

CITY OF MUSKEGON

CITY COMMISSION MEETING

September 9, 2024 @ 5:30 PM

**MUSKEGON CITY COMMISSION CHAMBERS
933 TERRACE STREET, MUSKEGON, MI 49440**

AGENDA

- ☐ **CALL TO ORDER:**
- ☐ **PRAYER:**
- ☐ **PLEDGE OF ALLEGIANCE:**
- ☐ **ROLL CALL:**
- ☐ **HONORS, AWARDS, AND PRESENTATIONS:**
 - A. Recognize Joshua Fors - Michigan Sexton of the Year Manager's Office
 - B. Regional Transit Authority Articles of Incorporation Manager's Office
 - C. Port Development Conversation Manager's Office
 - D. Nelson House Purchase and Development Agreement Planning
 - E. Short-Term Rental - Final Ordinance Presentation Manager's Office
- ☐ **PUBLIC COMMENT ON AGENDA ITEMS:**
- ☐ **CONSENT AGENDA:**
 - A. Approval of Minutes City Clerk
 - B. Nims Water Tower Cellular Antenna Lease Renewal Public Works
 - C. Marshall Water Tower Cellular Antenna Lease Renewal Public Works
 - D. Contract Award - 2024 Mill and Resurfacing Project Public Works
 - E. Amendment for Engineering Services - Olthoff Drive Extension Project
Public Works
 - F. Washwater Pump Replacement Valves DPW- Water Filtration Plan
 - G. Request to amend the planned unit development (PUD) at 3400, 3460,

3474 Wilcox Avenue, 1875 Waterworks Road, and 1490 Edgewater Street (the Docks). SECOND READING Planning

H. Rezoning of 349 W Webster Ave from Form Based Code, Urban Residential (FBC, UR) to Form Based Code, Neighborhood Core (FBC, NC). SECOND READING Planning

I. Rezoning of 1700 Oak Ave from Medical Care (MC) to Low-Density Multiple Family Residential (RM-1). SECOND READING Planning

☐ **PUBLIC HEARINGS:**

☐ **UNFINISHED BUSINESS:**

☐ **NEW BUSINESS:**

☐ **ANY OTHER BUSINESS:**

☐ **PUBLIC COMMENT ON NON-AGENDA ITEMS:**

- ▶ **Reminder: Individuals who would like to address the City Commission shall do the following:**
- ▶ Fill out a request to speak form attached to the agenda or located in the back of the room.
- ▶ Submit the form to the City Clerk.
- ▶ Be recognized by the Chair.
- ▶ Step forward to the microphone.
- ▶ State name and address.
- ▶ Limit of 3 minutes to address the Commission.

☐ **CLOSED SESSION:**

☐ **ADJOURNMENT:**

AMERICAN DISABILITY ACT POLICY FOR ACCESS TO OPEN MEETINGS OF THE CITY OF MUSKEGON AND ANY OF ITS COMMITTEES OR SUBCOMMITTEES

To give comment on a live-streamed meeting the city will provide a call-in telephone number to the public to be able to call and give comment. For a public meeting that is not live-streamed, and which a citizen would like to watch and give comment, they must contact the City Clerk's Office with at least a two-business day notice. The participant will then receive a zoom link which will allow them to watch live and give comment. Contact information is below. For more details, please visit:

www.shorelinecity.com

The City of Muskegon will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting, to individuals with disabilities who want to attend the meeting with twenty-four (24) hours' notice to the City of Muskegon. Individuals with disabilities requiring auxiliary aids or services should contact the City of Muskegon by writing or by calling the following:

Ann Marie Meisch, MMC. City Clerk. 933 Terrace St. Muskegon, MI 49440. (231)724-6705.
clerk@shorelinecity.com

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 9, 2024	Title: Regional Transit Authority Articles of Incorporation												
Submitted by: LeighAnn Mikesell, Deputy City Manager	Department: Manager's Office												
Brief Summary: Staff and a guest from the Muskegon Area Transit System will be presenting the proposed Articles of Incorporation for the new regional transit authority.													
Detailed Summary & Background: In November 2023, the City Commission approved a resolution of intent to join other municipalities in forming a regional transit authority. The first formal step for the group is to establish Articles of Incorporation. The legislative body of each member agency will need to approve the articles for the authority to proceed forward with developing bylaws and seeking funding.													
Goal/Focus Area/Action Item Addressed: Key Focus Areas: Goal/Action Item: 2027 GOAL 4: FINANCIAL INFRASTRUCTURE - Maximized efficient use of existing infrastructure													
Amount Requested: N/A	Budgeted Item: <table border="1"> <tr> <td>Yes</td> <td></td> <td>No</td> <td></td> <td>N/A</td> <td>X</td> <td></td> </tr> </table>	Yes		No		N/A	X						
Yes		No		N/A	X								
Fund(s) or Account(s): N/A	Budget Amendment Needed: <table border="1"> <tr> <td>Yes</td> <td></td> <td>No</td> <td></td> <td>N/A</td> <td>X</td> <td></td> </tr> </table>	Yes		No		N/A	X						
Yes		No		N/A	X								
Recommended Motion: Presentation only													
Approvals: <table border="1"> <tr> <td>Immediate Division Head</td> <td></td> <td></td> </tr> <tr> <td>Information Technology</td> <td></td> <td></td> </tr> <tr> <td>Other Division Heads</td> <td></td> <td></td> </tr> <tr> <td>Communication</td> <td></td> <td></td> </tr> </table>	Immediate Division Head			Information Technology			Other Division Heads			Communication			Guest(s) Invited / Presenting: Yes
Immediate Division Head													
Information Technology													
Other Division Heads													
Communication													

Legal Review			
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August 12, 2024

**Board of
Commissioners**

Charles Nash
Chair, District 5

Jessica Cook
Vice Chair, District 6

Kim Cyr
District 1

Zach Lahring
District 2

Michelle Hazekamp
District 3

Marcia Hovey-Wright
District 4

Darrell L. Paige
District 7

Ms. LeighAnn Mikesell, Deputy City Manager
City of Muskegon
933 Terrace Street
Muskegon, MI 49440

RE: Public Transit Authority Articles of Incorporation

Dear Ms. Mikesell:

Thank you for your assistance in the effort to create a public transit authority in our community, to be incorporated under Michigan Public Act 196 of 1986.

Attached is a copy of the Articles of Incorporation document that was developed with your assistance over the past months of work. Your further assistance in presenting these Articles of Incorporation for formal consideration and approval of your City Commission is greatly appreciated by all involved in this effort. Once all partner communities have approved these Articles of Incorporation, they will be published and filed as required, and the new entity will begin its work to identify and deliver improved public transportation in the community.

You may also find it expeditious at this time to obtain your Commission's formal appointment of a representative to serve as Director on the Authority board (and an Alternate Director, if desired). Appointing this individual(s) now will allow the Authority to conduct necessary business immediately upon incorporation. Please ensure that the appointed individual(s) meet the qualifications set out in the Articles.

Thank you again for your work on this matter. Please reach out with any questions or updates. If you wish for a representative of the County to attend your meeting, please advise.

Sincerely,

Mark Eisenbarth
County Administrator

James A. Koens
Transit Systems Manager

enclosure



**ARTICLES OF INCORPORATION
OF THE
MUSKEGON AREA TRANSIT SYSTEM (MATS)**

**Article I
Formation**

These Articles of Incorporation are executed and adopted by the Incorporating Political Subdivisions listed below to incorporate a public authority under the Public Transportation Authority Act of the State of Michigan, P.A. 196 of 1986, as amended (“Act 196”). The Incorporating Political Subdivisions anticipate that the Authority will enter into agreements with the County of Muskegon, the State of Michigan, and the Federal Transit Administration as may be necessary for the authority to acquire all of the County of Muskegon’s public transportation assets and assume all public transportation liabilities to the extent permitted under Act 196.

**Article II
Name, Incorporating Political Subdivisions, and Authority District**

Section 1. Name. The name of the Authority is the Muskegon Area Transit System.

Section 2. Incorporating Political Subdivisions. The following political subdivisions located within Muskegon County, Michigan, are the Incorporating Political Subdivisions and initial Members of the Authority:

- City of Muskegon
- City of Muskegon Heights
- City of Norton Shores
- City of Roosevelt Park

Additional political subdivision(s) may become Members or additional portions of a Member political subdivision may be added to the Authority District after the formation of the Authority upon resolution adopted by a majority vote of the members elected to, and serving on, the legislative body of the political subdivision requesting such membership or addition and upon approval by a two-thirds vote of the Authority Board of Directors, and upon proper adoption of an Amendment to these Articles as outlined herein.

Section 3. Authority District. For purposes of property tax levies as permitted by Act 196, the Authority shall have an “Authority District” with a geographic boundary that includes all of the voting precincts that have been authorized for inclusion by the Members in these Articles of Incorporation, as may be amended. The initial Authority District shall include:

- City of Muskegon – All Precincts
- City of Muskegon Heights – All Precincts
- City of Norton Shores – All Precincts
- City of Roosevelt Park – All Precincts

The Muskegon Area Transit System may provide its services both within the boundaries of its Authority District and outside of its Authority District in accordance with Act 196.

Article III

Purposes and Powers of the Authority

Section 1. Purposes. The purposes for which the Authority is created are:

- a. To provide public transportation services to the extent authorized by Act 196, including to plan, promote, finance, acquire, improve, enlarge, extend, own, construct, operate, maintain, replace, and contract for public transportation services and facilities within the Authority District.
- b. To provide ancillary services incidental, necessary, or convenient in support of the provision of public transportation services, including the facilitation of multi-modal access and connections for personal mobility devices, bicycles, pedestrians, inter-city buses, passenger rail, ports, airports, and other transportation means.
- c. To provide public transportation services within or outside the Authority District under contract or as determined beneficial by the Authority.
- d. To succeed to all rights, duties, and obligations of the County of Muskegon regarding public transportation services to the extent permitted under Act 196.
- e. To do all things necessary, suitable, or proper for the accomplishment of the above purposes.

Section 2. General Powers. The Authority has the power to do anything authorized or permitted by Act 196, and to do any other lawful act reasonably necessary, proper, suitable, or convenient for the achievement or furtherance of the purposes above stated.

Article IV

Board of Directors – Governance of the Authority

Section 1. The Board. The Authority shall be governed by a Board of Directors (the “Board” and/or “Directors”).

Section 2. Composition. The Board shall consist of four (4) voting Directors. The legislative body of each Member shall appoint one (1) Director, that being the chief executive, or another upper level administrative official of the Member. The legislative body of each Member may also appoint one (1) alternate Director, who shall also be an administrative official, who may attend meetings and otherwise act on behalf of the Director appointed by that Member.

Section 3. Terms. Each manager, supervisor, or administrative official appointed as Director or alternate Director shall serve for a term that runs concurrent with the time period for which they hold their office with the Member that appointed them.

Section 4. Removal / Resignation. Directors and alternate Directors, once appointed, shall continue to serve until they are reappointed, replaced by an appropriately appointed replacement, removed, or they resign. Directors and alternate Directors shall serve at the pleasure of the legislative body that appointed them and may be removed for any reason in the same manner by which they were appointed. A Director desiring to resign shall submit such resignation in writing to the Chairperson of the Authority Board of Directors and to the Member that appointed them. Such resignation shall take effect upon receipt of the resignation by the Chairperson of the Board of Directors. The legislative body that made the appointment of the removed or resigning Director shall make a replacement appointment within sixty (60) days of the removal action or accepted resignation. Professionalism and attendance at Board meetings is imperative and the Board may, by a two-thirds vote of the Authority Board of Directors, formally request that a

legislative body appoint a replacement Director for a pattern or practice of unexcused absence or for conduct unbecoming.

Section 5. Board Meetings. – The Board shall hold an initial meeting at a time and place selected and agreed to by the Board members for the purpose of appointing officers, adopting bylaws, and taking any other action the Board deems necessary. Thereafter, the Board shall hold at least an annual meeting at such place and time as shall be fixed by the Board. The Board shall transact other business as may be necessary at its annual meeting and shall hold regular meetings on a schedule to be determined by the Board.

Section 6. Voting and Decisions. Each Director shall have one (1) vote. Decisions of the Board shall require a majority vote of the total number of Directors present at any meeting of the Board in which a quorum is present.

Section 7. Quorum. A majority of the total number of Directors then in office who are present at a duly held meeting shall constitute a quorum for conducting business at any meeting of the Board. Attendance by electronic means shall be allowed only as permitted by applicable law.

Section 8. Compensation of Directors. Directors shall not be compensated by the Authority for attendance at meetings of the Board. Directors shall be entitled to reimbursement by the Authority for actual expenses incurred in the discharge of their official duties as determined by the Authority.

Section 9. Indemnification of Directors. The Board shall indemnify Directors of the Authority to the fullest extent permitted by applicable law. The Board may indemnify employees and other agents of the Authority as permitted by applicable law.

Section 10. Bylaws, Rules and Regulations. The Board shall adopt and establish its own bylaws, rules and regulations, policies and procedures regarding the operation, maintenance and management of the public transportation system.

Section 11. Open Meetings Act. The Board is a public body subject to the Open Meetings Act, PA 267 of 1976, as amended, and all meetings of the Board shall be open to the public.

Article V

Financial Matters

Section 1. Financial Records. The Authority shall maintain adequate financial records in accordance with law and generally accepted accounting principles.

Section 2. Annual Report. The Authority shall prepare an annual report on the Authority's operation and financial condition, which shall be made available to the public and transmitted to the Members of the Authority.

Section 3. Audits, Budgets, and Appropriations. The Authority shall provide for audits, budgets, and appropriations as required by Act 196.

Section 4. Fiscal Year. The Authority shall operate on a Fiscal Year beginning October 1 annually.

Article VI

Local Funding for Public Transportation Purposes

Section 1. Property Tax Levy. The Authority may levy property taxes on all of the taxable property within the limits of the Authority District for public transportation purposes as permitted by Act 196 and these Articles. Taxes shall not be levied except upon the approval by a majority of votes cast by registered and qualified electors residing in the Authority District and voting on the proposal(s) as authorized by Act 196. Any election on a transit revenue proposal initiated by the Authority shall be conducted and certified in accordance with Act 196.

Section 2. Collection of a Tax Levy. Any tax levy approved by the electorate shall be collected and transmitted to the Authority in accordance with the requirements of Act 196.

Section 3. Local Share Contribution Funding from Incorporating Political Subdivisions. Upon formation of the Authority, the Incorporating Political Subdivisions shall begin contributing quarterly to the Authority an amount equal to the funding levels paid by each Incorporating Political Subdivision for County-governed public transportation services in 2024. This level of quarterly contribution shall end after four years, or earlier at such time as a tax levy has been successfully collected by the Authority or an alternative local funding formula has been agreed by contract. No further Local Share Contribution under this Section shall be required of the Incorporating Political Subdivisions for the general purpose of forming the Authority. Local funding may be required as outlined elsewhere.

Section 4. Should a levy contemplated by this Article fail within four years of Authority formation, a Member may, by adoption of a resolution by a majority of the members elected to and serving on the legislative body of the Member, present to the Authority a request to be released from membership in the Authority. The Authority will not unduly decline the request and will act affirmatively as outlined in Article IX, Section 1(b), below.

Section 5. Local Jurisdiction and Contract Funding. The Authority shall have the ability to contract to provide services as it deems appropriate consistent with these Articles and Act 196. Contracts may include those entered with local municipalities, including Members, that provide for the purchase of service types or service levels not otherwise available or not offered in like manner across the entire Authority District.

Section 6. Funding equal to Tax Levy for New Subdivisions. In the event that a new Member (or additional voting precincts of an existing Member) is added to the Authority District after its formation, the Member requesting such addition shall be required to provide quarterly funding at an amount agreed with the Authority (if no tax levy has yet been passed). If a tax levy has been approved for collection, the new (or expanded) Member shall provide annual funding equal to the value of the tax levy that would have been assessed to the Member had it been included in the most recent tax levy. Such payment shall continue annually until the new Member's voting precincts can be included in a subsequent tax levy.

Article VII

Filing and Publication

Section 1. Filing and Publication. Within thirty (30) days after the signing of these Articles of Incorporation by all Incorporating Political Subdivisions, the Muskegon County Administrator, or his/her designee, shall:

- (a) Publish a copy of these articles at least once in a newspaper circulated within the area proposed to be served by the Authority, and

- (b) File a copy of these Articles with the Secretary of State, the Muskegon County Clerk, and the Director of the Michigan Department of Transportation

Section 2. Effective Date. These articles shall become effective immediately upon filing and publication as described above.

Section 3. Subsequent Filings. Publication and filing of Amendments to these Articles shall be consistent with Section 1 and Section 2, but shall be performed by the Chairperson of the Authority Board of Directors or his/her designee as the responsible official instead of the County Administrator.

Article VIII Amendment

Section 1. These Articles may be amended upon a resolution adopted by two-thirds of the legislative bodies that are, at the time of the proposed amendments, participating as Members of the Authority. No amendment shall be effective until the amendment is filed and published in the same manner as required for adoption of these Articles.

Article IX Release or Withdrawal from Authority

Section 1. An Incorporating Political subdivision may be released from membership in the Authority if all the following conditions are met:

- (a) Adoption of a resolution by a majority of the members serving on the governing or legislative body of the Incorporating Political Subdivision requesting release from membership.
- (b) Acceptance of the request by a 2/3 vote of the members serving on the board of the Authority, excluding the members representing the political subdivision requesting release.
- (c) Payment or the provision for payment is made regarding all obligations of the Incorporating Political Subdivision to the public authority or its creditors.

Section 2. Notwithstanding the provisions of Section 1, an Incorporating Political Subdivision may also be released from membership in the authority if all the following conditions are met:

- (a) A petition subject to section 5488 of the Michigan election law, 1945 PA 116, MCL 168.488, that bears the signatures of registered electors of the Incorporating Political Subdivision equal to at least 20% of the number of votes cast in the Incorporating Political Subdivision for all candidates for governor in the last general election in which a governor was elected and that requires the governing body of the Incorporating Political Subdivision entity by resolution to submit the question to its electors at the next general or special election is filed not less than 60 days before the election with the clerk of the entity presenting the question.
- (b) The Incorporating Political Subdivision desiring to withdraw from the authority has approved the question by a majority of the qualified and registered electors voting at a general or special election held in November before the expiration of a tax authorized to be levied under this act.
- (c) The vote upon the question approving the resolution is by ballot and is in substantially the following form: "Shall _____ (the Incorporating Political Subdivision) as provided by 1986 PA 196 withdraw from the authority as a member? Yes ____ No ____".
- (d) All ballots are cast, canvassed, and the results of the election certified in the same manner as ballots on any other question submitted to the electors of the entity seeking withdrawal pursuant to the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

- (e) Payment or the provision for payment is made regarding all obligations of the political subdivision to the public authority or its creditors. If withdrawal is approved by a majority of the electors voting on the question, the decision will take effect at the expiration date of the tax and neither the Authority nor officials of the other political subdivision(s) may appeal or amend this decision.

