

III
Res. No. 27 - 22 - 23. By Alderpersons Dekker and Perrella. June 6, 2022.

A RESOLUTION authorizing the appropriate City officials to enter into a contract with K-W Electric, Inc. for the replacement of the emergency electrical generator at Sheboygan Fire Department Fire Station #2.

WHEREAS, the existing emergency generator at Fire Station #2 is original to the building and no longer provides sufficient and dependable emergency electrical power to the building to support Fire Department operations in case of an electrical outage; and

WHEREAS, the Fire Department budgeted for the replacement of the generator and retained the services of MSA Architects and Engineers to design the replacement system and the installation of same (the "Work"); and

WHEREAS, the City advertised and issued a Request for Bids from qualified contractors for the replacement of the Generator including an upgrade to the natural gas service to the facility along with detailed plans and specifications for the project; and

WHEREAS, during the bid process, it was determined that the physical exterior location of the new generator in the plans was not ideal and an alternate location was identified which would reduce noise to the adjoining residences and result in less work associated with the routing of both gas and electrical service to the equipment; and

WHEREAS, Addendum #1 was issued to the bidders of record regarding the changes associated with the relocation of the equipment; and

WHEREAS, sealed bids were received on May 26, 2022, and following a review both City Staff and the Engineer agree that the low bid submitted by K-W Electric, Inc. in the amount of \$118,800.00 meets all of the specifications.

NOW, THEREFORE, BE IT RESOLVED: That the appropriate city officials are authorized to enter into contract with K-W Electric, Inc., in substantially similar terms as attached, for the Work in the amount of \$118,800.00.

PW

BE IT FURTHER RESOLVED: That the appropriate City officials are hereby authorized to draw funds for the Work pursuant to the terms of the attached contract as set forth below:

Account No. 48022100-621200 (Capital Improvements
Fund - Fire - Building Improvements)

\$118,800.00

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
K-W ELECTRIC, INC.
FOR THE PROVISION AND INSTALLATION OF A NEW EMERGENCY ELECTRICAL
GENERATOR AT SHEBOYGAN FIRE STATION # 2**

This Agreement ("Agreement") is made and entered into effective this ____th day of _____, 2022 (the "Effective Date"), by and between the City of Sheboygan (the "City"), a municipal corporation, and K-W Electric Inc. ("Contractor").

WITNESSETH:

WHEREAS, the City is the owner of Fire Station # 2 located at 2413 South 18th Street; and

WHEREAS, the existing emergency generator is located in the basement of the building and is no longer able to provide adequate and dependable emergency power to support the Fire Station operations; and

WHEREAS, the City wishes to replace the current generator with one of increased capacity sufficient to support current day operations in a location on the exterior of the building and in full compliance with the specifications, identified in Exhibit 1 to this Agreement, and

WHEREAS, the City issued Request for Bids # 2017-22 to obtain bids from qualified providers of the services and equipment ("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, the alternate exterior location was identified during the bid process as being superior from the standpoint of simplifying the installation and further assuring that residential properties to the east and north will experience reduced impact during operation of the unit. The relocation is addressed in Addendum # 1 to the Request for Bids (Exhibit 2); and

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

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

Article 1. Scope of Services

Contractor shall perform all work associated with the work as specified in Exhibits 1 & 2 related to the provision and installation of the emergency generator and upgrading the natural gas system (the "Services").

Contractor shall provide all labor, machinery, equipment, licenses, permits¹, bonds, and travel expenses to safely and skillfully complete the project and shall dispose of all materials from the removal of the current system in a lawful manner (the "Disposal").

Other: Contractor shall be responsible for obtaining any and all applicable City permits and paying any and all applicable permit fees prior to beginning work. The City of Sheboygan does not waive permitting fees between City of Sheboygan Departmental projects.

Contractor shall be responsible for furnishing, erecting, and maintaining suitable barricades, warning signs, flashers, fencing, and other protective equipment to properly protect and safeguard its personnel and the public during all phases of the Services.

Contractor will need to plan the work in advance of mobilization and coordinate with the City's Representative. The Fire Station will remain open during the project.

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, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care which appear within a period of one year from the date of final payment of the Contract.

