
 - 3. Property Damage \$500,000 per Occurrence
\$500,000 Aggregate
- E. Comprehensive Automobile Liability and Property Damage
 - 1. Operation of owned, hired and non-owned motor vehicles:
 - 2. Bodily Injury \$1,000,000 per Person
\$1,000,000 per Occurrence
 - 3. Property Damage \$1,000,000 per Occurrence

- F. If the Contractor is employing Subcontractors or hiring pieces of equipment from another firm/contractor, said Contractor must furnish certificates of insurance for each to the Owner.

1.14 LAWS TO BE OBSERVED

- A. The Contractor shall give all notices and comply with all Federal, State and Local laws, ordinances and regulations in any manner affecting the conduct of the work and all such orders and degrees as exist, or may be enacted by bodies or tribunals having any jurisdiction or authority over the work, and shall indemnify and save harmless the Owner against any claim or liability arising from, or based on, the violation of any such law, ordinance, regulation, order or decree, whether by himself or his employees.

1.15 PUBLIC SAFETY AND CONVENIENCE

- A. The Contractor shall at all times so conduct his work as to insure the least possible obstruction to traffic and the least possible inconvenience to the general public and to the employees of the Owner.

1.16 USE OF JOB SITE

- A. The Contractor shall confine his equipment, apparatus, the storage of materials and operations of his workman to limits indicated by the law, ordinances, permit or directions of the Owner and shall not encumber the premises with his materials.
- B. The Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety. The contractor shall observe and enforce the Owner's instructions regarding signs, advertisements, fires and smoke.

1.17 SCHEDULE OF VALUES

- A. The Contractor shall within ten (10) days of receipt of notice to proceed, submit a complete breakdown of the Contract Amount showing the value assigned to each part of the work, including an allowance for profit and overhead. Upon approval of the breakdown of the Contract Amount by the Engineer, it shall be used as the basis for all Requests for Payment.

1.18 REQUESTS FOR PAYMENT

- A. The Contractor may submit periodically but not more than once each month a Request for Payment of work done on the site and materials delivered and stored on the site. The Contractor shall furnish the Engineer all reasonable facilities required for obtaining the necessary information relative to the progress and execution of the work. Payment for materials stored on the site will be conditioned upon evidence submitted to establish the Owner's title to such materials. Each Request for Payment shall be computed from the work completed on all items listed in the Schedule of Values, less 10% to be retained until final completion and acceptance of the work and less previous payments.
- B. The Contractor shall be required to file waivers of lien from all suppliers, subcontractors, etc., with the Owner prior to receiving payment on the project.

1.19 RELEASE OF LIENS

- A. The Contractor shall deliver to the Owner a complete release of all liens arising out of this Contract before the retained percentage or before the final Request for Payment is paid. If any lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner such amounts as the Owner may have been compelled to pay in discharging such liens, including all costs and a reasonable attorney's fee.

1.20 PATENTS

- A. The Contractor shall pay for all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof.

1.21 COOPERATION WITH OWNER

- A. Personnel in the employ of the Contractor or any of his subcontractors, either directly or indirectly, are prohibited from using any existing facilities on adjacent property or trespassing in or about adjacent facilities.

1.22 SUBCONTRACTS

- A. The Contractor shall notify the Owner, in writing, of the names of the subcontractors proposed on the Contract and shall not employ any subcontractors until the Owner's approval in writing has been obtained.
- B. The Contractor agrees to be fully responsible to the Owner for the acts or omissions of his subcontractors and of anyone employed directly or indirectly by him or them, and this Contract obligation shall be in addition to the liability imposed by law upon the Contractor.
- C. Nothing contained in the Contract documents shall create any contractual relationship between any subcontractors and the Owner. The Contractor agrees to bind every subcontractor (and every subcontractor of a subcontractor) by the terms of the General and special Provisions of the Contract, the Contract Drawings and Specifications, as far as applicable to his work, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the Owner.

1.23 ASSIGNMENT OF CONTRACT

- A. No assignment by the Contractor of any construction contract, or any part thereof, or of the funds to be received there under by the Contractor, will be recognized, unless such assignment has had the written approval of the Owner and the Surety has been given due notice of such assignment and has furnished written consent thereto. Such written approval by the Owner shall not relieve that Contractor of the obligations incurred by him under the terms of this Contract. In addition to the usual recitals in assignment contracts, the following language must be set forth:

"It is agreed that the funds to be paid to the assignee under this assignment are subjected to a prior lien for services rendered or materials supplied for the performance of the work called for in said contract in favor of any persons, firms, or corporations rendering such services or supplying such materials".