Section 3. Notwithstanding Section 1 and 2 above, an Incorporating Political Subdivision that is part of the Authority may withdraw from the Authority in any year in which a tax authorized to be levied under Act 196 of 1986 expires, without meeting the conditions listed in Section 1 or 2, if the Incorporating Political Subdivision makes the determination to withdraw by a vote of its legislative body held in January of that year.

Article X

Savings Clause

Section 1. Savings Clause. The invalidity or unenforceability of any term in these Articles shall not affect the validity or enforceability of any remaining term in these Articles.

Endorsements

The foregoing articles of incorporation were adopted by an affirmative vote of a majority of the members serving on the governing or legislative body of _____, _____ at a meeting duly held on the ____ day of _____, A.D., 20__.

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The foregoing articles of incorporation were adopted by an affirmative vote of a majority of the members serving on the governing or legislative body of _____, _____ at a meeting duly held on the ____ day of _____, A.D., 20__.

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 9, 2024	Title: Port Development Conversation
Submitted by: Jonathan Seyferth, City Manager	Department: Manager's Office
Brief Summary: Representatives from Mart Dock will present outlines of a proposal for port development in Muskegon, which includes increased public access along the eastern edge of Muskegon Lake and downtown.	
Detailed Summary & Background: Several years ago, the City of Muskegon and Mart Dock began discussions on the possibility of a "land swap" between the two entities, which would include the property at Fisherman's Landing (city property) and what's referred to as the Third Street Pier (Mart Dock property). For various reasons, those conversations did not result in a deal. Recently, city staff and the Mart Dock have again started these conversations, but with a broader focus that looks at opening additional Muskegon Lake access on the east side of the lake (a concept of areas that could be used for east-side public access is attached - no details have been finalized and this is for conversation example only) and a complete picture of what downtown access could look like from Terrace Point west to GVSU's AWRI facility (Mart Dock will present on this concept Monday). This conversation relates to the more extensive waterfront development conversations that started following the city's completion of its master planning process last year. Multiple parties are involved in these conversations, including Muskegon County, WMSRDC, Parkland Properties, and the Muskegon Lakeshore Chamber of Commerce. A key part of this conversation is relocating the current Mart Dock port operations to the Fisherman's Landing site and completely redeveloping the Mark Dock into mixed uses with extensive public access. Mark Dock envisions containerized operations on the Fisherman's Landing site. A factor that has changed since the city's initial conversation with the Mart Dock is the possibility of acquiring the Verplank Property to the east of Fisherman's Landing and greatly expanding public access along the south branch of the Muskegon River and out onto Muskegon Lake (this is often referred to as an expansion of Richards Park because of its proximity to and likely connection to Richard Park if the development were to occur). Although many broad strokes are noted here and have been discussed, we're closer to the beginning of this conversation rather than the end. There will be a plan and opportunity for public feedback, especially as it relates to new access along the east end of Muskegon Lake. If the City Commission is comfortable with what is discussed at this meeting, city staff will begin drafting a formal agreement with Mark Dock that will formalize the logistics of the process to possibly set up a land transfer between the two parties and key milestones that will be inflection points. The	

objective is to produce an agreement establishing a road map for how public access would be maintained and increased and outline the city's commitment to actively partner with Mark Dock in applying for Federal Port Development Grants. These grants would be critical in financing any redevelopment of Muskegon's port.

Mart Dock will attend the meeting on Monday to present some of their ideas and make some commitments about how they are willing to move the project forward.

Key Topics for Discussion on Monday:

- Mart Dock's vision for its property in the future
- City staff discussing how public access on the east side of the lake could be expanded to the public as a result of this development
- Mart Dock's ideas related to a port collaborative on Muskegon Lake and how that could positively impact the community (and who, potentially, would be included in that collaborative)
- Guarantees of additional public access at Third Street even if federal grants are not successfully obtained

Goal/Focus Area/Action Item Addressed:

Key Focus Areas:

Improved access to the waterfront

Goal/Action Item:

2027 Goal 1: Destination Community & Quality of Life - Improved access to waterways

Amount Requested:

n/a

Budgeted Item:

Yes		No		N/A	X	
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Fund(s) or Account(s):

n/a

Budget Amendment Needed:

Yes		No		N/A	X	
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Recommended Motion:

Discussion only

Approvals:

Immediate Division Head	X	
Information Technology		
Other Division Heads		
Communication		
Legal Review		

Guest(s) Invited / Presenting:

Yes

CITY FEEDBACK

VERPLANK DOCK – OPTION 1

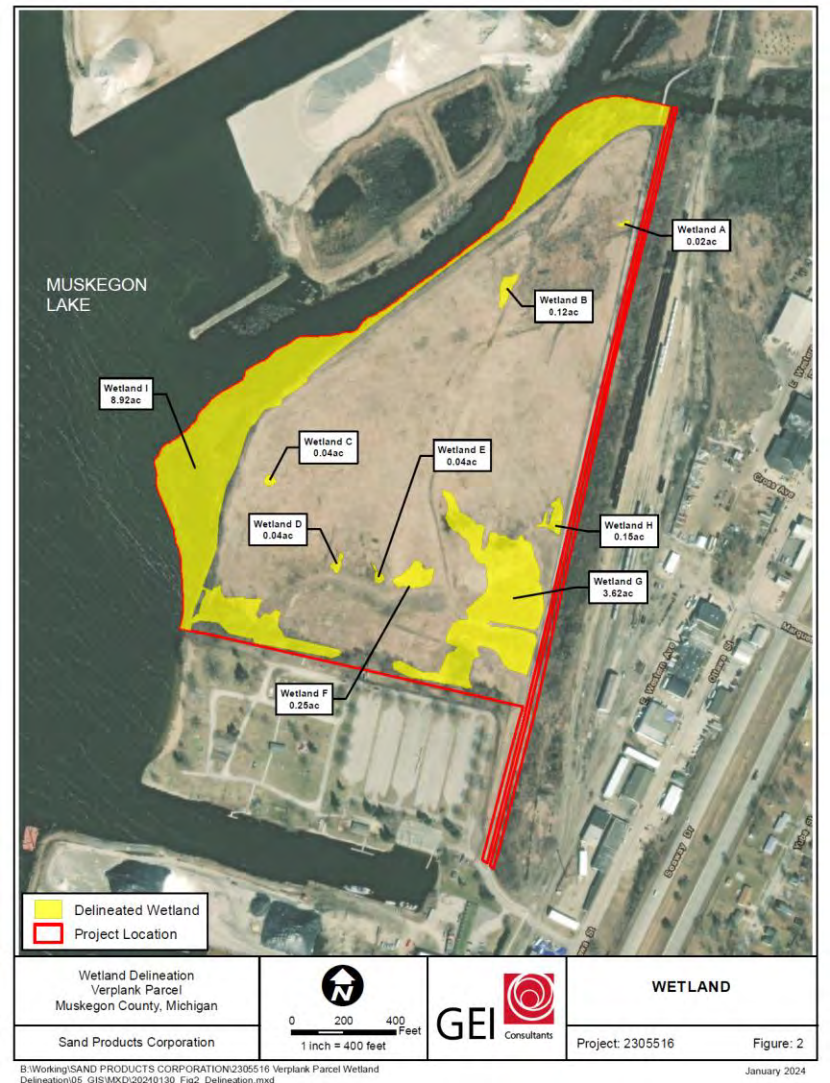
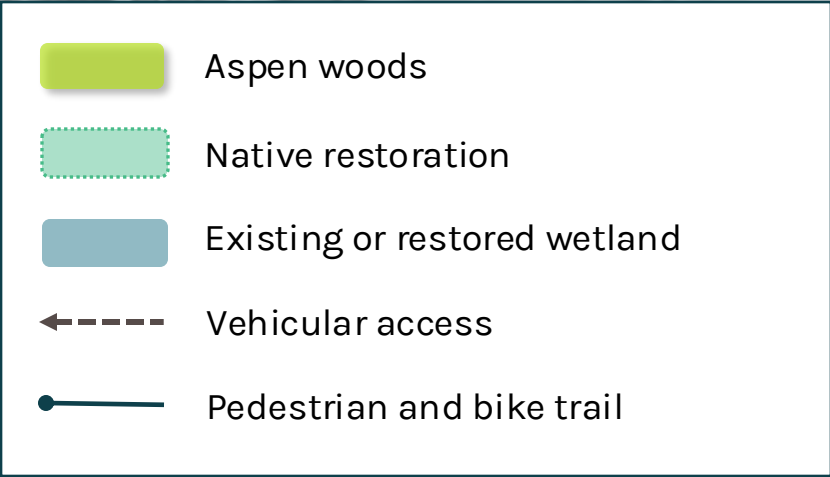
Park Expansion

Port Use – 25 acres

Port Use - Flex

Port Use

Boat Launch Area



WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 9, 2024	Title: Nelson House Purchase and Development Agreement															
Submitted by: Jamie Pesch, Planner	Department: Planning															
Brief Summary: Discussion on the Nelson House purchase and development agreement.																
Detailed Summary & Background:																
Goal/Focus Area/Action Item Addressed:																
<u>Key Focus Areas:</u>																
<u>Goal/Action Item:</u>																
Amount Requested:	Budgeted Item: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td></td><td></td></tr></table>	Yes		No		N/A										
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Legal Review																

CITY OF MUSKEGON REQUEST FOR BID

Nelson House Purchase and Redevelopment Request for Bids

Introduction:

The City of Muskegon is seeking bids from qualified buyers for the purchase and remodeling of the structure located at 382 West Muskegon Avenue., Muskegon, MI 49440, commonly known as the Nelson House. This project involves acquisition and complete renovation of the structure for the purpose of utilization as an owner-occupied, single family home. The goal of this project is to preserve the historically significant structure, enhance the area's aesthetic appeal, and to increase owner-occupied housing stock in the community.

Project Description:

The City of Muskegon Development Services Division will contract with a qualified buyer that can demonstrate financial capability to complete the remodeling and occupancy of the Subject Property. This Division is responsible for managing the city's Community Neighborhood Services, Planning Department, and Economic Development initiatives. These departments oversee zoning, site plans, and business development services, ensuring compliance with city regulations and fostering community growth.

Buyer Requirements:

1. Proof of Financing and Purchase Price Offer:

- Bid materials shall include the price offered for the Subject Property, method of payment (cash/loan) and proof of financing or capability to achieve financing. Accepted

2. Exterior Targeted Demolition and Renovation Plan:

- The City has not completed a formal inspection of the subject property's exterior. Stabilization of the exterior to prevent further deterioration should be a priority in any bid.
- Buyer shall be responsible for any necessary removals (siding, existing roofing material, window casings, etc)
- Specific timeline for commencement for exterior renovations will be dictated in a purchase and development agreement approved by the City Commission, but shall commence no later than 90 days after closing.

3. Interior Renovation Plan:

- Bidders shall submit a proposed timeline and detailed scope of renovation from a licensed contractor with their bid.
- Specific timeline for commencement of interior renovations will be dictated in a purchase and development agreement approved by the City Commission, but shall commence no later than 150 days after closing.

Property Information

382 W. Muskegon Avenue Muskegon, MI

General Information:

The Subject Property is a historic single family home that has been recently relocated to the parcel at 282 W. Muskegon Avenue in Downtown Muskegon, Michigan. The home sits in a registered Historic District, and all exterior renovations of the Subject Property, fencing, additions, or accessory structures will be required to receive approval from the Historic District Commission. The City of Muskegon and Muskegon Public Schools have completed asbestos abatement and removal within the structure, a report of which is available to Bidders or their representatives for review at City Hall.

Owner	City of Muskegon
Owner Address	933 Terrace St. Muskegon, MI 49440
Property Address	382 W. Muskegon Avenue, Muskegon, MI 49440
Property Number	61-24-205-336-0008-00
Year Built	1890 approx.
Occupancy	Not occupied

Existing Condition Exterior Photos



Proposal Submission Requirements:

Proposals must clearly state the name, address, phone number, and email address of the Bidder. By submitting a sealed bid, Bidders acknowledge that any agreement for sale of the Subject Property shall require:

- **Commitment to Owner-Occupy:** The City Commission and the community at large have prioritized increasing the number of owner-occupiers in the City of Muskegon. The successful Bidder will commit in their sealed bid and in the Purchase and Development Agreement to establish the Subject Property as their primary residence upon project completion. The City intends to file a deed restriction requiring owner-occupancy at the Subject Property in perpetuity to the extent permissible by law.
- **Work Timeline:** Successful Bidders will accept and comply with the development milestone requirements as reflected in the Purchase and Development Agreement. Namely, exterior stabilization to be commenced within 90 days of closing and interior renovations commenced within 150 days of closing. Project completion and occupancy should not exceed a total project timeline of 12 months.
- **Reverter Clause:** Successful Bidders will accept and acknowledge that the City of Muskegon will include a “reverter clause” in the Purchase and Development Agreement which will allow for “claw back” of the Subject Property in the event Bidder is not making adequate progress or is otherwise in breach of the Agreement.
- **Project Budget:** Bidders will provide a total cost estimate for all anticipated renovations along with evidence of financial capability to perform said improvements.
- **Contractor Information:** Bidders will provide license information, at least one sample project, and references for the general contractor that will complete the project on Bidder’s behalf.
- **Compliance with City Goals:** Attention is called to the fact that the City requires that the Contractor employ local trades and laborers insofar as possible; the goals established are 14% minority and 7% female participation in each trade. The Contractor must ensure employees and applicants for employment are not discriminated against based on race, creed, color, religion, sex, national origin, handicapped condition, or veteran status, and that all pertinent regulations are complied with. The City of Muskegon reserves the right to reject any or all bids or to waive any informalities or irregularities in the bidding.

Proposal Deadline:

Proposals are due by 2:00 p.m. local time on Thursday, November 21st, 2024. They must be sealed and delivered to: Muskegon City Hall, City Clerk’s Office, 933 Terrace Street, P.O. Box 536, Muskegon, MI 49440. Proposal envelopes should be marked “Nelson House Purchase Sealed BID”. Staff anticipates presenting a recommendation to the City Commission at their December 10, 2024 meeting.

Pre-Proposal Questions:

Please direct all questions to:

- **Jamie Pesch, Planner** Jamie.Pesch@shorelinecity.com 231-724-4405

Important Considerations:

- **Site Visit:** Prospective Bidders and their contractor are **REQUIRED** to visit the site before submitting their proposals to fully understand the scope of the project. Bidders must contact Jamie Pesch in the City of Muskegon Planning Department to coordinate site access. There is no limit to the number of visits but there will be no exploratory demolition permitted.
- **Permits and Licenses:** The selected Bidder will be responsible for obtaining all necessary permits and licenses to complete the renovations.
- **Safety and Environmental Compliance:** Bidders must adhere to all safety and environmental regulations throughout any site visits.

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 9, 2024	Title: Short-Term Rental - Final Ordinance Presentation							
Submitted by: Jonathan Seyferth, City Manager	Department: Manager's Office							
Brief Summary: Following feedback from the City Commission and the public the staff has updated the proposed STR Ordinance.								
Detailed Summary & Background: In August, the staff presented a proposed ordinance change focused on short-term rentals (STRs) in the City of Muskegon. The proposed ordinance has been updated following feedback from the City Commission and the public. The staff still proposes separating the city into zones based on Federal Census Tracts and capping STRs within each zone to 4% of the total housing stock. Staff also recommends that the DDA and Lakeside BID districts be pulled out of these tracts to encourage short-term rentals in these zones. This will adjust the Lakeside and North Nelson/Jackson Hill tract caps. Updated caps for each zone/tract are on the following page. I should note that by removing the Lakeside BID from the cap, the Lakeside Tract went from having more STRs than the cap would allow to fewer and opening up seven (7) additional licenses within that census tract. Taking into consideration additional feedback, the staff is also recommending that current properties with active STR licenses be able to be sold and have their STR licenses transferred to the new owner - if the new owner can meet STR application requirements. Additionally, the new owner must apply for their STR license within 60 days of the purchase of their property, or they forfeit their right to an STR license. The staff plans to hold a special Planning Commission meeting the week of September 16 to hold a public hearing on the STR ordinance and then bring the ordinance to the City Commission for final consideration on October 8, 2024.								
Goal/Focus Area/Action Item Addressed: <u>Key Focus Areas:</u> <u>Goal/Action Item:</u> 2027 Goal 1: Destination Community & Quality of Life								
Amount Requested: N/A	Budgeted Item: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>X</td><td></td></tr></table>	Yes		No		N/A	X	
Yes		No		N/A	X			
Fund(s) or Account(s):	Budget Amendment Needed:							

N/A			<table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>X</td><td></td></tr></table>						Yes		No		N/A	X	
Yes		No		N/A	X										
Recommended Motion: Discussion Only															
Approvals:			Guest(s) Invited / Presenting:												
Immediate Division Head	X		No												
Information Technology															
Other Division Heads	X														
Communication	X														
Legal Review	X														

Zoning Recommendation

- Amend Definitions section (Article II) of the zoning ordinance - Short Term Rental: A property in which a tenant is allowed to lease the dwelling unit or a portion of the dwelling unit for periods of less than one calendar month but more than 24 hours in return for remuneration.
- Create a Short-Term Rental Overlay District which allows a certain number of Short-Term Rental certificates in each zone. The zones were created based off of the census tracts. The idea is to limit the number of Short-Term Rentals in each zone to 4% of the housing stock. Studies have shown negative impacts to neighborhoods when Short-Term Rentals increase to over 5% of the housing stock.

Proposed Short-Term Rental Ordinance

Section 2314: Short-Term Rental Overlay District

A Short-Term Rental Overlay District is hereby created as outlined in Figure 23-3. Within said overlay district, a certain number of Short-Term Rentals are licensed in each zone pursuant to City Code Sections 10-353 through 10-379. The zones were created using census tract information and will be periodically reviewed to ensure that this ordinance reflects the appropriate balance of Short-Term Rentals among other use types.