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 Michael Willmas as the City's 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 observe 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

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.

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 \$ 118,800.00 ("Contract Amount").

Invoices shall be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within sixty (60) days of receipt of invoice. Contractor shall submit an invoice to the City on a monthly basis and shall be based on the percentage of each quadrant completed. The invoice shall be sent to:

Bernard Rammer
City of Sheboygan
828 Center Ave.
Sheboygan, Wisconsin 53081

Contractor shall be required to file waivers of lien from all suppliers and subcontractors with the Owner prior to receiving payment. 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 the Final Payment is paid. If any lien remains unsatisfied after the retained percentage or the Final Payment is paid, Contractor shall refund to the City such amounts as the City may have been compelled to pay in discharging such liens (including any costs and reasonable legal fees).

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 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:

- Defective work.
- Evidence indicating 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.
- The probable filing of claims by other parties against Contractor which may adversely affect the City.

- 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 City also reserves the right to refuse payment of the final 10% due to Contractor until the City's Representative is satisfied that all subcontractors, material suppliers, and employees of the Contractor have been paid in full.

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. The City agrees that it will make its best effort to obtain sufficient funds for the Agreement to meet its obligations hereunder in full.

Article 6. Performance and Payment Bond

Contractor shall, within ten (10) days of the execution of this Agreement by the Common Council of the City of Sheboygan, provide the City with a Performance Bond and a Payment Bond in the amount of one hundred percent (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 thirty (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. All work shall be coordinated with the City's Representative. No work may occur on weekends, holidays without prior approval from the City's Representative.

Contractor shall complete the services on or before February 28, 2023, or within such extra time as may have been allowed by a mutually agreed extension (the "Deadline") Due primarily to the Manufacturer **Lead time** of the Generator appliance. The City's Representative shall have the authority to consent to an extension of the Deadline on behalf of the City and waive any associated penalties with liquidated damages.

The Parties agree that no charges or claims for damages shall be made by Contractor for any delays or hindrances, from any cause whatsoever, during the progress of any portion of the services specified in the Agreement. Such delays or hindrances, if any, may be compensated for by an extension of time for a reasonable period as may be mutually agreed upon between the Parties, it being understood, however, that permitting Contractor to proceed to complete any service, or any part of the services / project, after the date to which the time of completion may have been extended shall in no way operate as a waiver on the part of the City of any of its rights herein.

Article 8. Liquidated Damages

In the event that Contractor does not complete the Services by the Deadline or the alternative final agreed upon completion date, 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 One Hundred and 00/100 Dollars (\$100.00) per calendar day.

This sum shall be considered and treated not as a penalty but as fixed, agreed, and liquidated damages 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.

Article 9. Workmanship and Quality of Materials

Contractor shall ensure that the System has the following warranties, which begin after Final Acceptance and completion of all training required in the Project Manual:

- All equipment purchased as a result of this Agreement shall include the equipment manufacturer's standard warranty.
 - Contractor shall provide a one-year warranty against defects for parts and labor.
- All material used 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.

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.

Article 11. Open 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 that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of the contract, and that Contractor must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of Final Payment under the Agreement.

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 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 Contract Documents, the Contractor may, upon 7 days written notice to the City, terminate the Agreement and recover from the City 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.

If Contractor defaults or fails to fulfill in a timely and proper manner its obligations pursuant to this Agreement, the City may, seven (7) 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 in the time specified.

For the avoidance of doubt, the specific remedies identified in this Article 11 are not exclusive. In other words, the City may pursue any remedy in law or equity in the event that Contractor defaults under this Agreement.

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 seven (7) 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 City. 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 sub-contractors be construed to be, or represent themselves to be, employees of the City. Contractor shall be solely responsible for the payment and reporting of 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, losses, damages, costs, attorney's fees, expenses, causes of action, claims, 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 attorney's 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. Workers' Compensation Insurance – Contractor shall acquire and maintain, for the duration of the Agreement, Workers' Compensation Insurance that meets all statutory requirements. In the event this Agreement authorizes any work to be subcontracted, Contractor shall require any subcontractor to similarly provide Workers' Compensation Insurance in accordance with all statutory requirements.
- b. 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 \$2,000,000 per occurrence and \$2,000,000 in the aggregate.