1.24 OTHER CONTRACTS

- A. The Owner may award other contracts for additional work at the site of the project (or other locations) and the Contractor shall fully cooperate with such other Contractors and carefully fit his own work to that provided under other contracts as may be directed by the Owner. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor.

1.25 OWNER'S RIGHT TO DO WORK

- A. If the Contractor neglects to prosecute the work to be performed on this Contract properly, or fails to perform any provision of this Contract, the Owner, after three days' written notice to the Contractor and his Surety, may, without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment due the Contractor.

1.26 TERMINATION BY THE CONTRACTOR

- A. If the Owner fails to make payment through no fault of the Contractor for a period of thirty (30) days after such payment is due in accordance with the Contract Documents, the Contractor may, upon seven (7) days written notice to the Owner terminate the Contract and recover from the Owner payment for all work executed and for any proven loss sustained upon any materials, equipment, tools, and construction equipment and machinery including reasonable profit and damages.

1.27 TERMINATION BY THE OWNER

- A. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, the Owner may, after seven (7) days written notice to the Contractor and without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or

thereafter due the Contractor or, at his option, may terminate the Contract and take possession of the site and of all material, equipment, tools and construction equipment and machinery thereon owned by the Contractor and may finish the work by whatever method he may deem expedient, and if the unpaid balance of the Contract sum exceeds the expense of finishing the work, such excess shall be paid to the contractor, but if such expense exceeds such unpaid balance, the Contractor shall pay the difference to the Owner.

1.28 CHANGES IN THE WORK

- A. The Owner without invalidating the Contract may order changes in the work consisting of additions, deletions, or modifications, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the work shall be authorized by written Change Order signed by the Owner.
- B. The Contract Sum and the Contract Time may be changed only by Change Order.
- C. The cost or credit to the Owner from a change in the work shall be determined by mutual agreement before executing the work involved.

1.29 CORRECTION OF WORK

- A. The Contractor shall correct any work that fails to conform to the requirements of the Contract Documents where such failure to conform appears during the progress of the work, and shall remedy any defects due to faulty materials, equipment or workmanship which appear within a period of one year from the date of final payment of the Contract or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents. The provisions of this Article apply to work done by Subcontractors as well as to work done by direct employees of the Contractor. The obligations of the Contractor under this paragraph shall be in addition to and not in limitation of any obligations imposed upon him by special guarantees required by the Contract Documents or otherwise prescribed by law.

1.30 SANITARY CONVENIENCE

- A. The Contractor shall have access to the use of sanitary facilities available to the Facility Staff.

1.31 CLEANING UP AND FINAL INSPECTION

- A. The Contractor shall at all times keep the site of the work free from accumulation of waste material or rubbish caused by his employees on the construction work, and at the completion of the work he shall remove all his rubbish from and about the work and all his tools, equipment, scaffolding, and surplus materials, and shall leave the completed 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 several Contractors, if more than one is employed on the project, in proportion to the amounts as shall be determined by the Owner to be just.

1.32 OWNER'S RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION

- A. The Owner may withhold from payments to the Contractor, in addition to retained percentage, such an amount or amounts as may be necessary to cover:
 - 1. Payments that may be earned or due for just claims for labor or materials furnished in and about the work.
 - 2. For defective work not remedied.
 - 3. For failure of the contractor to make proper payments to the Subcontractors.
 - 4. Reasonable doubt that this Contract can be completed for the balance then unpaid.
 - 5. Evidence of damage to another Contractor.
 - 6. Liquidated damages due to failure to meet contract completion dates.
- B. The Owner will disburse and shall have the right to act as agent for the Contractor in disbursing such funds as have been withheld pursuant to this paragraph to the part or parties who are entitled to payment therefrom. The Owner will render to the Contractor a proper accounting of all such funds disbursed in behalf of the Contractor.

- C. The Owner also reserves the right, even after full completion and acceptance of the work, to refuse payment of the final ten percent (10%) due the contractor until it is satisfied that all Subcontractors, material suppliers and employees of the Contractor have been paid in full.