1. Overlay District:
 - a. Location: See Figure 23-3 for the location of the overlay district, which is separated into 11 different zones, each allowing their own maximum number of Short-Term Rentals.
 - b. Number of Short-Term Rentals allowed per zone. A Short-Term Rental must be located in a unit designated for residential use. The number of Short-Term Rentals allowed in each zone is as follows:
 - Zone 1 – 34
 - Zone 2 – 68
 - Zone 3 – 60
 - Zone 4 – 70
 - Zone 5 – 79
 - Zone 6 – 25
 - Zone 7 – 80
 - Zone 8 – 50
 - Zone 9 – 95
 - Zone 10 – 77
 - Zone 11 – 13

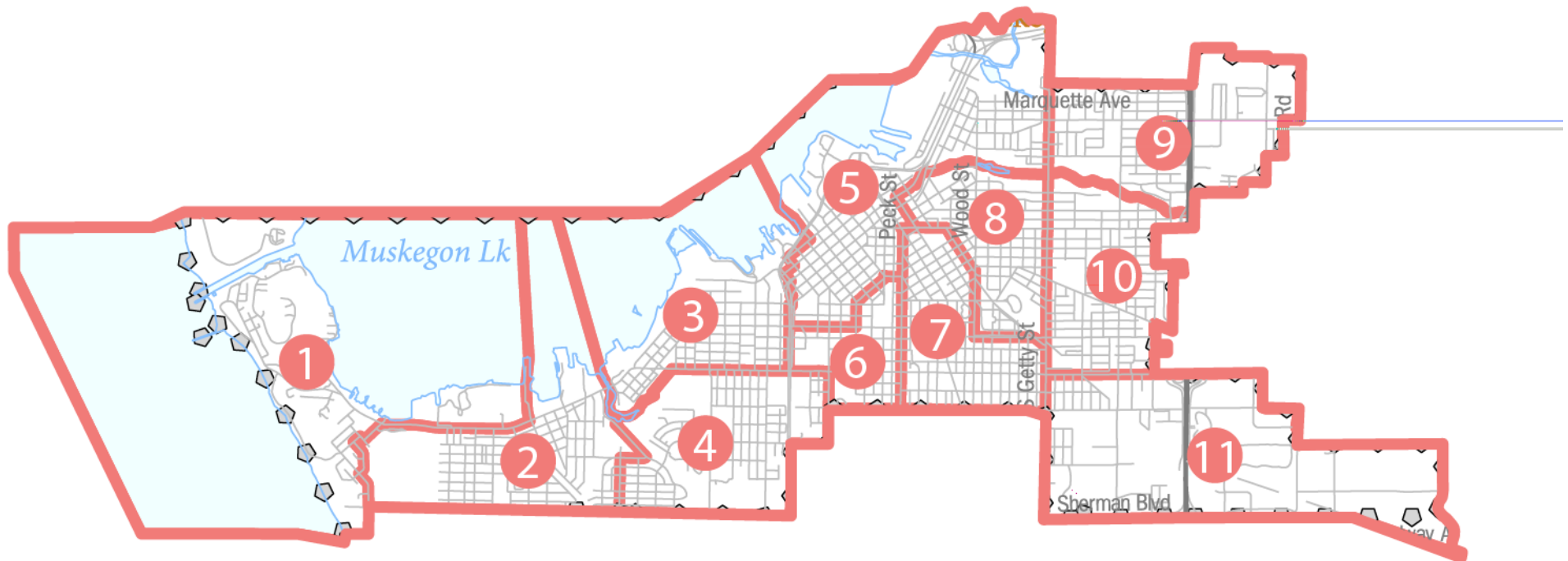
- c. Exemptions: Properties located within the Downtown Development Authority and Lakeside Business Improvement District boundaries are exempt from this ordinance. There are no maximum number of Short-Term Rentals allowed within these areas.
- 2. Restrictions:
 - a. Neighboring properties: No parcel within the City shall have more than two Short-Term Rentals abut its property lines.
- 3. Transferring of licenses:
 - a. Any person purchasing a property that has an active Short-Term Rental license will have the opportunity to apply for that particular license. The new applicant will have up to 60 days to apply with the Inspections Department for the Short-Term Rental license at that particular address.

DRAFT

Census Tract	Housing Units	STR's	Percentage of Units	Number of Additional STR's to get to 4%	Total STR's Allowed at 4%
1 (Beachwood/Bluffton)	861	73	8.4%	-39	34
2 (Lakeside/West Glenside)	1724	61	3.5%	7	68
3 (Nims)	1514	27	1.7%	33	60
5 (Downtown/North Nelson/Jackson Hill)	1992	5	0.002%	74	79
4 (Campbell Field/East Glenside)	1758	5	0.002%	65	70
7 (Angell/Marsh Field)	2023	4	0.002%	76	80
10 (Oakview/Sheldon Park/Oakview)	1939	1	0.0005%	76	77
9 (Marquette/East of 31)	2392	1	0.0004%	94	95
11 (East Muskegon)	346	0	0%	13	13
8 (Angell)	1256	0	0%	50	50
6 (South Nelson)	643	0	0%	25	25

DRAFT

Short-Term Rental Zones



WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 9, 2024	Title: Approval of Minutes															
Submitted by: Ann Meisch, City Clerk	Department: City Clerk															
Brief Summary: Approve minutes of the August 27, 2024, City Commission Meeting.																
Detailed Summary & Background:																
Goal/Focus Area/Action Item Addressed: <u>Key Focus Areas:</u> <u>Goal/Action Item:</u>																
Amount Requested:	Budgeted Item: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>x</td><td></td></tr></table>	Yes		No		N/A	x									
Yes		No		N/A	x											
Fund(s) or Account(s):	Budget Amendment Needed: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>x</td><td></td></tr></table>	Yes		No		N/A	x									
Yes		No		N/A	x											
Recommended Motion: Approval of the minutes.																
Approvals: <table border="1"><tr><td>Immediate Division Head</td><td></td><td></td></tr><tr><td>Information Technology</td><td></td><td></td></tr><tr><td>Other Division Heads</td><td></td><td></td></tr><tr><td>Communication</td><td></td><td></td></tr><tr><td>Legal Review</td><td></td><td></td></tr></table>	Immediate Division Head			Information Technology			Other Division Heads			Communication			Legal Review			Guest(s) Invited / Presenting: No
Immediate Division Head																
Information Technology																
Other Division Heads																
Communication																
Legal Review																

CITY OF MUSKEGON

CITY COMMISSION MEETING

August 27, 2024 @ 5:30 PM

**MUSKEGON CITY COMMISSION CHAMBERS
933 TERRACE STREET, MUSKEGON, MI 49440**

MINUTES

CALL TO ORDER

The Regular Commission Meeting of the City of Muskegon was held at City Hall, 933 Terrace Street, Muskegon, Michigan at 5:30 p.m., Tuesday, August 27, 2024. Pastor Adam Dollar from Evanston Avenue Baptist Church opened the meeting with prayer, after which the Commission and public recited the Pledge of Allegiance to the Flag.

ROLL CALL

Present: Mayor Ken Johnson, Vice Mayor Rebecca St.Clair, Commissioners Jay Kilgo, Destinee Keener, Willie German, Jr., and Rachel Gorman, City Manager Jonathan Seyferth, City Attorney John Schrier, and City Clerk Ann Marie Meisch
Absent: Commissioner Katrina Kochin

PUBLIC COMMENT ON AGENDA ITEMS

No public comments were made.

2024-77 CONSENT AGENDA

D. 7th Amendment to Lumberjacks Agreement-Scoreboard Arena

Staff is requesting the Commission's approval for a new center hanging scoreboard in Trinity Health Arena. The Arena Staff and Muskegon Lumberjacks are seeking approval to purchase a new scoreboard and add it to the list of items being addressed to re-negotiate in the 7th amendment. The 6th amendment which approved the new construction called for some additional things to be addressed in the Lumberjacks shared use agreement. Arena staff is requesting to contribute \$200,000 from the state MEDC RAP grant award to help the Lumberjacks offset the total cost of the scoreboard. The Lumberjacks will fund the balance of the project with a 7 year payback on rent credit starting in

2027 at an interest rate of 5.25%. The current scoreboard is beyond its life expectancy and we are no longer able to service the outdated technology.

STAFF RECOMMENDATION: Recommend the Commission allows the City to enter into an agreement with the Lumberjacks to purchase a new center hung scoreboard at the Arena.

F. Fluoride Contract Renewal - DPW Filtraton Public Works

Staff is requesting approval to renew our current contract with Univar to supply fluoride to the Water Filtration Plant. The Water Filtration Plant purchases water treatment chemicals as part of a cooperative that includes six area municipalities. The contracts and bidding processes are managed by the City of Grand Rapids.

In 2023, the City of Grand Rapids issued public bid invitations to supply and deliver fluoride (hydrofluorosilicic acid) on behalf of the consortium. Staff had requested and was granted approval for Univar as the lowest bidder for the delivery of fluoride for a one-year term with two, one-year renewal options. We are currently at the end of our one-year contract and are requesting to renew it for a second year (the first of the two renewal periods).

The Water Filtration Plant uses an average of 60 tons of fluoride annually. Under the renewal contract with Univar, the estimated annual cost based on average use will be \$31,500 (\$525/ton). An increase of \$1,500 (+\$25/ton) from the previous contract. Fluoride purchases are included in the Water Filtration Plant budget. Based on average use it is anticipated that no budget adjustments will be required this fiscal year, however the actual amount spent will ultimately depend on water usage.

STAFF RECOMMENDATION: To approve a one-year renewal of the contract with Univar for the supply and delivery of fluoride at a cost of \$550 per ton.

H. Modify MERS Defined Benefit (DB) Plan Adoption Agreement Finance

Modify MERS Defined Benefits Plan Adoption Agreement to lump sum payments of Comp Time. MERS has requested the City to modify its plan to include comp time payouts. In the past, it was coded as deferred overtime, which MERS deems as comp time payout.

STAFF RECOMMENDATION: We recommend that the Commission adopts the modification to all MERS Defined Benefits plans to allow lump sum payments of comp time.

I. South PM Restroom & Kite Shack Improvements Award DPW- Parks

A public bid was posted on July 25th for the construction of a new restroom at South Pere Marquette and improvements to the Kite Shack. The target cost was \$700,000, with a grant from the DNR covering \$300,000 of that. CooperRock Construction of Grand Rapids is the low bidder and recommended contract

awardee for \$602,049. CooperRock Construction, out of Grand Rapids, submitted the low bid for the project, \$602,049. Clifford Buck Construction, a local City of Muskegon bidder (located at 500 Irwin), came in second with a bid of \$630,771. When the 2% local bidding adjustment was applied, Clifford Buck was still about \$16,000 higher.

It should be noted that we are receiving a state grant from the DNR. The DNR does not recognize local bidding adjustments and requires the City (and any grant recipients) to go with the low bidder. If we were to choose not to go with the low bidder, the City would forfeit its DNR grant.

There are some additional project costs related to Consumers Energy moving a utility pole that are not included in this final bid.

STAFF RECOMMENDATION: To award the Pere Marquette South Restroom & Kite Shack Improvement project to CooperRock Construction for \$602,049.

J. Rezoning of 349 W Webster Ave from Form Based Code, Urban Residential (FBC, UR) to Form Based Code, Neighborhood Core (FBC, NC). Planning

The Planning Commission unanimously recommended in favor of the request at their August meeting. This property is the former location of the Muskegon Public Schools Administration building. It has been privately owned since 2021. The applicant is requesting a rezoning to allow the building to be converted into a hotel, with retail and other mixed-uses. There were no public comments given at the public hearing.

STAFF RECOMMENDATION: I move to approve the request to rezone the property at 349 W. Webster Ave. from Form Based Code, Urban Residential to Form Based Code, Neighborhood Core.

(REQUIRES SECOND READING)

K. Rezoning of 1700 Oak Ave from Medical Care (MC) to Low-Density Multiple Family Residential (RM-1). Planning

The Planning Commission unanimously recommended approval of the request at their August meeting. The property is the site of the former Muskegon General Hospital and is still zoned MC, Medical Care. The site measures just under 26 acres. The applicant is seeking a rezoning to RM-1, Low-Density Multi-Family Residential to allow for a 144-unit “work force” apartment development. The plans include the demolition of the existing hospital buildings. The applicant would utilize about 14 acres of the 26 acre site. The Planning Commission recommended in favor of the rezoning and also approved the site plan, contingent upon the City Commission approving the rezoning.

STAFF RECOMMENDATION: I move to approve the rezoning of 1700 Oak Ave from Medical Care (MC) to Low-Density Multiple Family Residential (RM-1).

(REQUIRES SECOND READING)

L. Acquisition of vacant buildable lots at 60 E Walton, 1192 Ambrosia, 456 McGlaughlin, 379 McLaughlin, and 1047 Wood Street Economic Development

Development Services has been working with Rashard Thrower to acquire his vacant properties with the intent to retain his firm Q9 Development, LLC to construct affordable infill housing on the properties within the next 48 months. For three years staff have been working with Mr. Thrower to attempt a housing infill project on these lots. Initially, the owner hoped to build and retain affordable rental properties on the sites, but due to interest rate increases, construction cost inflation, and the desire to keep rents low in his home neighborhood that project concept became non-viable. Staff then worked with Mr. Thrower to try to develop a "for-sale" project as we have done with other builders that buy their lots and construct units, but again the prices needed to generate any return and prevent losses on the project made the homes unattainable for most folks in the community, and there was some concern that a lack of comparable sales in these areas would prevent sales from going through as well.

Finally, staff proposed to Mr. Thrower that the City could potentially acquire the properties and then retain Mr. Thrower and a contractor partner to build on the sites, as we have done for the ARP and Midtown phase projects. This would allow us to build more economical models and keep them at affordable prices while regaining losses through the Brownfield, while eliminating the risk to Mr. Thrower were he to build on these lots privately.

The purchase agreement includes a 4-year exclusive right for Mr. Thrower to act as the builder for the City on these properties. If we do not successfully complete a residential construction project by then, the City is free to select any other builder, sell the properties for private construction, or any other reasonable option. It should be noted that a separate purchase agreement for a property owned by Mr. Thrower on Peck Street will come to the Commission at a later meeting, but it made sense to separate that one as it was formerly a gas station and staff would like a longer due diligence period to conduct an environmental site assessment.

STAFF RECOMMENDATION: To approve the Real Estate Purchase Agreement as presented, and to authorize the Mayor and Clerk to sign.

Motion by Commissioner Keener, second by Commissioner Gorman, to adopt the Consent Agenda minus items A, B, C, E, and G.

ROLL VOTE: Ayes: St.Clair, Johnson, Kilgo, Keener, German, and Gorman
Nays: None

MOTION PASSES

2024-78 ITEMS REMOVED FROM THE CONSENT AGENDA

A. Approval of Minutes City Clerk

Approve minutes of the August 12, 2024, City Commission Worksession Meeting and the August 13, 2024, City Commission Meeting.

STAFF RECOMMENDATION: Approval of the minutes.

Motion by Commissioner Kilgo, second by Commissioner Gorman, to approve the minutes.

ROLL VOTE: Ayes: Gorman, St.Clair, Johnson, Kilgo, Keener, and German
Nays: None

MOTION PASSES

M. Request to Amend the Planned Unit Development (PUD) at 3400, 3460, 3474 Wilcox Avenue, 1875 Waterworks Road, and 1490 Edgewater Street (The Docks) Planning **(ITEM ADDED BY MAYOR)**

The plans have been amended to develop around areas that have been declared as established wetlands. There will be a total of 240 residential units and a community building with retail/restaurant space. The Planning Commission unanimously recommended approval of the amended PUD with the following conditions:

1. The applicant receives a stormwater permit from the Engineering Department.
2. All utility plans are reviewed and approved by the Engineering Department.
3. Lane widths of streets are reduced to 9 or 10 feet subject to the Engineering Department.
4. Bulb outs are eliminated on road A.
5. Road C will be connected back to road B.
6. The parking lot to the southern marina parking lot will be revised as discussed.
7. Landscaping areas inside of parking areas and streets will be privately maintained.
8. A public/private street map will be provided and describe the ownership as discussed with all private/owned roadways being publicly accessible.
9. A landscaping plan is approved by the Planning Department.

Conditions 4, 5, and 6 have been addressed and reflected on the revised plans in the packet.

STAFF RECOMMENDATION: To approve the request to amend the PUD with the following conditions:

1. The applicant receives a stormwater permit from the Engineering

- Department.
2. All utility plans are reviewed and approved by the Engineering Department.
 3. Lane widths of streets are reduced to 9 or 10 feet subject to the Engineering Department.
 4. Landscaping areas inside of parking areas and streets will be privately maintained.
 5. A public/private street map will be provided and describe the ownership as discussed with all privately-owned roadways being publicly accessible.
 6. A landscaping plan is approved by the Planning Department.

Motion by Commissioner Kilgo, second by Commissioner Gorman, to amend the PUD to add an additional condition that on-street parking, inclusive of handicap parking, be placed to the north of the structural retaining wall at Public Road E's northerly bend.

**ROLL VOTE: Ayes: German, Gorman, St.Clair, Johnson, Kilgo, and Keener
Nays: None**

MOTION PASSES (REQUIRES SECOND READING)

B. 30-Day Extension of the Short Term Rental Registration Pause Manager's Office

This will extend the end date of the STR Pause from September 8, 2024, to October 8, 2024. In March 2024, the City Commission put into place a pause on Short Term Rental (STR) registrations. The pause is set to expire on September 8, 2024. Because the staff is still finalizing updated STR rules following Commission feedback, extending the registration pause by 30 days is prudent to ensure the new rules/ordinances are in place before the pause expires. The new expiration date would be Tuesday, October 8, 2024. The objective would be to have the Commission vote on an ordinance in early September 2024.

STAFF RECOMMENDATION: To extend the Short Term Rental Registration Pause by 30 days, expiring on Tuesday, October 8, 2024.

Motion by Commissioner Kilgo, second by Vice Mayor St.Clair, to extend the Short Term Rental Registration Pause by 30 days, expiring on Tuesday, October 8, 2024.

**ROLL VOTE: Ayes: Keener, German, Gorman, St.Clair, and Johnson
Nays: Kilgo**

MOTION PASSES

C. Write Off of Loan to BoomTown Market, LLC Balance Economic Development

We have an unpaid balance on our original Economic Development Revolving Loan to BoomTown Market that must be written off per our auditor's guidance. In April of 2019, the City received an application for a \$55,000 loan from Boomtown Market for furnishings for their grocery store concept. This loan application was approved by the City Commission at their June 25, 2019, regular meeting. By February of 2020, ownership of BoomTown requested to be temporarily placed on interest only payments due to winter slowdowns, which were later exacerbated by the Covid-19 pandemic. Sometime later the owner ran into significant medical issues and decided to close, owing several lenders and the landlord large sums ahead of our loan in position. This has resulted in our inability to collect the remainder of the original loan. The total paid to the City through the life of the loan is \$13,933.12. The write off amount, inclusive of unpaid interest, is \$60,164.71.

STAFF RECOMMENDATION: Motion to write off \$60,164.71 in unpaid debt owed by BoomTown Market, LLC as presented.

Motion by Commissioner German, second by Vice Mayor St.Clair, to write off \$60,164.71 in unpaid debt owed by BoomTown Market, LLC as presented.