The proof of insurance referenced above shall require the insurance company to notify the City at least thirty (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 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 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

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, developmental disability (as defined in Wis. Stat. 51.01(5)), sexual orientation (as defined in Wis. Stat. 111.32(13m)), 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. This includes all safety requirements as set forth by the Wisconsin Administrative Code and all applicable OSHA Standards.

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	K-W Electric, Inc
City of Sheboygan	N5875 County Road M
828 Center Ave.	Plymouth, WI 53073
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 Attachments
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. The Plan Set for Request for Bids 2005-21
5. All Addenda to the Request for Bids
6. All Other Submittals by Contractor
7. 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. **Guaranteed Delivery.** Failure of the Contractor to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the Contractor liable for all costs in excess of the Agreement price when alternate procurement is necessary. Excess costs shall include the administrative costs and other costs attributable to the delay.
5. **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.
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

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 K-W ELECTRIC, INC.

BY: _____
Ryan Sorenson, Mayor

BY: _____

ATTEST: _____
Meredith DeBruin, City Clerk

ATTEST: _____

DATE: _____

DATE: _____

BID PROPOSAL FORM

**CITY OF SHEBOYGAN FIRE STATION #2
GENERATOR SYSTEM UPGRADE**

Bids Close: 1:00 p.m., Thursday, May 26, 2022

PROPOSAL

To: City of Sheboygan City Hall
Finance Department
Attn: Mr. Bernard Rammer
828 Center Avenue
Sheboygan, WI 53081

We K-W Electric, Inc. ☒ a corporation
(Company name) ☐ a partnership
☐ an individual

Of N5875 County Road M Plymouth, WI 53073 (920) 467-2000
Street City and State Zip Telephone No.

Hereby agree to execute contract and furnish satisfactory bond in the amount specified, and to furnish all labor and materials required to complete the project located in Sheboygan, Wisconsin, in strict accordance with the contract documents prepared by MSA Professional Services, Inc., and dated April 29, 2022.

BASE BID

We propose to furnish all permits, equipment, materials and labor, to include travel, lodging and other expenses to install a new generator system in accordance with the bid plans and specifications for a turn-key installation.

Total Lump-Sum Cost \$ 118,800.00

Addendum Receipt

We acknowledge receipt of the following Addenda:

Addendum No. 1 Date 5/13/22

Addendum No. _____ Date _____

Addendum No. _____ Date _____

CITY OF SHEBOYGAN FIRE STATION #2
GENERATOR SYSTEM UPGRADE

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The undersigned agrees, if awarded the contract, to commence the contract work upon written notice and to complete the contract work within the times stated in the contract documents.

K-W Electric, Inc.

John Unger

Firm Name



By

Attested (Corporate Secretary)

Title

Corporate Secretary

Dated

5/26

, 20 22

BID BOND

KNOW ALL MEN BY THESE PRESENTS, That K-W Electric, Inc. (a corporation) (individual) (partnership) of the State of Wisconsin (hereinafter referred to as the "Principal", and West Bend Mutual Insurance Company, (Name of Surety) a corporation of the State of Wisconsin, (hereinafter referred to as the "Surety"), are held and firmly bound unto City of Sheboygan (hereinafter referred to as the "Obligee"), in the penal sum of five percent (5%) of the amount of the total bid or bids of the Principal herein accepted by the Obligee, for the payment of which the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

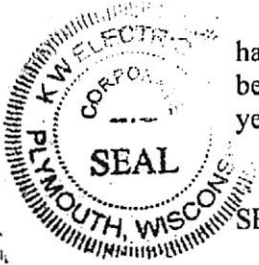
The conditions of this obligation are such that, whereas the Principal has submitted, or is about to submit, to City of Sheboygan (Owner) a certain bid, including the related alternate and combined bids attached hereto and hereby made a part hereof, to enter into a contract in writing for (Type of work) for the Sheboygan Fire Station #2 Generator System Upgrade (Project).