1.33 CHANGES-PAYMENT

- A. The Owner may, in accordance with the rules of its Common Council, authorize changes in the work to be performed or the materials to be furnished under the provisions of this Contract.
- B. Adjustment, if any, in the amounts to be paid to the Contractor by reason of any such changes shall be determined by one or more of the following methods:
 - 1. By an acceptable lump sum or unit price proposal by the Contractor.
 - 2. On a cost-plus limited basis not to exceed a specified limit (defined as the cost of labor, materials and insurance) plus a specified percentage of the cost of such labor, materials and insurance provided the specified percentage does not exceed fifteen percent (15%) of the aggregate of the cost of such labor, materials and insurance, and shall in no event exceed a specified limit.
- B. No claim for an addition to the contract price will be valid unless authorized as aforesaid.
- C. In cases where a lump sum proposal is submitted by the Contractor in Excess of Five Hundred Dollars (\$500.00) and the Owner considers the proposal so submitted is excessive or unreasonable for the changes or added work contemplated; the Owner reserves the right to request a proposal for the same changed items from other Contractors. If a proposal for such added work is obtained from other Contractors at a lesser amount, the Owner reserves the right to make an award of such work to another Contractor, unless the Contractor on this Contract agrees to do the added work or changed work for the price named by the other Contractor.
- D. It shall be expressly understood and hereby agreed to by the Contractor that no claim for extra work will be recognized by the Owner unless same has been ordered, in writing, by the Owner, or unless claim for such added work has been filed by the Contractor within five (5) days after the end of the calendar month in which such alleged work was performed. Inspectors and Resident Engineers are not authorized to act for the Owner in giving orders for the Owner for extra or additional work, either in writing or verbally.

1.34 DEDUCTION FOR UNCORRECTED WORK

- A. If the Owner deems it expedient to accept work damaged or not done in accordance with the Contract, an equitable adjustment will be made with a proper deduction from the contract price for unsatisfactory work.

1.35 FINAL ACCEPTANCE OF THE WORK

- A. The Contract shall be deemed as having been finally accepted by the Owner when its governing body, by formal resolution, accepts the work.

1.36 CORRECTION OF WORK AFTER FINAL PAYMENT

- A. Neither the final payment on this Contract by the Owner nor any provision in these Contract Documents shall relieve the Contractor or Surety of the responsibility for negligence in the furnishing and installation of faulty materials or for faulty workmanship which shows up within the extent of the period provided by law nor of the responsibility of remedying such faulty workmanship and materials.

1.37 OWNER'S RIGHT TO USE UNCOMPLETED WORK

- A. The Owner shall have the right to take possession of and use portions of the work prior to final acceptance without waiving rights against the Contractor or his Surety for defects in the work or failure to complete same in its entirety.

1.38 PAYMENTS

- A. Pay estimate periods shall close on the last day of each calendar month so that completed estimates can be computed for processing. On each partial payment during the progress of the project, the Owner will retain an amount in accordance with Chapter 66.29 Wisconsin Statutes. No payment will be made for material stored at the job site.

1.39 DELAYS

- A. If the work of the Contractor is delayed because of any acts or omissions of any other Contractor, the Contractor shall have no claim against the Owner on that account other than an extension of time.
- B. In case any action in court is brought against the Owner or Engineer, or any officer or agent of either of them, for the failure, omission or neglect of the Contractor, utility company or Owner of other facilities within the project area to perform any of the covenants, acts, matters or things by this Contract undertaken, or for injury or damage caused by the alleged negligence of the Contractor or his subcontractors or his or their agents, or in connection with any claim based on lawful demands of subcontractors, workmen, material men, or suppliers, the Contractor shall indemnify and save harmless the Owner and Engineer and their officers or agents, from all losses, damages, costs, expenses, judgments or decrees arising out of such action.

1.40 ATTACHMENTS

- A. The following attachments are referenced herein, attached hereto and made part of this document.
- EJCDC Form C-430 Bid Bond Form
 - EJCDC Form C-610 Performance Bond Form
 - EJCDC FORM C-615 Payment Bond Form
 - City of Sheboygan Standard Form of Agreement
 - City of Sheboygan Certificate of Non-Collusion
 - City of Sheboygan Bidders Proof of Responsibility