ROLL VOTE: Ayes: Kilgo, Keener, German, Gorman, St.Clair, and Johnson
Nays: None

MOTION PASSES

E. Rooftop Solar Lease Public Works

Staff requests approval to enter into a lease with Sunwealth LLC for space on the Trinity Health Arena rooftop for the installation of photovoltaic solar energy generation equipment. The solar system installed on the arena roof has been in operation for nearly six months; however, in reviewing their files, the system owner (Sunwealth LLC) realized that a lease, granting them the right to install the system on the arena roof, had not been executed. Attorney's at Sunwealth and Miller Canfield (on behalf of the City) worked to develop this lease and it is presented to the Commission for approval. The term of the lease is concurrent with the power purchase agreement (PPA) that governs the two parties' use and maintenance of the system, which is for 25 years unless extended or unless the City purchases the equipment earlier. This does not change any of the particulars of the solar project, it simply allows the system to sit on the arena roof as intended.

STAFF RECOMMENDATION: To authorize staff to enter into a lease with Sunwealth LLC for space on the Trinity Health Arena rooftop for the installation of photovoltaic solar energy generation equipment.

Motion by Commissioner Kilgo, second by Commissioner German, to authorize staff to enter into a lease with Sunwealth LLC for space on the Trinity Health Arena rooftop for the installation of photovoltaic solar energy generation equipment.

**ROLL VOTE: Ayes: Johnson, Kilgo, Keener, German, Gorman, and St.Clair
Nays: None**

MOTION PASSES

G. Modify MERS Defined Contribution (DC) Plan Adoption Agreement
Finance

Modify MERS Defined Contribution Plan Adoption Agreement to lump sum payments of Comp Time. MERS has requested the City to modify its plan to include comp time payouts. In the past, it was coded as deferred overtime, which MERS deems as comp time payout.

STAFF RECOMMENDATION: To adopt the modification to all MERS Defined Contribution plans allowing lump sum payments of comp time.

Motion by Commissioner German, second by Commissioner Kilgo, to adopt the modification to all MERS Defined Contribution plans allowing lump sum payments of comp time.

**ROLL VOTE: Ayes: St.Clair, Johnson, Kilgo, Keener, German, and Gorman
Nays: None**

MOTION PASSES

ANY OTHER BUSINESS

City Manager Jonathan Seyferth commented on short-term rentals - carveouts and transferability. Commissioner German Stated what a honor it was to attend the Democratic National Convention as an elected District Delegate. Vice Mayor St.Clair stated that August 26, 2024, was National Woman's Equality Day. Mayo Johnson thanked Commission, staff, and Neighborhood Associations for the great National Night Out event at Marsh Field. Commissioner Kilgo mentioned that the next City Commission Meeting will be combined with the Worksession Meeting on Monday, September 9th, at 5:30 p.m.

PUBLIC COMMENT ON NON-AGENDA ITEMS

Public comments received.

ADJOURNMENT

The City Commission meeting adjourned at 7:02 p.m.

Respectfully Submitted,

Ann Marie Meisch, MMC City Clerk

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 9, 2024	Title: Nims Water Tower Cellular Antenna Lease Renewal																								
Submitted by: Dan VanderHeide, Public Works Director	Department: Public Works																								
Brief Summary: Staff requests authorization to enter into a 10 year lease renewal agreement with up to 25 years of extension options with New Cingular Wireless PCS, LLC for space on and near the Nims water tower for a cellular antenna and related equipment.																									
Detailed Summary & Background: Commission authorized Maralat, LLC, a cellular antenna industry consultant, to enter into negotiations on the City's behalf with AT&T for renewal of their lease on the Nims water tower. Staff, legal counsel and Maralat have been working with AT&T to finalize the terms of a lease extension and have reached an agreement as presented in the attached lease agreement. The table below summarizes the terms in both the prior lease and this proposed extension.																									
<table border="1"><thead><tr><th>Component</th><th>Prior Lease</th><th>Proposed Renewal</th></tr></thead><tbody><tr><td>Rental Rate</td><td>\$4,938.77</td><td>\$4,850</td></tr><tr><td>Annual Escalation</td><td>3%</td><td>3%</td></tr><tr><td>Commencement Date</td><td>N/A</td><td>February 1, 2024</td></tr><tr><td>Termination Date</td><td>September 30, 2018</td><td>January 31, 2059</td></tr><tr><td>Termination Fee (Initial 10-Year Term)</td><td>None</td><td>100% of Rent for 5 Years, then 50%</td></tr><tr><td>Equipment Upgrade Fee</td><td>None</td><td>\$325 per Month Per New Antenna</td></tr><tr><td>Administrative Signing Bonus</td><td>None</td><td>\$7,500</td></tr></tbody></table>		Component	Prior Lease	Proposed Renewal	Rental Rate	\$4,938.77	\$4,850	Annual Escalation	3%	3%	Commencement Date	N/A	February 1, 2024	Termination Date	September 30, 2018	January 31, 2059	Termination Fee (Initial 10-Year Term)	None	100% of Rent for 5 Years, then 50%	Equipment Upgrade Fee	None	\$325 per Month Per New Antenna	Administrative Signing Bonus	None	\$7,500
Component	Prior Lease	Proposed Renewal																							
Rental Rate	\$4,938.77	\$4,850																							
Annual Escalation	3%	3%																							
Commencement Date	N/A	February 1, 2024																							
Termination Date	September 30, 2018	January 31, 2059																							
Termination Fee (Initial 10-Year Term)	None	100% of Rent for 5 Years, then 50%																							
Equipment Upgrade Fee	None	\$325 per Month Per New Antenna																							
Administrative Signing Bonus	None	\$7,500																							
The proposed lease is the same as the Marshall water tower extension included on tonight's agenda. Although the rental rate is slightly decreased at the start of the lease, Maralat ensures staff that it reflects the best available rates and terms available to the City and the lease includes other items such as a termination fee, an upgrade fee and an administrative signing bonus that make the slight rent reduction less impactful overall, and the extension continues the 3% annual escalator.																									
Goal/Focus Area/Action Item Addressed: Key Focus Areas: Decrease infrastructure burden on residents, Sustainability in financial practices and infrastructure, Increase revenue																									

Goal/Action Item:

2027 GOAL 4: FINANCIAL INFRASTRUCTURE - Increase revenue

Amount Requested:

N/A

Budgeted Item:

Yes	X	No		N/A		
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Fund(s) or Account(s):

591 (Water)

Budget Amendment Needed:

Yes		No	X	N/A		
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Recommended Motion:

Authorize staff to enter into a 10 year lease renewal agreement with up to 25 years of extension options with New Cingular Wireless PCS, LLC for space on and near the Nims water tower for a cellular antenna and related equipment.

Approvals:

Immediate Division Head	X	
Information Technology		
Other Division Heads	X	
Communication		
Legal Review	X	

Guest(s) Invited / Presenting:

No

Market: MI / IN
Cell Site Number: GRANMI5603
Cell Site Name: Muskegon Nims WT
Fixed Asset Number: 10124755

STRUCTURE LEASE AGREEMENT

THIS STRUCTURE AGREEMENT (“**Agreement**”), dated as of the latter of the signature dates below (the “**Execution Date**”) and effective _____, 2024 (the “**Effective Date**”), is entered into by City of Muskegon, a Michigan municipal corporation, having a mailing address of 933 Terrace Street, Muskegon, MI 49443 (“**Landlord**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 (“**Tenant**”).

BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, as described on **Exhibit 1**, improved with a water tower (the “**Water Tower**”), together with all rights and privileges arising in connection therewith, located at 719 Nims Street, in the County of Muskegon, State of Michigan (collectively, the “**Property**”). Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

Landlord and Tenant (or their predecessors-in-interest) entered into that certain Site Lease dated October 1, 1998, as amended by that certain First Amendment to the Site Lease dated January 29, 2009, as amended by that certain Second Amendment to the Site Lease dated August 17, 2012, as amended by that certain Third Amendment to the Site Lease dated September 23, 2014, and as further amended by that certain Fourth Amendment to the Site Lease dated November 10, 2014 (collectively, the “**Prior Lease**”), for the Premises defined below and the term of the Prior Lease expired on September 30, 2018. Landlord and Tenant agree that this Agreement shall be effective as of the Effective Date and as of the Effective Date, the Prior Lease shall be terminated and of no further force and effect and this Agreement replaces and supersedes the Prior Lease.

The parties agree as follows:

1. LEASE OF PREMISES. Landlord hereby leases to Tenant a portion of the Property consisting of:

(a) approximately 100 square feet including the air space above such ground space, as described on attached **Exhibit 1**, for the placement of Tenant’s Communication Facility;

(b) space for any structural steel or other improvements to support Tenant’s equipment (collectively, the space referenced in (a) and (b) is the “**Equipment Space**”);

(c) that certain space on the Water Tower, as generally depicted on **Exhibit 1**, including the air space above same, where Tenant shall have the right to install its antennas and other equipment (collectively, the “**Antenna Space**”); and

(d) those certain areas where Tenant’s conduits, wires, cables, cable trays and other necessary connections are located between the Equipment Space and the Antenna Space, and between the Equipment Space and the electric power, telephone, and fuel sources for the Property (hereinafter collectively referred to as the “**Connection Space**”). Landlord agrees that Tenant shall have the right to install connections between Tenant’s equipment in the Equipment Space and Antenna Space; and between Tenant’s equipment in the Equipment Space and the electric power, telephone, and fuel sources for the Property, and any other improvements and will require written approval before installing a flammable fuel source such as natural gas or propane, which consent may be withheld in Landlord’s sole discretion. Landlord further agrees that Tenant shall have the right to install, replace and maintain utility lines, wires, poles, cables, conduits, pipes and other

necessary connections over or along any right-of-way extending from the aforementioned public right-of-way to the Premises. All new installations of equipment and services by Tenant at the Premises shall require prior notice and approval by Landlord and Landlord's inspections department, such approvals not to be unreasonably withheld, conditioned or delayed. The Equipment Space, Antenna Space, and Connection Space, are hereinafter collectively referred to as the "**Premises.**"

2. PERMITTED USE. Tenant, its personnel, invitees, contractors, agents, subtenants, or its authorized sublessees, or assigns may use the Premises, at no additional cost or expense, for the transmission and reception of any and all communications signals and, to modify, supplement, replace, upgrade, expand, or refurbish the equipment, as provided herein, and/or the improvements thereon (collectively, the "Communications Facility") or relocate the same within the Premises, at any time during the term of the Agreement, so long as these changes do not exceed the structural capacity of the tower/structure at this height, or at Tenant's sole expense upgrade the structural capacity, or in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services or for any other reason. Before Tenant commences any modification which increase the structural load on the tower/structure, Tenant shall provide Landlord with a passing structural analysis. Tenant may operate the Communications Facility at any frequency for which it has all requisite licenses and permits so long as these frequencies do not cause an interference issue with an existing lawfully installed and properly operated tenant on the tower/structure. Landlord shall reasonably cooperate in obtaining governmental and other use permits or approvals necessary or desirable for the foregoing permitted use. As of the Effective Date of this Agreement, Tenant has the right to install nine (9) antennas, as well as any antennae required for E911 purposes and/or for Tenant to keep its Communications Facility in compliance with all applicable laws and regulations as required herein. Should Tenant increase the quantity of antennas beyond nine (9), then Tenant shall increase its monthly rental payment to Landlord by \$325.00 for each additional antenna. Said rental increase shall commence on the 1st day of the month after Tenant begins the equipment installation. This rental increase shall not apply to antennas added for E911 purposes or for Tenant to keep the Communications Facility in compliance with any applicable law or regulations as required herein. If Landlord does not comply with the terms of this section, in addition to any other rights it may have at law, Tenant may terminate the Agreement and shall have no further liability to Landlord. If Landlord does not comply with the terms of this section, Tenant will have the right to exercise any and all rights available to it under law and equity, including the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant. Landlord and Tenant agree that any portion of the Communication Facility that may be conceptually described on **Exhibit 1** will not be deemed to limit Tenant's Permitted Use. If **Exhibit 1** includes drawings of the initial installation of the Communication Facility, Landlord's execution of this Agreement will signify Landlord's approval of **Exhibit 1**. During the Term, Tenant cannot materially interfere with or block Landlord's access with the main functions and day-to-day operations of the Water Tower or with existing tenants as of the Effective Date. For a period of ninety (90) days following the start of construction, Landlord grants Tenant, its subtenants, licensees and sublicensees, the right to use such portions of the Landlord's contiguous, adjoining or surrounding property (the "**Surrounding Property**") as may reasonably be required during construction and installation of the Communication Facility. Tenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the Property's main entry point to the equipment shelter or cabinet, install a generator and to make other improvements, alterations, upgrades or additions appropriate for Tenant's Permitted Use, including the right to construct a fence around the Premises or equipment (so long as the fence does not unreasonably interfere with Landlord's existing use of the Water Tower or the existing use of the Water Tower by tenants existing as of the Effective Date), install warning signs to make individuals aware of risks, install protective barriers, install any other control measures reasonably required by Tenant's safety procedures or applicable law, and undertake any other appropriate means to secure the Premises or equipment at Tenant's expense. Tenant has the right, to install, modify, supplement, replace, upgrade, expand the Communication Facility (including, for example, increasing the number of antennas or adding microwave dishes) or relocate the Communication

Facility within the Premises at any time during the Term. Tenant will be allowed to make such alterations to the Property in order to ensure that the Communication Facility complies with all applicable federal, state or local laws, rules or regulations. In the event Tenant desires to modify or upgrade the Communication Facility, in a manner that requires an additional portion of the Property (the “**Additional Premises**”) for such modification or upgrade, Landlord agrees to lease to Tenant the Additional Premises, upon the same terms and conditions set forth herein, except that the Rent shall increase, in conjunction with the lease of the Additional Premises by the amount equivalent to the then-current per square foot rental rate charged by Landlord to Tenant times the square footage of the Additional Premises. Landlord agrees to take such actions and enter into and deliver to Tenant such documents as Tenant reasonably requests in order to effect and memorialize the lease of the Additional Premises to Tenant.

3. TERM.

(a) The initial lease term will be ten (10) years (the “**Initial Term**”), commencing on February 1, 2024. The Initial Term will terminate on the tenth (10th) anniversary of the Initial Term.

(b) This Agreement will automatically renew for five (5) additional five (5) year term(s) (each additional five (5) year term shall be defined as an “**Extension Term**”), upon the same terms and conditions set forth herein unless Tenant notifies Landlord in writing of Tenant’s intention not to renew this Agreement at least sixty (60) days prior to the expiration of the Initial Term or the then-existing Extension Term.

(c) Unless (i) Landlord or Tenant notifies the other in writing of its intention to terminate this Agreement at least six (6) months prior to the expiration of the final Extension Term, or (ii) the Agreement is terminated as otherwise permitted by this Agreement prior to the end of the final Extension Term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter (“**Annual Term**”) until terminated by either party hereto by giving to the other party hereto written notice of its intention to so terminate at least six (6) months prior to the end of any such Annual Term. Monthly Rent during such Annual Terms shall be equal to the Rent paid for the last month of the final Extension Term. If Tenant remains in possession of the Premises after the termination of this Agreement, then Tenant will be deemed to be occupying the Premises on a month-to-month basis (the “**Holdover Term**”), subject to the terms and conditions of this Agreement.

(d) The Initial Term, any Extension Terms, any Annual Terms and any Holdover Term are collectively referred to as the “**Term.**”

4. RENT.

(a) Commencing on February 1, 2024 (the “**Rent Commencement Date**”), Tenant will pay Landlord on or before the fifth (5th) day of each calendar month in advance, Four Thousand Eight Hundred Fifty and No/100 Dollars (\$4,850.00) (the “**Rent**”), at the address set forth above. The Rent shall continue during the Term, subject to adjustment as provided herein: on each anniversary of the Rent Commencement Date, including throughout any Extension Term exercised, the Rent will increase by three percent (3%) over the Rent paid during the previous year, and every year thereafter. In any partial month occurring after the Rent Commencement Date, the Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within ninety (90) days after the Rent Commencement Date. In addition to Rent, Tenant shall owe Landlord a one-time signing bonus of Seven Thousand Five Hundred and No/100 Dollars (\$7,500.00) upon the full execution of this Agreement.

(b) Modification of Tenant’s Obligation to Pay – Rent Guarantee. Notwithstanding Tenant’s obligations to pay Rent set forth under the Agreement, for a sixty (60) month period commencing February 1, 2024, and ending January 31, 2029, Tenant’s obligation to pay the entire Rent is guaranteed in full for such period and such obligation will not be subject to offset or cancellation by Tenant. Following such sixty (60) month period, for a sixty (60) month period commencing February 1, 2029 and ending January 31, 2034, Tenant’s obligation to pay Rent is guaranteed in an amount of no less than 50% of the Rent due for such period and such obligation will not be subject to offset or cancellation by Tenant. For purposes of this Agreement, such one hundred twenty (120) month period shall be referred to as the “**Rent Guarantee Period**”. The Termination Fee (as hereinafter defined) shall not apply and shall not be payable by Tenant if

Tenant terminates as provided herein within the Rent Guarantee Period. Notwithstanding the foregoing, if Landlord exercises any of Landlord's rights to terminate the Agreement, if any, other than the Landlord's right to terminate the Agreement due to the default of Tenant under the terms of the Agreement beyond any applicable grace period, Tenant will be released from any and all of its obligations to pay Rent during the Rent Guarantee Period as of the effective date of the termination. In addition, Tenant shall be released from any and all of its obligations to pay Rent during the Rent Guarantee Period if the following shall occur: (i) Landlord is in breach of the Agreement, including but not limited to any default under the terms of the Agreement beyond any applicable grace and cure period; (ii) there is a foreclosure of the Agreement which results in a termination of the Agreement; or (iii) the Landlord shall require Tenant to relocate Tenant's equipment and facilities to a location that is not acceptable to Tenant in its reasonable business judgment if allowed for in the Agreement. If the Agreement is further modified in the future with an obligation for Tenant to pay additional Rent, the payment of Rent guarantee established in this paragraph will not be diminished or limited, but such Rent guarantee will not extend to that future additional Rent obligation.

(c) All charges payable under this Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of this subsection shall survive the termination or expiration of this Agreement.

5. APPROVALS.

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises and Property for Tenant's Permitted Use and Tenant's ability to obtain and maintain all governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by Tenant for its use of the Premises, including without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"). Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for Tenant's Permitted Use under this Agreement and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals. In addition, Tenant shall have the right to initiate the ordering and/or scheduling of necessary utilities.