- (1) If said bid is rejected by the Obligee, then this obligation shall be void.
- (2) If said bid is accepted by the Obligee and the Principal shall execute and deliver a contract in the form specified by the Obligee (properly completed in accordance with said bid) and shall furnish a bond for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connections therewith, and shall in all other respects perform the agreement created by the acceptance of said bid, then this obligation shall be void.
- (3) If said bid is accepted by the Obligee and the Principal shall fail to execute and deliver the contract and the performance and payment bond noted in (2) above executed by this Surety, all within the time specified or any extension thereof, the Principal and Surety agree jointly and severally to forfeit to the Obligee the penal sum mentioned above, it being understood that the liability of the Surety for any and all claims hereunder shall in no event exceed the penal sum of this obligation as stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by an extension of the time within which the Obligee may accept such bid, and said Surety does hereby waive notice of any such extension.

CITY OF SHEBOYGAN FIRE STATION #2
GENERATOR SYSTEM UPGRADE

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IN WITNESS THEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed, and these presents to be signed by their proper offices, on the day and year set forth below:

SEAL:

(Principal)

05/25/2022

(Date)

BY:

May 12, 2022

(Name of Surety)

(Date)

West Bend Mutual Insurance Company
Kimberly Aschenbach, Attorney-in-Fact

NOTE TO SURETY AND PRINCIPAL:

The Bid submitted, which this Bond guarantees, may be rejected if the following instrument is not attached to this Bond: Power of Attorney showing that the agent of Surety is currently authorized to execute bonds in behalf of the Surety, and in the amounts referenced above.



THE SILVER LINING®

Bond No. 2519372

POWER OF ATTORNEY

Know all men by these Presents, That West Bend Mutual Insurance Company, a corporation having its principal office in the City of West Bend, Wisconsin does make, constitute and appoint:

Kimberly Aschenbach

lawful Attorney(s)-in-fact, to make, execute, seal and deliver for and on its behalf as surety and as its act and deed any and all bonds, undertakings and contracts of suretyship, provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of:

Ten Million Dollars (\$10,000,000)

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of West Bend Mutual Insurance Company at a meeting duly called and held on the 21st day of December, 1999.

Appointment of Attorney-In-Fact. The president or any vice president, or any other officer of West Bend Mutual Insurance Company may appoint by written certificate Attorneys-In-Fact to act on behalf of the company in the execution of and attesting of bonds and undertakings and other written obligatory instruments of like nature. The signature of any officer authorized hereby and the corporate seal may be affixed by facsimile to any such power of attorney or to any certificate relating therefore and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the company, and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the company in the future with respect to any bond or undertaking or other writing obligatory in nature to which it is attached. Any such appointment may be revoked, for cause, or without cause, by any said officer at any time.

In witness whereof, the West Bend Mutual Insurance Company has caused these presents to be signed by its president undersigned and its corporate seal to be hereto duly attested by its secretary this 17th day of August, 2021.

Attest Christopher C. Zwygart
Christopher C. Zwygart
Secretary



Kevin A. Steiner
Kevin A. Steiner
Chief Executive Officer/President

State of Wisconsin
County of Washington

On the 17th day of August, 2021, before me personally came Kevin A. Steiner, to me known being by duly sworn, did depose and say that he resides in the County of Washington, State of Wisconsin; that he is the President of West Bend Mutual Insurance Company, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that is was so affixed by order of the board of directors of said corporation and that he signed his name thereto by like order.



Matthew E. Carlton
Matthew E. Carlton
Senior Corporate Attorney
Notary Public, Washington Co., WI
My Commission is Permanent

The undersigned, duly elected to the office stated below, now the incumbent in West Bend Mutual Insurance Company, a Wisconsin corporation authorized to make this certificate, Do Hereby Certify that the foregoing attached Power of Attorney remains in full force effect and has not been revoked and that the Resolution of the Board of Directors, set forth in the Power of Attorney is now in force.

Signed and sealed at West Bend, Wisconsin this 26th day of May, 2022.



Heather Dunn
Heather Dunn
Vice President - Chief Financial Officer

Notice: Any questions concerning this Power of Attorney may be directed to the Bond Manager at West Bend Mutual Insurance Company.