(b) Tenant, at Tenant's sole cost and expense, has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

6. TERMINATION. This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 15 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant; or if Tenant determines, in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

(c) by Tenant, upon written notice to Landlord, if Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory for its intended uses;

(d) by Tenant upon written notice to Landlord for any reason or no reason, at any time prior to commencement of construction by Tenant;

(e) by Tenant upon sixty (60) days' prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to six (6) months' Rent, at the then-current rate (the "Termination Fee"), provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any termination provision contained in any other Section of this Agreement, including the following: Section 5 Approvals, Section 6(a) Termination, Section 6(b) Termination, Section 6(c) Termination, Section 6(d) Termination, Section 8 Interference, Section 11(d) Environmental, Section 18 Condemnation or Section 19 Casualty; or,

(f) by Landlord upon any of the following events: (i) upon two (2) years prior written notice if Landlord determines that after the Initial Term of this Agreement, or upon two (2) years prior written notice before to the conclusion of any renewals of this Agreement, that the Tenant's Permitted Use of the Premises under this Agreement is no longer in the Landlord's best interest, in its sole discretion; (ii) if Landlord determines that Tenant's Permitted Use of the Premises under this Agreement (including Tenant's operation of its communications equipment) is interfering with the rights of Landlord or other tenants currently on the Property and that the issue cannot be remediated by Tenant; or (iii) if Tenant is in default of the terms of this Agreement and the default has not been cured under Section 15.

7. **INSURANCE.** During the Term, Tenant, at Tenant's sole cost and expense, will carry and maintain in effect a commercial general liability insurance per ISO form CG 00 01 or its equivalent, insuring against bodily injury and property damage. Said policy of commercial general liability insurance will provide a combined single limit of One Million and No/100 Dollars (\$1,000,000.00) per occurrence and in aggregate. Tenant shall provide Landlord with a certificate of insurance evidencing such coverage which states that the carrier has insured Tenant for the required insurance policies liabilities under this Lease. Tenant will provide at least 30 days written notice to Landlord, of cancellation or non-renewal of any required coverage that is not replaced.. Landlord shall be included to the policy as an additional insured by endorsement as respects to this Agreement.

8. **INTERFERENCE.**

(a) Prior to or concurrent with the execution of this Agreement, Landlord has provided or will provide Tenant with a list of radio frequency user(s) on the Property as of the Effective Date; provided, however, it shall be Tenant's sole responsibility to determine the actual radio frequencies used by such user(s). Tenant warrants that its use of the Premises will not interfere with those existing radio frequency uses on the Property, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Landlord will not grant, after the Effective Date, a lease, license or any other right to any third party, if the exercise of such grant may in any way adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement.

(c) Landlord will not, nor will Landlord permit its employees, tenants, licensees, invitees, agents or independent contractors to interfere in any way with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period, Landlord shall cease all operations which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected. Tenant will not, nor will Tenant permit its employees, tenants, licensee, invitees, agents, or independent contractors to interfere in any way with the operations of Landlord or other tenants of the Water Tower or Premises, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(d) For the purposes of this Agreement, "interference" may include, but is not limited to, any use on the Property that causes electronic or physical obstruction with, or degradation of, the communications signals from the Communication Facility.

(e) Tenant's installation, operation, and maintenance of its Communication Facilities shall not damage or interfere with Landlord's Water Tower and/or the Property's operations or related repair and

maintenance activities. Landlord, at all times during this Agreement, reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter or improve the Property in connection with city operations as may be necessary, including leasing parts of the Water Tower and/or Property and surrounding ground space to others.

(f) Tenant acknowledges and agrees that the primary purpose of the Water Tower is to provide water storage for Landlord and its customers. Tenant understands that Landlord may have to interrupt Tenant's use of the Premises from time to time to service, maintain, or repair the Water Tower. Accordingly, Landlord reserves the right at all times during this Agreement to take any action it deems necessary in its sole discretion to repair, maintain, alter, or improve the Property and shall not be liable to Tenant for any temporary interference with Tenant's use as a result of actions necessary to carry out any such activities. Notwithstanding the foregoing, Landlord agrees to provide Tenant with reasonable advance notice of any planned activities, emergencies excepted, and to carry out such activities in a manner to minimize interruptions with Tenant's use.

9. Intentionally deleted.

10. WARRANTIES.

(a) Each of Tenant and Landlord (to the extent not a natural person) each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power, and authority or capacity, as applicable, to enter into this Agreement and bind itself hereto through the party or individual set forth as signatory for the party below.

(b) To the extent permitted by state or municipal law, and except as otherwise previously disclosed by Landlord to Tenant prior to the date of this Agreement, Landlord represents, warrants and agrees that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license and solely owns the Water Tower; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises in accordance with the terms of this Agreement without hindrance or ejection by any persons lawfully claiming under Landlord ; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, then Landlord will provide promptly to Tenant a mutually agreeable subordination, non-disturbance and attornment agreement executed by Landlord and the holder of such security interest in the form attached hereto as **Exhibit 10(b)**.

(c) Tenant currently leases a portion of the Property pursuant to the Prior Lease, and Tenant acknowledges and agrees that Tenant is familiar with the condition of the Premises and agrees to accept the physical condition of the Premises in "AS IS" condition. Tenant further acknowledges and agrees that Tenant is relying solely on its own investigation of the Premises and not on any information provided to or to be provided by Landlord. Tenant agrees to accept the Premises and waive all objections or claims against Landlord arising from or related to the Premises, except for a breach of any representations, warranties, or covenants set forth in this Lease.

11. ENVIRONMENTAL.

Notwithstanding the foregoing, Landlord represents that it has no knowledge of the presence of or contamination by any hazardous substances on the Property in violation of any applicable federal, state, or local law or regulation. Landlord and Tenant agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Property.

12. ACCESS. At all times throughout the Term of this Agreement, Tenant and its employees, agents, and subcontractors, will require twenty-four (24) hour access, for pedestrian and vehicular access (“**Access**”) to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises. There is a sign at the access point that will need to be called to, to provide access to enter the Premises in the case of emergencies. As may be described more fully in **Exhibit 1**, Landlord grants to Tenant an easement for such Access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such Access. Upon Tenant’s request, Landlord will execute a separate recordable easement evidencing this right. Landlord shall execute a letter granting Tenant Access to the Property substantially in the form attached as **Exhibit 12**; upon Tenant’s request, Landlord shall execute additional letters during the Term. If Tenant elects to utilize an Unmanned Aircraft System (“**UAS**”) in connection with its installation, construction, monitoring, site audits, inspections, maintenance, repair, modification, or alteration activities at the Property, Landlord hereby grants Tenant, or any UAS operator acting on Tenant’s behalf, express permission to fly over the applicable Property and Premises, and consents to the use of audio and video navigation and recording in connection with the use of the UAS. Landlord acknowledges that in the event Tenant cannot obtain Access to the Premises, Tenant shall incur significant damage. If Landlord fails to provide the Access granted by this Section 12, such failure shall be a default under this Agreement.

13. REMOVAL/RESTORATION. All portions of the Communication Facility brought onto the Property by Tenant will be and remain Tenant’s personal property and, at Tenant’s option, may be removed by Tenant at any time during or after the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of Tenant and may be removed by Tenant at any time during or after the Term. Tenant will repair any damage to the Property resulting from Tenant’s removal activities. Any portions of the Communication Facility that Tenant does not remove within one hundred twenty (120) days after the later of the end of the Term and cessation of Tenant’s operations at the Premises shall be deemed abandoned and owned by Landlord. Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation.

14. MAINTENANCE/UTILITIES.

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto, the Water Tower, and all areas of the Premises where Tenant does not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. Landlord will be responsible for maintenance of landscaping on the Property.

(b) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to sub-meter from Landlord. When sub-metering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Tenant shall reimburse Landlord for such utility usage at the same rate charged to Landlord by the utility service provider. Landlord further agrees to provide the usage data and invoice on forms provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within sixty (60) days of receipt of the usage data and required forms. Landlord shall maintain accurate and detailed records of all utility expenses, invoices and payments applicable to Tenant’s reimbursement obligations hereunder. Within fifteen (15) days after a request from Tenant, Landlord shall provide copies of such utility billing records to the Tenant in the form of copies of invoices, contracts and cancelled checks. If the utility billing records reflect

an overpayment by Tenant, Tenant shall have the right to deduct the amount of such overpayment from any monies due to Landlord from Tenant.

(c) As noted in Section 4(c) above, any utility fee recovery by Landlord is limited to a twelve (12) month period. If Tenant sub-meters electricity from Landlord, Landlord agrees to give Tenant at least twenty-four (24) hours advance notice of any planned interruptions of said electricity. Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week. If the interruption is for an extended period of time, in Tenant's reasonable determination, Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

(d) Tenant will have the right to install utilities, at Tenant's expense, and to improve present utilities on the Property and the Premises. Landlord hereby grants to any service company providing utility or similar services, including electric power and telecommunications, to Tenant an easement over the Property, from an open and improved public road to the Premises, and upon the Premises, for the purpose of constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such service companies may from time to time require in order to provide such services to the Premises. Upon Tenant's or service company's request, Landlord will execute a separate recordable easement evidencing this grant, at no cost to Tenant or the service company.

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after written notice from Landlord specifying the failure. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, then Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) Landlord's failure to provide Access to the Premises as required by Section 12 within twenty-four (24) hours after written notice of such failure; (ii) Landlord's failure to cure an interference problem as required by Section 8 within twenty-four (24) hours after written notice of such failure; or (iii) Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after written notice from Tenant specifying the failure. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have: (i) the right to cure Landlord's default and to deduct the reasonable costs of such cure from any monies due to Landlord from Tenant, and (ii) any and all other rights available to it under law and equity.

16. ASSIGNMENT/SUBLEASE. This Agreement may not be assigned or subleased without the prior written consent of Landlord, which consent may be withheld for any reason or no reason in Landlord's sole discretion. Notwithstanding the foregoing, this Agreement may be assigned without Landlord consent to an entity that controls, is controlled by, or is under the common control of Tenant, or to any entity resulting from any merger or consolidation with Tenant, or to any partner of Tenant, or to any person or entity that acquires all of the assets of Tenant as a going concern, provided that Tenant shall indemnify and hold Landlord harmless. Notwithstanding anything contained herein to the contrary, Tenant acknowledges and agrees that any permitted assignee or subtenant shall be required to comply with all applicable laws including all licensing and/or permitting requirements imposed by all governmental entities having jurisdiction over the Premises.

17. NOTICES. All notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to

be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties hereto as follows:

If to Tenant: New Cingular Wireless PCS, LLC
Attn: Tower Asset Group - Lease Administration
Re: Cell Site #: GRANMI5603; Cell Site Name: Muskegon Nims (MI)
Fixed Asset #: 10124755
1025 Lenox Park Blvd NE
3rd Floor
Atlanta, GA 30319

With a copy to: New Cingular Wireless PCS, LLC
Attn.: Legal Dept – Network Operations
Re: Cell Site #: GRANMI5603; Cell Site Name: Muskegon Nims (MI)
Fixed Asset #: 10124755
208 S. Akard Street
Dallas, TX 75202-4206

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

If to Landlord: City of Muskegon
933 Terrace Street
Muskegon, MI 49443
Attn: Dave Baker

Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other party hereto as provided herein.

18. CONDEMNATION. In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within twenty-four (24) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses. Tenant will be entitled to reimbursement for any prepaid Rent on a *pro rata* basis.

19. CASUALTY. Landlord will provide notice to Tenant of any casualty or other harm affecting the Property within twenty-four (24) hours of the casualty or other harm. If any part of the Communication Facility or the Property is damaged by casualty or other harm as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to Landlord, which termination will be effective as of the date of such casualty or other harm. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a *pro rata* basis. Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property, but only until such time as Tenant is able to activate a replacement transmission facility at another location; notwithstanding the termination of this Agreement, such temporary facilities will be governed by all of the terms and conditions of this Agreement, including Rent. If Landlord or Tenant undertakes to rebuild or restore the Premises and/or the Communication Facility, as applicable, Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property

until the reconstruction of the Premises and/or the Communication Facility is completed. If Landlord determines not to rebuild or restore the Property, Landlord will notify Tenant of such determination within thirty (30) days after the casualty or other harm. If Landlord does not so notify Tenant and Tenant decides not to terminate under this Section 19, then Landlord will promptly rebuild or restore any portion of the Property interfering with or required for Tenant's Permitted Use of the Premises to substantially the same condition as existed before the casualty or other harm. Landlord agrees that the Rent shall be abated until the Property and/or the Premises are rebuilt or restored, unless Tenant places temporary transmission and reception facilities on the Property.

20. WAIVER OF LANDLORD'S LIENS. Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law; Landlord consents to Tenant's right to remove all or any portion of the Communication Facility from time to time in Tenant's sole discretion and without Landlord's consent.

21. TAXES.

(a) Landlord shall be responsible for (i) all taxes and assessments levied upon the lands, improvements and other property of Landlord including any such taxes that may be calculated by a taxing authority using any method, including the income method, (ii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with this Agreement, and (iii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with a sale of the Property or assignment of Rent payments by Landlord. Tenant shall be responsible for (x) all property taxes, real or personal, directly attributable to its occupancy and use of the Property, (y) any taxes and assessments attributable to and levied upon Tenant's leasehold improvements on the Premises if and as set forth in this Section 21 and (z) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with an assignment of this Agreement or sublease by Tenant. Nothing herein shall require Tenant to pay any inheritance, franchise, income, payroll, excise, privilege, rent, capital stock, stamp, documentary, estate or profit tax, or any tax of similar nature, that is or may be imposed upon Landlord.

(b) In the event Landlord receives a notice of assessment with respect to which taxes or assessments are imposed on Tenant's leasehold improvements on the Premises, Landlord shall provide Tenant with copies of each such notice immediately upon receipt, but in no event later than thirty (30) days after the date of such notice of assessment. If Landlord does not provide such notice or notices to Tenant in a timely manner and Tenant's rights with respect to such taxes are prejudiced by the delay, Landlord shall reimburse Tenant for any increased costs directly resulting from the delay and Landlord shall be responsible for payment of the tax or assessment set forth in the notice, and Landlord shall not have the right to reimbursement of such amount from Tenant. If Landlord provides a notice of assessment to Tenant within such time period and requests reimbursement from Tenant as set forth below, then Tenant shall reimburse Landlord for the tax or assessments identified on the notice of assessment on Tenant's leasehold improvements, which has been paid by Landlord. If Landlord seeks reimbursement from Tenant, Landlord shall, no later than thirty (30) days after Landlord's payment of the taxes or assessments for the assessed tax year, provide Tenant with written notice including evidence that Landlord has timely paid same, and Landlord shall provide to Tenant any other documentation reasonably requested by Tenant to allow Tenant to evaluate the payment and to reimburse Landlord.

(c) For any tax amount for which Tenant is responsible under this Agreement, Tenant shall have the right to contest, in good faith, the validity or the amount thereof using such administrative, appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same

under protest, or take such other steps as permitted by law. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate with respect to the commencement and prosecution of any such proceedings and will execute any documents required therefor. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant, to the extent the amounts were originally paid by Tenant. In the event Tenant notifies Landlord by the due date for assessment of Tenant's intent to contest the assessment, Landlord shall not pay the assessment pending conclusion of the contest, unless required by applicable law.

(d) Landlord shall not split or cause the tax parcel on which the Premises are located to be split, bifurcated, separated or divided without the prior written consent of Tenant, which consent shall not be unreasonably withheld.

(e) Tenant shall have the right but not the obligation to pay any taxes due by Landlord hereunder if Landlord fails to timely do so, in addition to any other rights or remedies of Tenant. In the event that Tenant exercises its rights under this Section 21(e) due to such Landlord default, Tenant shall have the right to deduct such tax amounts paid from any monies due to Landlord from Tenant as provided in Section 15(b), provided that Tenant may exercise such right without having provided to Landlord notice and the opportunity to cure per Section 15(b).

(f) Any tax-related notices shall be sent to Tenant in the manner set forth in Section 17. Promptly after the Effective Date, Landlord shall provide the following address to the taxing authority for the authority's use in the event the authority needs to communicate with Tenant. In the event that Tenant's tax address changes by notice to Landlord, Landlord shall be required to provide Tenant's new tax address to the taxing authority or authorities.

(g) Notwithstanding anything to the contrary contained in this Section 21, Tenant shall have no obligation to reimburse any tax or assessment for which the Landlord is reimbursed or rebated by a third party.

22. SALE OF PROPERTY.

(a) Landlord may sell the Property or a portion thereof to a third party, provided: (i) the sale is made subject to the terms of this Agreement; and (ii) if the sale does not include the assignment of Landlord's full interest in this Agreement, the purchaser must agree to perform, without requiring compensation from Tenant or any subtenant, any obligation of Landlord under this Agreement, including Landlord's obligation to cooperate with Tenant as provided hereunder.

(b) If Landlord, at any time during the Term of this Agreement, decides to rezone or sell, subdivide or otherwise transfer all or any part of the Premises, or all or any part of the Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such rezoning, sale, subdivision or transfer shall be subject to this Agreement and Tenant's rights hereunder. In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord or its successor shall send the documents listed below in this Section 22(b) to Tenant. Until Tenant receives all such documents, Tenant's failure to make payments under this Agreement shall not be an event of default and Tenant reserves the right to hold payments due under this Agreement.

- i. Old deed to Property
- ii. New deed to Property
- iii. Bill of Sale or Transfer
- iv. Copy of current Tax Bill
- v. New IRS Form W-9
- vi. Completed and Signed Tenant Payment Direction Form
- vii. Full contact information for new Landlord including phone number(s)

(c) Landlord agrees not to sell, lease or use any areas of the Property for the installation, operation or maintenance of other wireless communication facilities if such installation, operation or

maintenance would interfere with Tenant's Permitted Use or communications equipment as determined by radio propagation tests performed by Tenant in its sole discretion. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Tenant, Landlord shall be prohibited from selling, leasing or using any areas of the Property for purposes of any installation, operation or maintenance of any other wireless communication facility or equipment.

(d) The provisions of this Section 22 shall in no way limit or impair the obligations of Landlord under this Agreement, including interference and access obligations.

23. RIGHT OF FIRST REFUSAL. Notwithstanding the provisions contained in Section 22, if at any time after the Effective Date, Landlord receives a bona fide written offer from a third party seeking any sale, conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the Premises, including without limitation any offer seeking an assignment or transfer of the Rent payments associated with this Agreement or an offer to purchase an easement with respect to the Premises ("Offer"), Landlord shall immediately furnish Tenant with a copy of the Offer. Tenant shall have the right within thirty (30) days after it receives such copy to match the financial terms of the Offer and agree in writing to match such terms of the Offer. Such writing shall be in the form of a contract substantially similar to the Offer but Tenant may assign its rights to a third party. If Tenant chooses not to exercise this right or fails to provide written notice to Landlord within the thirty (30) day period, Landlord may sell, convey, assign or transfer such property interest in or related to the Premises pursuant to the Offer, subject to the terms of this Agreement. If Landlord attempts to sell, convey, assign or transfer such property interest in or related to the Premises without complying with this Section 23, the sale, conveyance, assignment or transfer shall be void. Tenant shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this Agreement until Landlord complies with this Section 23. Tenant's failure to exercise the right of first refusal shall not be deemed a waiver of the rights contained in this Section 23 with respect to any future proposed conveyances as described herein.