ATTACHMENT 2 Non-Collusion Certification

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in case of a joint bidder, each party certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and behalf:

- 1) The prices in this bid have been 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) Unless otherwise required by law, the prices quoted in this bid have not been knowingly disclosed by the bidder, and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or competitor; and,
- 3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not submit a bid for the purpose of restricting competition.

Date: 5/4/22

Company Name K-W Electric, Inc.

Signature [Signature]

Title Corporate Secretary

ELECTRICAL ADDENDUM #1



Project: Sheboygan Fire Station #2 Generator Replacement Project
Project No.: MSA# 09511018
Date: May 13, 2022

Sign in Sheet:

1. See attachment for pre-bid walk through sign in sheet.

Pre-bid Notes:

1. See attachment for pre-bid walk through notes.

General:

1. Sheet E1.0:
 - A. REVISE north arrow direction as shown clouded.
 - B. REVISE: Site Plan – Electrical, relocate generator as shown clouded.
 - C. Add: Site Plan – Electrical, added location for exiting underground cable television/internet service.
2. Sheet E1.1:
 - A. REVISE: detail 10/E1.1 add bonding jumper for water meter as shown clouded.
 - B. REVISE: First Floor Plan – Electrical relocated generator as shown clouded.
 - C. ADD: First Floor Plan – Electrical added location for existing underground cable television/internet service.
 - D. ADD: Lower Level Plan – Electrical add generator feeder as shown clouded.
 - E. ADD: plan notes 7 through 10.
 - F. REMOVE: detail 9/E1.1.
3. Sheet E1.2:
 - A. REVISE: First Floor Plan – Gas Piping relocate generator as shown clouded.
4. Sheet E1.3:
 - A. ADD: junction box for generator wiring.
 - B. ADD: plan note 15.

Location: Sheboygan Fire Station #2

<u>NAME</u>	<u>REPRESENTING</u>	<u>PHONE</u>	<u>E-MAIL</u>
Present for meeting:			
Dave Schulze (EE)	MSA Professional Ser.	920-894-4710	dschulze@msa-ps.com
Bernie Rammer	Sheboygan County	920-459-3469	Bernard.Rammer@sheboyganwi.gov
Mike Williams	City of Sheboygan	920-459-3444	Michael.Willmas@sheboyganwi.gov
Tony Dohr	Pieper Electric	920-312-6156	Tony.dohr@pieperpower.com
Dave Altmeyer	Altmeyer Electric	920-458-3406	david@altmeyerelectric.net
Gerry Krebsbach	KW Electric	920-467-2000	estimating@kwelectricinc.com
Jason Konz	Konz Electric	920-627-2863	jasonk@konzelectric.com
Justin Miller	J. Miller Electric	262-305-3858	justin.jmillerelectric@gmail.com
Not present for Pre-bid:			
Cameron Sauve	MSA Professional Ser.	920-267-6043	csauve@msa-ps.com
Reggie Schwarzenbart	MSA Professional Ser.	920-243-4023	rschwarzenbart@msa-ps.com
Jamon Ingelse	Battalion Chief	920-451-2368	jamon.ingelse@sheboyganwi.gov

PRE-BID MEETING NOTES



Project: City of Fire Station #2 Generator Replacement Project

Project No.: MSA# R09511018

Walk Through Date: Thursday, May 12, 2022 at 8:00 am

Walk Through Location: Sheboygan Fire Station #2

Notes By: Dave Schulze, MSA Professional Services.

A. Overview

1. Everyone sign-in, check log in.
2. Contact person: Michael Willmas
3. Project Scope: This work is to include replacing the existing generator and transfer switch and gas meter.
4. Tax exempt with owner purchase. Bidders are to include materials without sales tax and applicable county taxes in their bid.
5. This is not a prevailing wage project.
6. **Submit bid with 5% Bid Bond. No permit fees will be waived.**
7. **Contractor that is awarded with the project shall submit a Performance and Payment Bond of 100% of the contract cost.**
8. **Each contractor shall make sure they up to date with the City's Bidder's Proof of Responsibility, see front end of specification for this form.**
9. One prime contractor (EC); gas piping contractor is a subcontractor of the EC.
10. Asbestos: may be some but should not cause work delays.
11. Provide Bidder's Proof of Responsibility.
12. Overview.
13. Questions.