24. MISCELLANEOUS.

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by Landlord and Tenant. No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this Agreement or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) **Memorandum/Short Form Lease.** Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum of Lease substantially in the form attached as **Exhibit 24(b)**. Either party may record this Memorandum of Lease at any time during the Term, in its absolute discretion. Thereafter during the Term, either party will, at any time upon fifteen (15) business days' prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease.

(c) **Limitation of Liability.** Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.

(d) **Compliance with Law.** Tenant agrees to comply with all federal, state and local laws, orders, rules and regulations ("Laws") applicable to Tenant's use of the Communication Facility on the Property. Landlord agrees to comply with all Laws relating to Landlord's ownership and use of the Property and any improvements on the Property.

(e) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(f) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and

agreements with respect to the subject matter of this Agreement. Exhibits are numbered to correspond to the Section wherein they are first referenced. Except as otherwise stated in this Agreement, each party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution and performance of this Agreement and the transactions it contemplates.

(g) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(h) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term “including” will be interpreted to mean “including but not limited to”; (iii) whenever a party’s consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms “termination” or “expiration” are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; (viii) the singular use of words includes the plural where appropriate; and (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(i) **Affiliates.** All references to “Tenant” shall be deemed to include any Affiliate of New Cingular Wireless PCS, LLC using the Premises for any Permitted Use or otherwise exercising the rights of Tenant pursuant to this Agreement. “Affiliate” means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. “Control” of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

(j) **Survival.** Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(k) **W-9.** As a condition precedent to payment, Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant, including any change in Landlord’s name or address. A copy of the IRS Form 1-9 in its current form is attached hereto as **Exhibit 24(k)**.

(l) **Execution/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart.

(m) **Attorneys’ Fees.** In the event that any dispute between the parties related to this Agreement should result in litigation, the prevailing party in such litigation shall be entitled to recover from the other party all reasonable fees and expenses of enforcing any right of the prevailing party, including reasonable attorneys’ fees and expenses. Prevailing party means the party determined by the court to have most nearly prevailed even if such party did not prevail in all matters. This provision will not be construed to entitle any party other than Landlord, Tenant and their respective Affiliates to recover their fees and expenses.

(n) **WAIVER OF JURY TRIAL.** EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING UNDER ANY THEORY OF LIABILITY ARISING OUT OF OR

IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE TRANSACTIONS IT CONTEMPLATES.

(o) **No Additional Fees/Incidental Fees.** Unless otherwise specified in this Agreement, all rights and obligations set forth in the Agreement shall be provided by Landlord and/or Tenant, as the case may be, at no additional cost. No unilateral fees or additional costs or expenses are to be applied by either party to the other party, for any task or service including, but not limited to, review of plans, structural analyses, consents, provision of documents or other communications between the parties.

(p) **Further Acts.** Upon request, Landlord will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents, and assurances as Tenant may request from time to time in order to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all transactions and Permitted Use contemplated by this Agreement.

(o) **Estoppel.** Landlord acknowledges that there are not any owed or outstanding rental payments or fees due on the part of Tenant.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the Effective Date.

“LANDLORD”

City of Muskegon
a Michigan municipal corporation

By: _____
Print Name: Ken Johnson
Its: Mayor
Date: _____

By: _____
Print Name: Ann Meisch
Its: City Clerk
Date: _____

“TENANT”

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____
Print Name: _____
Its: _____
Date: _____

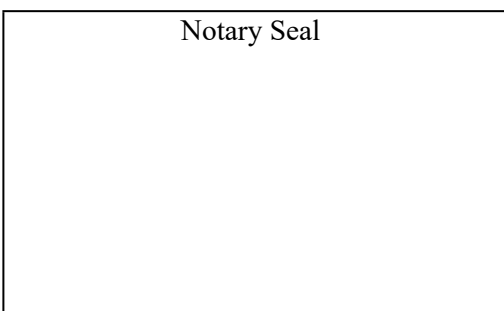
[ACKNOWLEDGMENTS APPEAR ON NEXT TWO PAGES]

TENANT ACKNOWLEDGMENT

STATE OF _____)
) SS.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of AT&T Mobility Corporation, the Manager of **New Cingular Wireless PCS, LLC, a Delaware limited liability company**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.



(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary Public in and for the State of _____

My appointment expires: _____

LANDLORD ACKNOWLEDGMENT

STATE OF _____)
)
COUNTY OF _____)

I CERTIFY that on _____, 202__, _____ [name of representative] personally came before me and acknowledged under oath that he or she:

- (a) is the _____ [title] of **City of Muskegon, a Michigan municipal corporation**, the corporation named in the attached instrument;
- (b) was authorized to execute this instrument on behalf of the corporation; and
- (c) executed the instrument as the act of the corporation.

Notary Public: _____
My Commission Expires: _____

EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

Page ___ of ___

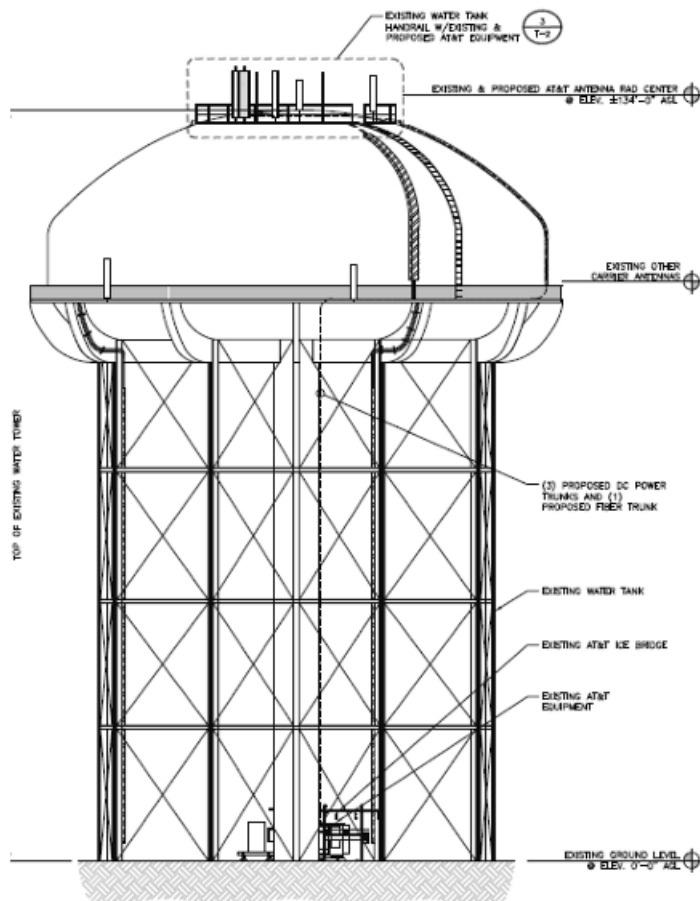
to the Structure Lease Agreement dated _____, 202__, by and between City of Muskegon, a Michigan municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property is legally described as follows:

Nims Tank –

A triangular piece of land bounded by Nims Street, Superior Street and Dale Avenue

The Premises are described and/or depicted as follows:



Notes:

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENT AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENT AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.
4. THE TYPE, NUMBER AND MOUNTING POSITIONS AND LOCATIONS OF ANTENNAS AND TRANSMISSION LINES ARE ILLUSTRATIVE ONLY. ACTUAL TYPES, NUMBERS AND MOUNTING POSITIONS MAY VARY FROM WHAT IS SHOWN ABOVE.

EXHIBIT 10(b)

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

[FOLLOWS ON NEXT PAGE]

**Recording Requested By
& When Recorded Return To:**

Prepared by, and
after recording return to:
MD7, LLC
(469) 965-9850
950 W. Bethany Drive, Suite 700
Allen, TX 75013
APN: _____

(Space Above This Line For Recorder's Use Only)

Cell Site No.: GRANMI5603
Cell Site Name: Muskegon Nims (MI)
Fixed Asset No.: 10124755
State: Michigan
County: Muskegon

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement"), dated as of the last of the signature dates below (the **"Effective Date"**), is entered into by and among City of Muskegon, a Michigan municipal corporation, having a mailing address of 933 Terrace Street, Muskegon, MI 49443 (**"Lender"**), _____, a _____, having a mailing address of _____ (**"Landlord"**), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 (**"Tenant"**).

RECITALS:

- A. Tenant has entered into a certain Structure Lease Agreement dated _____, 202__, (the **"Lease"**) with Landlord, covering property more fully described in **Exhibit 1** attached hereto and made a part hereof (the **"Premises"**); and
- B. Lender has made a loan to Landlord in the original principal sum of _____ Dollars (\$ _____), which loan has been secured by a certain _____ dated _____, and recorded on _____, as Document Number _____ in the Official Records of the County Recorder of _____ County, State of _____ (the **"Deed of Trust"**), upon that certain real property located at _____, in the City of _____, County of _____, State of _____ [APN: _____] (**"Property"**), a part of which Property contains the Premises; and
- C. Tenant desires to be assured of continued occupancy of the Premises under the terms of the Lease and subject to the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Lender hereby consents to the Lease to the extent that Lender's consent is required, if at all, pursuant to the Deed of Trust or any other agreement(s) pertaining to the Property.

2. So long as this Agreement will remain in full force and effect, the Lease is and will be subject and subordinate to the lien and effect of the Deed of Trust insofar as it affects the real property and fixtures of which the Premises forms a part (but not Tenant's trade fixtures and other personal property), and to all renewals, modifications, consolidations, replacements and extensions thereof, to the full extent of the principal sum secured thereby and interest thereon, with the same force and effect as if the Deed of Trust had been executed, delivered, and duly recorded among the above-mentioned public records, prior to the execution and delivery of the Lease.

3. In the event Lender takes possession of the Premises as mortgagee-in-possession or lender-in-possession or its substantive equivalent, including but not limited to, by deed in lieu of foreclosure or foreclosure of the Deed of Trust, Lender agrees not to affect or disturb Tenant's right to possession of the Premises and any of Tenant's other rights under the Lease in the exercise of Lender's rights so long as Tenant is not then in default, after applicable notice and/or grace periods, under any of the terms, covenants, or conditions of the Lease.

4. In the event that Lender succeeds to the interest of Landlord or other landlord under the Lease and/or to title to the Premises, Lender and Tenant hereby agree to be bound to one another under all of the terms, covenants and conditions of the Lease; accordingly, from and after such event, Lender and Tenant will have the same remedies against one another for the breach of an agreement contained in the Lease as Tenant and Landlord had before Lender succeeded to the interest of Landlord; provided, however, that Lender will not be:

- (a) personally liable for any act or omission of any prior landlord (including Landlord); or
- (b) bound by any rent or additional rent which Tenant might have paid for more than the payment period as set forth under the Lease (one month, year etc.) in advance to any prior landlord (including Landlord).

5. In the event that Lender or anyone else acquires title to or the right to possession of the Premises upon the foreclosure of the Deed of Trust, or upon the sale of the Premises by Lender or its successors or assigns after foreclosure or acquisition of title in lieu thereof or otherwise, Tenant agrees not to seek to terminate the Lease by reason thereof, but will remain bound unto the new owner so long as the new owner is bound to Tenant (subject to paragraph 4 above) under all of the terms, covenants and conditions of the Lease.

6. Lender understands, acknowledges and agrees that notwithstanding anything to the contrary contained in the Deed of Trust and/or any related financing documents, including, without limitation, any UCC-1 financing statements, Lender will acquire no interest in any furniture, equipment, trade fixtures and/or other property installed by Tenant on the Property. Lender hereby expressly waives any interest which Lender may have or acquire with respect to such furniture, equipment, trade fixtures and/or other property of Tenant now, or hereafter, located on or affixed to the Property or any portion thereof and Lender hereby agrees that same do not constitute realty regardless of the manner in which same are attached or affixed to the Property.

7. This Agreement will be binding upon and will extend to and benefit the successors and assigns of the parties hereto and to any assignees or subtenants of Tenant which are permitted under the Lease. The term "**Lender**", when used in this Agreement will be deemed to include any person or entity which acquires title to or the right to possession of the Premises by, through or under Lender and/or the Deed of Trust, whether directly or indirectly.

8. This Agreement may be executed in two (2) or more counterpart originals, and when the original counterpart signatures are assembled together, shall constitute one integrated instrument. All parties need not sign the same counterpart.

9. This Agreement will be governed by the laws of the state in which the Premises are located without regard to conflicts of law.

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed as of the last signature date below.

"LANDLORD"

City of Muskegon,
a Michigan municipal corporation

By: _____
Name: _____
Its: _____
Date: _____, 20__

"TENANT"

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____
Name: _____
Its: _____
Date: _____, 20__

"LENDER"

_____,
a _____

By: _____
Name: _____
Its: _____
Date: _____, 20__

[ACKNOWLEDGMENTS APPEAR ON THE FOLLOWING THREE (3) PAGES]

LANDLORD ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____)

I CERTIFY that on _____, 202__, _____ [name
of representative] personally came before me and acknowledged under oath that he or she:

- (a) is the _____ [title] of **City of Muskegon, a Michigan municipal corporation**, the corporation named in the attached instrument;
- (b) was authorized to execute this instrument on behalf of the corporation; and
- (c) executed the instrument as the act of the corporation.

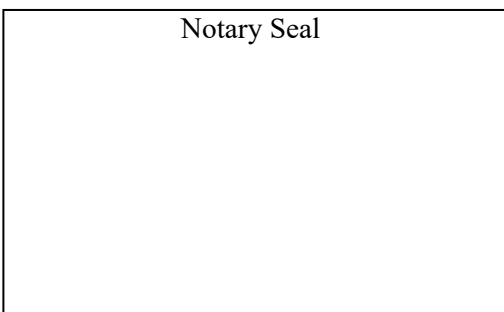
Notary Public: _____
My Commission Expires: _____

TENANT ACKNOWLEDGMENT

STATE OF _____)
) SS.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that he/she signed this instrument,
on oath stated that he/she was authorized to execute the instrument and acknowledged it as the
_____ of AT&T Mobility Corporation, the Manager of **New Cingular**
Wireless PCS, LLC, a Delaware limited liability company, to be the free and voluntary act of such party
for the uses and purposes mentioned in the instrument.

DATED: _____.



(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary Public in and for the State of _____

My appointment expires: _____

STATE OF _____)
)
COUNTY OF _____) SS.

DATED: _____.

My appointment expires: _____

EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

The Property is legally described as follows:

The Premises is legally described as follows:

[One (1) Page Depiction of the Premises Suitable for Recording in _____ County
Appears on Following Page]

EXHIBIT 11

ENVIRONMENTAL DISCLOSURE

Landlord represents and warrants that the Property, as of the Effective Date, is free of hazardous substances except as follows:

None.

EXHIBIT 12
STANDARD ACCESS LETTER
[FOLLOWS ON NEXT PAGE]

{This Letter Goes On Landlord's Letterhead}

[Insert Date]

Building Staff / Security Staff
[Landlord, Lessee, Licensee]
[Street Address]
[City, State, Zip]

Re: Authorized Access granted to []

Dear Building and Security Staff,

Please be advised that we have signed a lease with [] permitting [] to install, operate and maintain telecommunications equipment at the property. The terms of the lease grant [] and its representatives, employees, agents and subcontractors ("representatives") 24 hour per day, 7 day per week access to the leased area.

To avoid impact on telephone service during the day, [] representatives may be seeking access to the property outside of normal business hours. [] representatives have been instructed to keep noise levels at a minimum during their visit.

Please grant the bearer of a copy of this letter access to the property and to leased area. Thank you for your assistance.

Landlord Signature

EXHIBIT 24(b)
MEMORANDUM OF LEASE
[FOLLOWS ON NEXT PAGE]

PARCEL #: 24-129-400-0002-00

**Prepared by, and
after recording return to:**

MD7, LLC
(469) 965-9850
950 W. Bethany Drive, Suite 700
Allen, TX 75013

Cell Site No.: GRANMI5603
Cell Site Name: Muskegon Nims (MI)
Fixed Asset No.: 10124755
State: Michigan
County: Muskegon

**MEMORANDUM
OF
LEASE**

This Memorandum of Lease is entered into on this ____ day of _____, 202__, by and between City of Muskegon, a Michigan municipal corporation, having its principal office/residing at 933 Terrace Street, Muskegon, MI 49443 (hereinafter called “**Landlord**”), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 (“**Tenant**”).

1. Landlord and Tenant entered into a certain Structure Lease Agreement (“**Agreement**”) on the ____ day of _____, 202__, for the purpose of installing, operating and maintaining a communication facility and other improvements. All of the foregoing is set forth in the Agreement.
2. The initial lease term will be ten (10) years commencing on February 1, 2024, with five (5) successive automatic five (5) year options to renew.
3. The portion of the land being leased to Tenant and associated easements are described in **Exhibit 1** annexed hereto.
4. The Agreement gives Tenant a right of first refusal in the event Landlord receives a bona fide written offer from a third party seeking any sale, conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the Premises, including without limitation any offer seeking an assignment or transfer of the Rent payments associated with the Agreement or an offer to purchase an easement with respect to the Premises.
5. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall

control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

LANDLORD:

City of Muskegon,
a Michigan municipal corporation

By: _____
Print Name: _____
Its: _____
Date: _____

TENANT:

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____
Print Name: _____
Its: _____
Date: _____

[ACKNOWLEDGMENTS APPEAR ON TWO NEXT PAGES]

LANDLORD ACKNOWLEDGMENT

STATE OF _____)
)
COUNTY OF _____)

I CERTIFY that on _____, 202__, _____ [name of representative] personally came before me and acknowledged under oath that he or she:

- (a) is the _____ [title] of **City of Muskegon, a Michigan municipal corporation**, the corporation named in the attached instrument;
- (b) was authorized to execute this instrument on behalf of the corporation; and
- (c) executed the instrument as the act of the corporation.

Notary Public: _____
My Commission Expires: _____

TENANT ACKNOWLEDGMENT

STATE OF _____)
) SS.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of AT&T Mobility Corporation, the Manager of **New Cingular Wireless PCS, LLC, a Delaware limited liability company**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.

Notary Seal

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary Public in and for the State of _____

My appointment expires: _____

EXHIBIT 1 TO MEMORANDUM OF LEASE
DESCRIPTION OF PROPERTY AND PREMISES

Page ____ of ____

to the Memorandum of Lease dated _____, 20____, by and between City of Muskegon, a Michigan municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property is legally described as follows:

Nims Tank –

A triangular piece of land bounded by Nims Street, Superior Street and Dale Avenue

The Premises are described and/or depicted as follows:

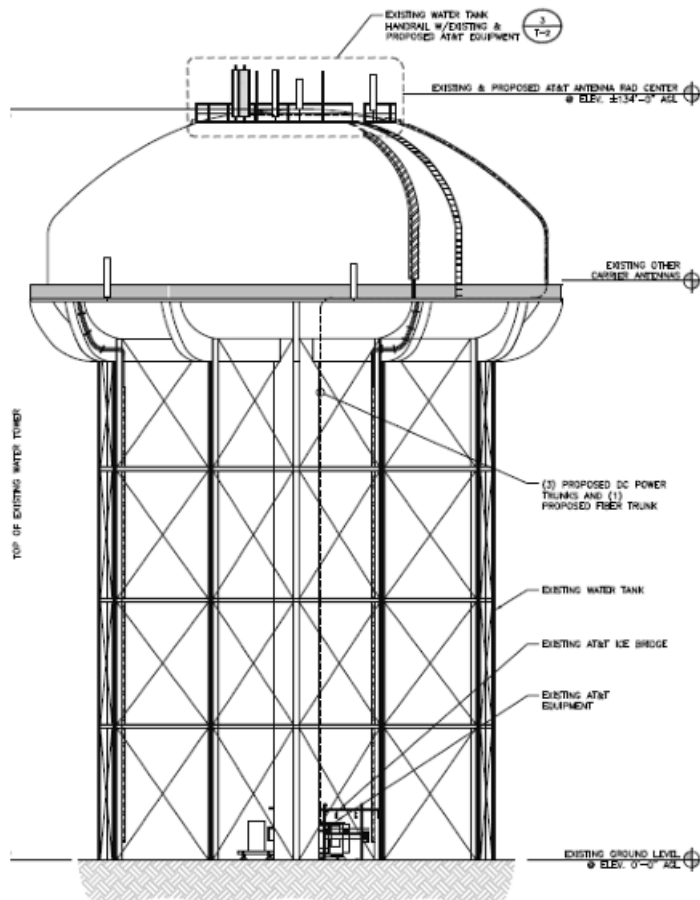


EXHIBIT 24(k)

IRS FORM W-9

Page 1 of 1

[IRS FORM W-9 (REVISED OCTOBER 2018)
APPEAR ON FOLLOWING PAGE]

Request for Taxpayer Identification Number and Certification

▶ Go to www.irs.gov/FormW9 for instructions and the latest information.

Give Form to the
requester. Do not
send to the IRS.

Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. ☐ Individual/sole proprietor or single-member LLC ☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. ☐ Other (see instructions) ▶ _____ ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ (Applies to accounts maintained outside the U.S.)
	5 Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)
	6 City, state, and ZIP code	
	7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number									
				-			-		
or									
Employer identification number									
				-					

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ▶ _____	Date ▶ _____
------------------	---	---------------------

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 9, 2024	Title: Marshall Water Tower Cellular Antenna Lease Renewal																								
Submitted by: Dan VanderHeide, Public Works Director	Department: Public Works																								
Brief Summary: Staff requests authorization to enter into a 10 year lease renewal agreement with up to 25 years of extension options with New Cingular Wireless PCS, LLC for space on and near the Marshall water tower for a cellular antenna and related equipment.																									
Detailed Summary & Background: Commission authorized Maralat, LLC, a cellular antenna industry consultant, to enter into negotiations on the City's behalf with AT&T for renewal of their lease on the Marshall water tower. Staff, legal counsel and Maralat have been working with AT&T to finalize the terms of a lease extension and have reached an agreement as presented in the attached lease agreement. The table below summarizes the terms in both the prior lease and this proposed extension.																									
<table border="1"><thead><tr><th>Component</th><th>Prior Lease</th><th>Proposed Renewal</th></tr></thead><tbody><tr><td>Rental Rate</td><td>\$4,938.77</td><td>\$4,850</td></tr><tr><td>Annual Escalation</td><td>3%</td><td>3%</td></tr><tr><td>Commencement Date</td><td>N/A</td><td>February 1, 2024</td></tr><tr><td>Termination Date</td><td>September 30, 2018</td><td>January 31, 2059</td></tr><tr><td>Termination Fee (Initial 10-Year Term)</td><td>None</td><td>100% of Rent for 5 Years, then 50%</td></tr><tr><td>Equipment Upgrade Fee</td><td>None</td><td>\$325 per Month Per New Antenna</td></tr><tr><td>Administrative Signing Bonus</td><td>None</td><td>\$7,500</td></tr></tbody></table>		Component	Prior Lease	Proposed Renewal	Rental Rate	\$4,938.77	\$4,850	Annual Escalation	3%	3%	Commencement Date	N/A	February 1, 2024	Termination Date	September 30, 2018	January 31, 2059	Termination Fee (Initial 10-Year Term)	None	100% of Rent for 5 Years, then 50%	Equipment Upgrade Fee	None	\$325 per Month Per New Antenna	Administrative Signing Bonus	None	\$7,500
Component	Prior Lease	Proposed Renewal																							
Rental Rate	\$4,938.77	\$4,850																							
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Commencement Date	N/A	February 1, 2024																							
Termination Date	September 30, 2018	January 31, 2059																							
Termination Fee (Initial 10-Year Term)	None	100% of Rent for 5 Years, then 50%																							
Equipment Upgrade Fee	None	\$325 per Month Per New Antenna																							
Administrative Signing Bonus	None	\$7,500																							
The proposed lease is the same as the Nims water tower extension included on tonight's agenda. Although the rental rate is slightly decreased at the start of the lease, Maralat ensures staff that it reflects the best available rates and terms available to the City and the lease includes other items such as a termination fee, an upgrade fee and an administrative signing bonus that make the slight rent reduction less impactful overall, and the extension continues the 3% annual escalator.																									
Goal/Focus Area/Action Item Addressed: Key Focus Areas: Decrease infrastructure burden on residents, Sustainability in financial practices and infrastructure, Increase revenue																									

Goal/Action Item:

2027 GOAL 4: FINANCIAL INFRASTRUCTURE - Increase revenue

Amount Requested:

N/A

Budgeted Item:

Yes	X	No		N/A		
-----	---	----	--	-----	--	--

Fund(s) or Account(s):

591 (Water)

Budget Amendment Needed:

Yes		No	X	N/A		
-----	--	----	---	-----	--	--

Recommended Motion:

Authorize staff to enter into a 10 year lease renewal agreement with up to 25 years of extension options with New Cingular Wireless PCS, LLC for space on and near the Marshall water tower for a cellular antenna and related equipment.

Approvals:

Immediate Division Head	X	
Information Technology		
Other Division Heads	X	
Communication		
Legal Review	X	

Guest(s) Invited / Presenting:

No

Market: MI / IN
Cell Site Number: GRANMI5602
Cell Site Name: Muskegon Marshall WT
Fixed Asset Number: 10124756

STRUCTURE LEASE AGREEMENT

THIS STRUCTURE AGREEMENT (“**Agreement**”), dated as of the latter of the signature dates below (the “**Execution Date**”) and effective _____, 2024 (the “**Effective Date**”), is entered into by City of Muskegon, a Michigan municipal corporation, having a mailing address of 933 Terrace Street, Muskegon, MI 49443 (“**Landlord**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 (“**Tenant**”).

BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, as described on **Exhibit 1**, improved with a water tower (the “**Water Tower**”), together with all rights and privileges arising in connection therewith, located at 275 Marshall Street, in the County of Muskegon, State of Michigan (collectively, the “**Property**”). Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

Landlord and Tenant (or their predecessors-in-interest) entered into that certain Site Lease dated October 1, 1998, as amended by that certain First Amendment to the Site Lease dated January 29, 2009, as amended by that certain Second Amendment to the Site Lease dated August 17, 2012, as amended by that certain Third Amendment to the Site Lease dated September 23, 2014, and as further amended by that certain Fourth Amendment to the Site Lease dated November 10, 2014 (collectively, the “**Prior Lease**”), for the Premises defined below and the term of the Prior Lease expired on September 30, 2018. Landlord and Tenant agree that this Agreement shall be effective as of the Effective Date and as of the Effective Date, the Prior Lease shall be terminated and of no further force and effect, and this Agreement replaces and supersedes the Prior Lease.

The parties agree as follows:

1. **LEASE OF PREMISES.** Landlord hereby leases to Tenant a portion of the Property consisting of:

(a) approximately 100 square feet including the air space above such ground space, as described on attached **Exhibit 1**, for the placement of Tenant’s Communication Facility;

(b) space for any structural steel or other improvements to support Tenant’s equipment (collectively, the space referenced in (a) and (b) is the “**Equipment Space**”);

(c) that certain space on the Water Tower, as generally depicted on **Exhibit 1**, including the air space above same, where Tenant shall have the right to install its antennas and other equipment (collectively, the “**Antenna Space**”); and

(d) those certain areas where Tenant’s conduits, wires, cables, cable trays and other necessary connections are located between the Equipment Space and the Antenna Space, and between the Equipment Space and the electric power, telephone, and fuel sources for the Property (hereinafter collectively referred to as the “**Connection Space**”). Landlord agrees that Tenant shall have the right to install connections between Tenant’s equipment in the Equipment Space and Antenna Space; and between Tenant’s equipment in the Equipment Space and the electric power, telephone, and fuel sources for the Property, and any other improvements and will require written approval before installing a flammable fuel source such as natural gas or propane, which consent may be withheld in Landlord’s sole discretion. Landlord further agrees that Tenant shall have the right to install, replace and maintain utility lines, wires, poles, cables, conduits, pipes and other

necessary connections over or along any right-of-way extending from the aforementioned public right-of-way to the Premises. All new installations of equipment and services by Tenant at the Premises shall require prior notice and approval by Landlord and Landlord's inspections department, such approvals not to be unreasonably withheld, conditioned or delayed. The Equipment Space, Antenna Space, and Connection Space, are hereinafter collectively referred to as the "**Premises.**"

2. PERMITTED USE. Tenant, its personnel, invitees, contractors, agents, subtenants, or its authorized sublessees, or assigns may use the Premises, at no additional cost or expense, for the transmission and reception of any and all communications signals and, to modify, supplement, replace, upgrade, expand, or refurbish the equipment, as provided herein, and/or the improvements thereon (collectively, the "Communications Facility") or relocate the same within the Premises, at any time during the term of the Agreement, so long as these changes do not exceed the structural capacity of the tower/structure at this height, or at Tenant's sole expense upgrade the structural capacity, or in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services or for any other reason. Before Tenant commences any modification which increase the structural load on the tower/structure, Tenant shall provide Landlord with a passing structural analysis. Tenant may operate the Communications Facility at any frequency for which it has all requisite licenses and permits so long as these frequencies do not cause an interference issue with an existing lawfully installed and properly operated tenant on the tower/structure. Landlord shall reasonably cooperate in obtaining governmental and other use permits or approvals necessary or desirable for the foregoing permitted use. As of the Effective Date of this Agreement, Tenant has the right to install nine (9) antennas, as well as any antennae required for E911 purposes and/or for Tenant to keep its Communications Facility in compliance with all applicable laws and regulations as required herein. Should Tenant increase the quantity of antennas beyond nine (9), then Tenant shall increase its monthly rental payment to Landlord by \$325.00 for each additional antenna. Said rental increase shall commence on the 1st day of the month after Tenant begins the equipment installation. This rental increase shall not apply to antennas added for E911 purposes or for Tenant to keep the Communications Facility in compliance with any applicable law or regulations as required herein. If Landlord does not comply with the terms of this section, in addition to any other rights it may have at law, Tenant may terminate the Agreement and shall have no further liability to Landlord. If Landlord does not comply with the terms of this section, Tenant will have the right to exercise any and all rights available to it under law and equity, including the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant. Landlord and Tenant agree that any portion of the Communication Facility that may be conceptually described on **Exhibit 1** will not be deemed to limit Tenant's Permitted Use. If **Exhibit 1** includes drawings of the initial installation of the Communication Facility, Landlord's execution of this Agreement will signify Landlord's approval of **Exhibit 1**. During the Term, Tenant cannot materially interfere with or block Landlord's access with the main functions and day-to-day operations of the Water Tower or with existing tenants as of the Effective Date. For a period of ninety (90) days following the start of construction, Landlord grants Tenant, its subtenants, licensees and sublicensees, the right to use such portions of the Landlord's contiguous, adjoining or surrounding property (the "**Surrounding Property**") as may reasonably be required during construction and installation of the Communication Facility. Tenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the Property's main entry point to the equipment shelter or cabinet, install a generator and to make other improvements, alterations, upgrades or additions appropriate for Tenant's Permitted Use, including the right to construct a fence around the Premises or equipment (so long as the fence does not unreasonably interfere with Landlord's existing use of the Water Tower or the existing use of the Water Tower by tenants existing as of the Effective Date), install warning signs to make individuals aware of risks, install protective barriers, install any other control measures reasonably required by Tenant's safety procedures or applicable law, and undertake any other appropriate means to secure the Premises or equipment at Tenant's expense. Tenant has the right, to install, modify, supplement, replace, upgrade, expand the Communication Facility (including, for example, increasing the number of antennas or adding microwave dishes) or relocate the Communication Facility within the Premises at any time during the Term. Tenant will be allowed to make such alterations to the Property in order to ensure that the

Communication Facility complies with all applicable federal, state or local laws, rules or regulations. In the event Tenant desires to modify or upgrade the Communication Facility, in a manner that requires an additional portion of the Property (the “**Additional Premises**”) for such modification or upgrade, Landlord agrees to lease to Tenant the Additional Premises, upon the same terms and conditions set forth herein, except that the Rent shall increase, in conjunction with the lease of the Additional Premises by the amount equivalent to the then-current per square foot rental rate charged by Landlord to Tenant times the square footage of the Additional Premises. Landlord agrees to take such actions and enter into and deliver to Tenant such documents as Tenant reasonably requests in order to effect and memorialize the lease of the Additional Premises to Tenant.

3. TERM.

(a) The initial lease term will be ten (10) years (the “**Initial Term**”), commencing on February 1, 2024. The Initial Term will terminate on the tenth (10th) anniversary of the Initial Term.

(b) This Agreement will automatically renew for five (5) additional five (5) year term(s) (each additional five (5) year term shall be defined as an “**Extension Term**”), upon the same terms and conditions set forth herein unless Tenant notifies Landlord in writing of Tenant’s intention not to renew this Agreement at least sixty (60) days prior to the expiration of the Initial Term or the then-existing Extension Term.

(c) Unless (i) Landlord or Tenant notifies the other in writing of its intention to terminate this Agreement at least six (6) months prior to the expiration of the final Extension Term, or (ii) the Agreement is terminated as otherwise permitted by this Agreement prior to the end of the final Extension Term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter (“**Annual Term**”) until terminated by either party hereto by giving to the other party hereto written notice of its intention to so terminate at least six (6) months prior to the end of any such Annual Term. Monthly Rent during such Annual Terms shall be equal to the Rent paid for the last month of the final Extension Term. If Tenant remains in possession of the Premises after the termination of this Agreement, then Tenant will be deemed to be occupying the Premises on a month-to-month basis (the “**Holdover Term**”), subject to the terms and conditions of this Agreement.

(d) The Initial Term, any Extension Terms, any Annual Terms and any Holdover Term are collectively referred to as the “**Term.**”

4. RENT.

(a) Commencing on February 1, 2024 (the “**Rent Commencement Date**”), Tenant will pay Landlord on or before the fifth (5th) day of each calendar month in advance, Four Thousand Eight Hundred Fifty and No/100 Dollars (\$4,850.00) (the “**Rent**”), at the address set forth above. The Rent shall continue during the Term, subject to adjustment as provided herein: on each anniversary of the Rent Commencement Date, including throughout any Extension Term exercised, the Rent will increase by three percent (3%) over the Rent paid during the previous year, and every year thereafter. In any partial month occurring after the Rent Commencement Date, the Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within ninety (90) days after the Rent Commencement Date. In addition to Rent, Tenant shall owe Landlord a one-time signing bonus of Seven Thousand Five Hundred and No/100 Dollars (\$7,500.00) upon the full execution of this Agreement.

(b) Modification of Tenant’s Obligation to Pay – Rent Guarantee. Notwithstanding Tenant’s obligations to pay Rent set forth under the Agreement, for a sixty (60) month period commencing February 1, 2024, and ending January 31, 2029, Tenant’s obligation to pay the entire Rent is guaranteed in full for such period and such obligation will not be subject to offset or cancellation by Tenant. Following such sixty (60) month period, for a sixty (60) month period commencing February 1, 2029 and ending January 31, 2034, Tenant’s obligation to pay Rent is guaranteed in an amount of no less than 50% of the Rent due for such period and such obligation will not be subject to offset or cancellation by Tenant. For purposes of this Agreement, such one hundred twenty (120) month period shall be referred to as the “**Rent Guarantee Period**”. The Termination Fee (as hereinafter defined) shall not apply and shall not be payable by Tenant if Tenant terminates as provided herein within the Rent Guarantee Period. Notwithstanding the foregoing, if Landlord

exercises any of Landlord's rights to terminate the Agreement, if any, other than the Landlord's right to terminate the Agreement due to the default of Tenant under the terms of the Agreement beyond any applicable grace period, Tenant will be released from any and all of its obligations to pay Rent during the Rent Guarantee Period as of the effective date of the termination. In addition, Tenant shall be released from any and all of its obligations to pay Rent during the Rent Guarantee Period if the following shall occur: (i) Landlord is in breach of the Agreement, including but not limited to any default under the terms of the Agreement beyond any applicable grace and cure period; (ii) there is a foreclosure of the Agreement which results in a termination of the Agreement; or (iii) the Landlord shall require Tenant to relocate Tenant's equipment and facilities to a location that is not acceptable to Tenant in its reasonable business judgment if allowed for in the Agreement. If the Agreement is further modified in the future with an obligation for Tenant to pay additional Rent, the payment of Rent guarantee established in this paragraph will not be diminished or limited, but such Rent guarantee will not extend to that future additional Rent obligation.

(c) All charges payable under this Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of this subsection shall survive the termination or expiration of this Agreement.

5. APPROVALS.

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises and Property for Tenant's Permitted Use and Tenant's ability to obtain and maintain all governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by Tenant for its use of the Premises, including without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"). Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for Tenant's Permitted Use under this Agreement and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals. In addition, Tenant shall have the right to initiate the ordering and/or scheduling of necessary utilities.