B. Project Timetable

1. Addenda (if any) will be issued around Thursday, May 19, 2022.
2. Bids Due at 1:00 p.m. Thursday, May 26, 2022. Send Bids to: City of Sheboygan City Hall (Finance Department) Attn: Mr. Bernard Rammer 828 Center Avenue, Sheboygan, WI 53081
3. Bids will be reviewed May 26 – June 20, 2022.
4. Final approval by Common Council Monday. June 20, 2022.
5. Successful contractor notified and contract awarded June 21, 2022.
6. Pre-construction meeting tentatively week of June 27, 2022.
7. Contractors provide all submittals for review mid-July 2022.
8. Submittals returned to contractors with-in a few days.
9. Project completion "To be determined". This will depend on the lead time of the 77 kW natural gas generator.

C. Project Specifics

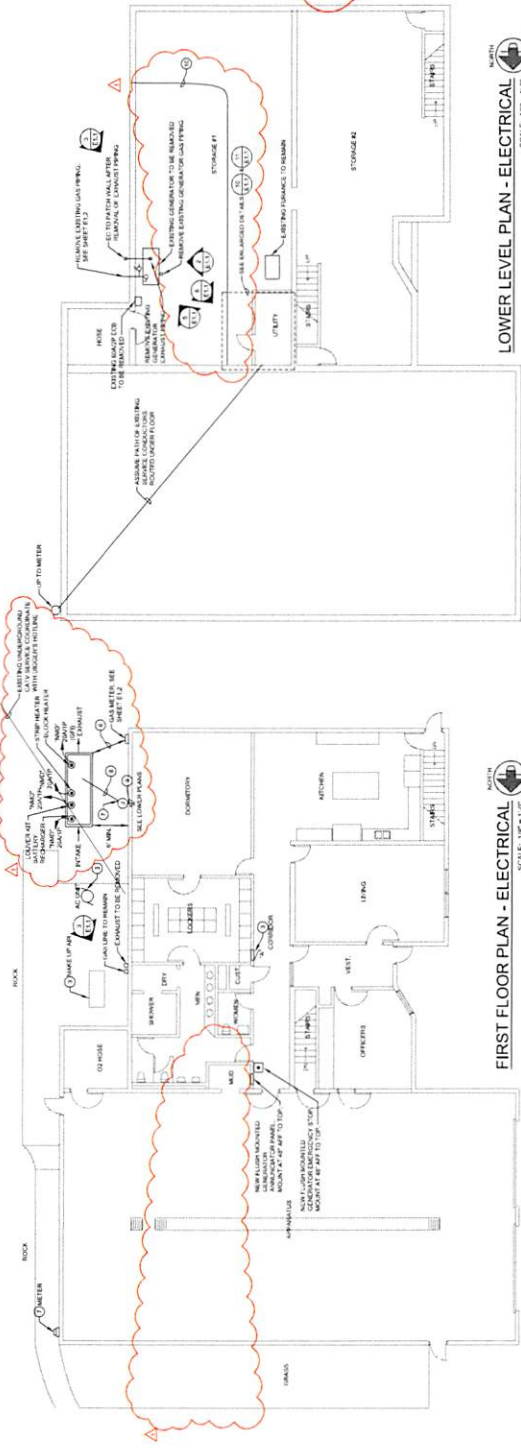
1. The owner will not leave the building. The EC shall minimize down time and coordinate ahead of time all down time.
2. Provide breaker ties for multi-wire circuits with common neutral.
3. Working hours: 6:30 am to 5:00 pm, Monday through Friday.
4. Dumpsters will be provided by the contractor.
5. Contractors shall be at the site to accept all deliveries of their equipment.
6. Existing generator and transfer switch to be removed by the electrical contractor.
7. Specification Section 26 05 01:
 - a. Ben Reisen at Alliant is stated as the contact person and the electric service should be turned off when changing the main service panel.
There is a \$500 allowance shall be included in the bid for Alliant's work.
8. Provide coordination study for the entire electrical system per 26 05 73.

GENERAL NOTES:

1. ALL ELECTRICAL WORK SHALL BE IN ACCORDANCE WITH THE 2017 NATIONAL ELECTRICAL CODE (NEC) AND THE 2017 NATIONAL FIRE ALARM CODE (NFAC).
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PLAN NOTES:

1. SEE TO BE REVISED AND RELOCATED.
2. SEE TO BE REVISED AND RELOCATED.
3. SEE TO BE REVISED AND RELOCATED.
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9. SEE TO BE REVISED AND RELOCATED.
10. SEE TO BE REVISED AND RELOCATED.



LOWER LEVEL PLAN - ELECTRICAL
SCALE: 1/8" = 1'-0"

EXISTING KOHLER GENERATOR EXHAUST
E1.1 NTS

EXISTING GENERATOR NAME TAG
E1.1 NTS

STORAGE #1 WALL
E1.1 NTS

EXISTING J-BOX
E1.1 NTS

EXISTING WALL UTILITY ROOM
E1.1 NTS

EXISTING MID GROUND WIRING
E1.1 NTS

ENLARGED UTILITY - ELECTRICAL - DEMO
E1.1 NTS

ENLARGED UTILITY - ELECTRICAL - NEW
E1.1 NTS

LOWER LEVEL PLAN - GAS PIPING
SCALE: 1/8" = 1'-0"

FIRST FLOOR PLAN - GAS PIPING
SCALE: 1/8" = 1'-0"



1 EXISTING GENERATOR GAS PIPING
E1.2 NTS



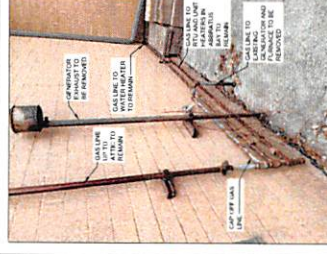
2 EXISTING GAS PIPING
E1.2 NTS

Sheboygan Fire Station #2 Natural Gas Loads
2413 S 18TH ST, Sheboygan, WI 53081
Existing Gas Meter #8806286
Existing Gas Meter Pressure 2 in.
Date: 4/17/2022

Item	Load	BTU/Hr	CFH
1 Stove		11,000	515.0
2 Appliance Heaters		450,000	460.0
3 (E) 150,000 BTU		250,000	250.0
4 MAKE UP AIR		350,000	350.0
5 Furnace		140,000	140.0
6 Water Heater		42,000	42.0
7 New Generator		1,302,000	1,292.5
8 Total		2,135,000	2,136.5

Note: BTU/100,000 - CFH

3 EXISTING GAS LOADS
E1.2 NTS



4 EXISTING EXTERIOR GAS PIPING
E1.2 NTS



5 EXISTING GAS METER
E1.2 NTS



6 EXISTING ELECTRIC METER
E1.2 NTS

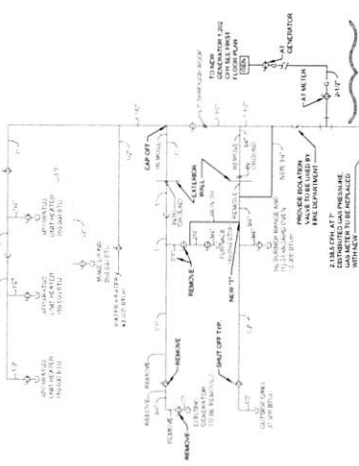


7 EXISTING GENERATOR GAS LINES
E1.1 NTS



8 EXISTING GRAVEL PITCH
E1.1 NTS

GENERAL NOTES:
1. ALL GAS PIPING SHALL BE INSTALLED IN ACCORDANCE WITH THE CITY OF SHEBOYGAN GAS PIPING ORDINANCE.
2. ALL GAS PIPING SHALL BE INSTALLED IN ACCORDANCE WITH THE CITY OF SHEBOYGAN GAS PIPING ORDINANCE.
3. ALL GAS PIPING SHALL BE INSTALLED IN ACCORDANCE WITH THE CITY OF SHEBOYGAN GAS PIPING ORDINANCE.



NATURAL GAS PIPING SCHEMATIC
E1.2