(b) Tenant, at Tenant's sole cost and expense, has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

6. TERMINATION. This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 15 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant; or if Tenant determines, in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

(c) by Tenant, upon written notice to Landlord, if Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory for its intended uses;

(d) by Tenant upon written notice to Landlord for any reason or no reason, at any time prior to commencement of construction by Tenant;

(e) by Tenant upon sixty (60) days' prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to six (6) months' Rent, at the then-current rate (the "Termination Fee"), provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any termination provision contained in any other Section of this Agreement, including the following: Section 5 Approvals, Section 6(a) Termination, Section 6(b) Termination, Section 6(c) Termination, Section 6(d) Termination, Section 8 Interference, Section 11(d) Environmental, Section 18 Condemnation or Section 19 Casualty; or,

(f) by Landlord upon any of the following events: (i) upon two (2) years prior written notice if Landlord determines that after the Initial Term of this Agreement, or upon two (2) years prior written notice before to the conclusion of any renewals of this Agreement, that the Tenant's Permitted Use of the Premises under this Agreement is no longer in the Landlord's best interest, in its sole discretion; (ii) if Landlord determines that Tenant's Permitted Use of the Premises under this Agreement (including Tenant's operation of its communications equipment) is interfering with the rights of Landlord or other tenants currently on the Property and that the issue cannot be remediated by Tenant; or (iii) if Tenant is in default of the terms of this Agreement and the default has not been cured under Section 15.

7. **INSURANCE.** During the Term, Tenant, at Tenant's sole cost and expense, will carry and maintain in effect a commercial general liability insurance per ISO form CG 00 01 or its equivalent, insuring against bodily injury and property damage. Said policy of commercial general liability insurance will provide a combined single limit of One Million and No/100 Dollars (\$1,000,000.00) per occurrence and in aggregate. Tenant shall provide Landlord with a certificate of insurance evidencing such coverage which states that the carrier has insured Tenant for the required insurance policies liabilities under this Lease. Tenant will provide at least 30 days written notice to Landlord, of cancellation or non-renewal of any required coverage that is not replaced.. Landlord shall be included to the policy as an additional insured by endorsement as respects to this Agreement.

8. **INTERFERENCE.**

(a) Prior to or concurrent with the execution of this Agreement, Landlord has provided or will provide Tenant with a list of radio frequency user(s) on the Property as of the Effective Date; provided, however, it shall be Tenant's sole responsibility to determine the actual radio frequencies used by such user(s). Tenant warrants that its use of the Premises will not interfere with those existing radio frequency uses on the Property, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Landlord will not grant, after the Effective Date, a lease, license or any other right to any third party, if the exercise of such grant may in any way adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement.

(c) Landlord will not, nor will Landlord permit its employees, tenants, licensees, invitees, agents or independent contractors to interfere in any way with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period, Landlord shall cease all operations which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected. Tenant will not, nor will Tenant permit its employees, tenants, licensee, invitees, agents, or independent contractors to interfere in any way with the operations of Landlord or other tenants of the Water Tower or Premises, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(d) For the purposes of this Agreement, "interference" may include, but is not limited to, any use on the Property that causes electronic or physical obstruction with, or degradation of, the communications signals from the Communication Facility.

(e) Tenant's installation, operation, and maintenance of its Communication Facilities shall not damage or interfere with Landlord's Water Tower and/or the Property's operations or related repair and

maintenance activities. Landlord, at all times during this Agreement, reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter or improve the Property in connection with city operations as may be necessary, including leasing parts of the Water Tower and/or Property and surrounding ground space to others.

(f) Tenant acknowledges and agrees that the primary purpose of the Water Tower is to provide water storage for Landlord and its customers. Tenant understands that Landlord may have to interrupt Tenant's use of the Premises from time to time to service, maintain, or repair the Water Tower. Accordingly, Landlord reserves the right at all times during this Agreement to take any action it deems necessary in its sole discretion to repair, maintain, alter, or improve the Property and shall not be liable to Tenant for any temporary interference with Tenant's use as a result of actions necessary to carry out any such activities. Notwithstanding the foregoing, Landlord agrees to provide Tenant with reasonable advance notice of any planned activities, emergencies excepted, and to carry out such activities in a manner to minimize interruptions with Tenant's use.

9. Intentionally deleted.

10. WARRANTIES.

(a) Each of Tenant and Landlord (to the extent not a natural person) each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power, and authority or capacity, as applicable, to enter into this Agreement and bind itself hereto through the party or individual set forth as signatory for the party below.

(b) To the extent permitted by state or municipal law, and except as otherwise previously disclosed by Landlord to Tenant prior to the date of this Agreement, Landlord represents, warrants and agrees that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license and solely owns the Water Tower; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises in accordance with the terms of this Agreement without hindrance or ejection by any persons lawfully claiming under Landlord ; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, then Landlord will provide promptly to Tenant a mutually agreeable subordination, non-disturbance and attornment agreement executed by Landlord and the holder of such security interest in the form attached hereto as **Exhibit 10(b)**.

(c) Tenant currently leases a portion of the Property pursuant to the Prior Lease, and Tenant acknowledges and agrees that Tenant is familiar with the condition of the Premises and agrees to accept the physical condition of the Premises in "AS IS" condition. Tenant further acknowledges and agrees that Tenant is relying solely on its own investigation of the Premises and not on any information provided to or to be provided by Landlord. Tenant agrees to accept the Premises and waive all objections or claims against Landlord arising from or related to the Premises, except for a breach of any representations, warranties, or covenants set forth in this Lease.

11. ENVIRONMENTAL.

Notwithstanding the foregoing, Landlord represents that it has no knowledge of the presence of or contamination by any hazardous substances on the Property in violation of any applicable federal, state, or local law or regulation. Landlord and Tenant agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the

environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Property.

12. ACCESS. At all times throughout the Term of this Agreement, Tenant and its employees, agents, and subcontractors, will require twenty-four (24) hour access, for pedestrian and vehicular access ("**Access**") to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises. There is a sign at the access point that will need to be called to, to provide access to enter the Premises in the case of emergencies. As may be described more fully in **Exhibit 1**, Landlord grants to Tenant an easement for such Access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such Access. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right. Landlord shall execute a letter granting Tenant Access to the Property substantially in the form attached as **Exhibit 12**; upon Tenant's request, Landlord shall execute additional letters during the Term. If Tenant elects to utilize an Unmanned Aircraft System ("**UAS**") in connection with its installation, construction, monitoring, site audits, inspections, maintenance, repair, modification, or alteration activities at the Property, Landlord hereby grants Tenant, or any UAS operator acting on Tenant's behalf, express permission to fly over the applicable Property and Premises, and consents to the use of audio and video navigation and recording in connection with the use of the UAS. Landlord acknowledges that in the event Tenant cannot obtain Access to the Premises, Tenant shall incur significant damage. If Landlord fails to provide the Access granted by this Section 12, such failure shall be a default under this Agreement.

13. REMOVAL/RESTORATION. All portions of the Communication Facility brought onto the Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during or after the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of Tenant and may be removed by Tenant at any time during or after the Term. Tenant will repair any damage to the Property resulting from Tenant's removal activities. Any portions of the Communication Facility that Tenant does not remove within one hundred twenty (120) days after the later of the end of the Term and cessation of Tenant's operations at the Premises shall be deemed abandoned and owned by Landlord. Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation.

14. MAINTENANCE/UTILITIES.

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto, the Water Tower, and all areas of the Premises where Tenant does not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. Landlord will be responsible for maintenance of landscaping on the Property.

(b) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to sub-meter from Landlord. When sub-metering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Tenant shall reimburse Landlord for such utility usage at the same rate charged to Landlord by the utility service provider. Landlord further agrees to provide the usage data and invoice on forms provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within sixty (60) days of receipt of the usage data and required forms. Landlord shall maintain accurate and detailed records of all utility expenses, invoices and payments applicable to Tenant's reimbursement obligations hereunder. Within fifteen

(15) days after a request from Tenant, Landlord shall provide copies of such utility billing records to the Tenant in the form of copies of invoices, contracts and cancelled checks. If the utility billing records reflect an overpayment by Tenant, Tenant shall have the right to deduct the amount of such overpayment from any monies due to Landlord from Tenant.

(c) As noted in Section 4(c) above, any utility fee recovery by Landlord is limited to a twelve (12) month period. If Tenant sub-meters electricity from Landlord, Landlord agrees to give Tenant at least twenty-four (24) hours advance notice of any planned interruptions of said electricity. Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week. If the interruption is for an extended period of time, in Tenant's reasonable determination, Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

(d) Tenant will have the right to install utilities, at Tenant's expense, and to improve present utilities on the Property and the Premises. Landlord hereby grants to any service company providing utility or similar services, including electric power and telecommunications, to Tenant an easement over the Property, from an open and improved public road to the Premises, and upon the Premises, for the purpose of constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such service companies may from time to time require in order to provide such services to the Premises. Upon Tenant's or service company's request, Landlord will execute a separate recordable easement evidencing this grant, at no cost to Tenant or the service company.

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after written notice from Landlord specifying the failure. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, then Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) Landlord's failure to provide Access to the Premises as required by Section 12 within twenty-four (24) hours after written notice of such failure; (ii) Landlord's failure to cure an interference problem as required by Section 8 within twenty-four (24) hours after written notice of such failure; or (iii) Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after written notice from Tenant specifying the failure. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have: (i) the right to cure Landlord's default and to deduct the reasonable costs of such cure from any monies due to Landlord from Tenant, and (ii) any and all other rights available to it under law and equity.

16. ASSIGNMENT/SUBLEASE. This Agreement may not be assigned or subleased without the prior written consent of Landlord, which consent may be withheld for any reason or no reason in Landlord's sole discretion. Notwithstanding the foregoing, this Agreement may be assigned without Landlord consent to an entity that controls, is controlled by, or is under the common control of Tenant, or to any entity resulting from any merger or consolidation with Tenant, or to any partner of Tenant, or to any person or entity that acquires all of the assets of Tenant as a going concern, provided that Tenant shall indemnify and hold Landlord harmless. Notwithstanding anything contained herein to the contrary, Tenant acknowledges and agrees that any permitted assignee or subtenant shall be required to comply with all applicable laws including all licensing and/or permitting requirements imposed by all governmental entities having jurisdiction over the Premises.

17. **NOTICES.** All notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties hereto as follows:

If to Tenant: New Cingular Wireless PCS, LLC
Attn: Tower Asset Group - Lease Administration
Re: Cell Site #: GRANMI5602; Cell Site Name: Muskegon Marshall WT (MI)
Fixed Asset #: 10124756
1025 Lenox Park Blvd NE
3rd Floor
Atlanta, GA 30319

With a copy to: New Cingular Wireless PCS, LLC
Attn.: Legal Dept – Network Operations
Re: Cell Site #: GRANMI5602; Cell Site Name: Muskegon Marshall WT (MI)
Fixed Asset #: 10124756
208 S. Akard Street
Dallas, TX 75202-4206

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

If to Landlord: City of Muskegon
933 Terrace Street
Muskegon, MI 49443
Attn: Dave Baker

Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other party hereto as provided herein.

18. **CONDEMNATION.** In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within twenty-four (24) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses. Tenant will be entitled to reimbursement for any prepaid Rent on a *pro rata* basis.

19. **CASUALTY.** Landlord will provide notice to Tenant of any casualty or other harm affecting the Property within twenty-four (24) hours of the casualty or other harm. If any part of the Communication Facility or the Property is damaged by casualty or other harm as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to Landlord, which termination will be effective as of the date of such casualty or other harm. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a *pro rata* basis. Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property, but only until such time as Tenant is able to activate a replacement transmission facility at another location; notwithstanding the termination of this Agreement, such temporary facilities will be governed by all of the terms and conditions of this Agreement, including Rent. If Landlord

or Tenant undertakes to rebuild or restore the Premises and/or the Communication Facility, as applicable, Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property until the reconstruction of the Premises and/or the Communication Facility is completed. If Landlord determines not to rebuild or restore the Property, Landlord will notify Tenant of such determination within thirty (30) days after the casualty or other harm. If Landlord does not so notify Tenant and Tenant decides not to terminate under this Section 19, then Landlord will promptly rebuild or restore any portion of the Property interfering with or required for Tenant's Permitted Use of the Premises to substantially the same condition as existed before the casualty or other harm. Landlord agrees that the Rent shall be abated until the Property and/or the Premises are rebuilt or restored, unless Tenant places temporary transmission and reception facilities on the Property.

20. WAIVER OF LANDLORD'S LIENS. Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law; Landlord consents to Tenant's right to remove all or any portion of the Communication Facility from time to time in Tenant's sole discretion and without Landlord's consent.

21. TAXES.

(a) Landlord shall be responsible for (i) all taxes and assessments levied upon the lands, improvements and other property of Landlord including any such taxes that may be calculated by a taxing authority using any method, including the income method, (ii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with this Agreement, and (iii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with a sale of the Property or assignment of Rent payments by Landlord. Tenant shall be responsible for (x) all property taxes, real or personal, directly attributable to its occupancy and use of the Property, (y) any taxes and assessments attributable to and levied upon Tenant's leasehold improvements on the Premises if and as set forth in this Section 21 and (z) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with an assignment of this Agreement or sublease by Tenant. Nothing herein shall require Tenant to pay any inheritance, franchise, income, payroll, excise, privilege, rent, capital stock, stamp, documentary, estate or profit tax, or any tax of similar nature, that is or may be imposed upon Landlord.

(b) In the event Landlord receives a notice of assessment with respect to which taxes or assessments are imposed on Tenant's leasehold improvements on the Premises, Landlord shall provide Tenant with copies of each such notice immediately upon receipt, but in no event later than thirty (30) days after the date of such notice of assessment. If Landlord does not provide such notice or notices to Tenant in a timely manner and Tenant's rights with respect to such taxes are prejudiced by the delay, Landlord shall reimburse Tenant for any increased costs directly resulting from the delay and Landlord shall be responsible for payment of the tax or assessment set forth in the notice, and Landlord shall not have the right to reimbursement of such amount from Tenant. If Landlord provides a notice of assessment to Tenant within such time period and requests reimbursement from Tenant as set forth below, then Tenant shall reimburse Landlord for the tax or assessments identified on the notice of assessment on Tenant's leasehold improvements, which has been paid by Landlord. If Landlord seeks reimbursement from Tenant, Landlord shall, no later than thirty (30) days after Landlord's payment of the taxes or assessments for the assessed tax year, provide Tenant with written notice including evidence that Landlord has timely paid same, and Landlord shall provide to Tenant any other documentation reasonably requested by Tenant to allow Tenant to evaluate the payment and to reimburse Landlord.

(c) For any tax amount for which Tenant is responsible under this Agreement, Tenant shall have the right to contest, in good faith, the validity or the amount thereof using such administrative, appellate or other

proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as permitted by law. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate with respect to the commencement and prosecution of any such proceedings and will execute any documents required therefor. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant, to the extent the amounts were originally paid by Tenant. In the event Tenant notifies Landlord by the due date for assessment of Tenant's intent to contest the assessment, Landlord shall not pay the assessment pending conclusion of the contest, unless required by applicable law.

(d) Landlord shall not split or cause the tax parcel on which the Premises are located to be split, bifurcated, separated or divided without the prior written consent of Tenant, which consent shall not be unreasonably withheld.

(e) Tenant shall have the right but not the obligation to pay any taxes due by Landlord hereunder if Landlord fails to timely do so, in addition to any other rights or remedies of Tenant. In the event that Tenant exercises its rights under this Section 21(e) due to such Landlord default, Tenant shall have the right to deduct such tax amounts paid from any monies due to Landlord from Tenant as provided in Section 15(b), provided that Tenant may exercise such right without having provided to Landlord notice and the opportunity to cure per Section 15(b).

(f) Any tax-related notices shall be sent to Tenant in the manner set forth in Section 17. Promptly after the Effective Date, Landlord shall provide the following address to the taxing authority for the authority's use in the event the authority needs to communicate with Tenant. In the event that Tenant's tax address changes by notice to Landlord, Landlord shall be required to provide Tenant's new tax address to the taxing authority or authorities.

(g) Notwithstanding anything to the contrary contained in this Section 21, Tenant shall have no obligation to reimburse any tax or assessment for which the Landlord is reimbursed or rebated by a third party.

22. SALE OF PROPERTY.

(a) Landlord may sell the Property or a portion thereof to a third party, provided: (i) the sale is made subject to the terms of this Agreement; and (ii) if the sale does not include the assignment of Landlord's full interest in this Agreement, the purchaser must agree to perform, without requiring compensation from Tenant or any subtenant, any obligation of Landlord under this Agreement, including Landlord's obligation to cooperate with Tenant as provided hereunder.

(b) If Landlord, at any time during the Term of this Agreement, decides to rezone or sell, subdivide or otherwise transfer all or any part of the Premises, or all or any part of the Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such rezoning, sale, subdivision or transfer shall be subject to this Agreement and Tenant's rights hereunder. In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord or its successor shall send the documents listed below in this Section 22(b) to Tenant. Until Tenant receives all such documents, Tenant's failure to make payments under this Agreement shall not be an event of default and Tenant reserves the right to hold payments due under this Agreement.

- i. Old deed to Property
- ii. New deed to Property
- iii. Bill of Sale or Transfer
- iv. Copy of current Tax Bill
- v. New IRS Form W-9
- vi. Completed and Signed Tenant Payment Direction Form
- vii. Full contact information for new Landlord including phone number(s)

(c) Landlord agrees not to sell, lease or use any areas of the Property for the installation, operation or maintenance of other wireless communication facilities if such installation, operation or maintenance would interfere with Tenant's Permitted Use or communications equipment as determined by radio propagation tests performed by Tenant in its sole discretion. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Tenant, Landlord shall be prohibited from selling, leasing or using any areas of the Property for purposes of any installation, operation or maintenance of any other wireless communication facility or equipment.

(d) The provisions of this Section 22 shall in no way limit or impair the obligations of Landlord under this Agreement, including interference and access obligations.

23. RIGHT OF FIRST REFUSAL. Notwithstanding the provisions contained in Section 22, if at any time after the Effective Date, Landlord receives a bona fide written offer from a third party seeking any sale, conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the Premises, including without limitation any offer seeking an assignment or transfer of the Rent payments associated with this Agreement or an offer to purchase an easement with respect to the Premises ("**Offer**"), Landlord shall immediately furnish Tenant with a copy of the Offer. Tenant shall have the right within thirty (30) days after it receives such copy to match the financial terms of the Offer and agree in writing to match such terms of the Offer. Such writing shall be in the form of a contract substantially similar to the Offer but Tenant may assign its rights to a third party. If Tenant chooses not to exercise this right or fails to provide written notice to Landlord within the thirty (30) day period, Landlord may sell, convey, assign or transfer such property interest in or related to the Premises pursuant to the Offer, subject to the terms of this Agreement. If Landlord attempts to sell, convey, assign or transfer such property interest in or related to the Premises without complying with this Section 23, the sale, conveyance, assignment or transfer shall be void. Tenant shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this Agreement until Landlord complies with this Section 23. Tenant's failure to exercise the right of first refusal shall not be deemed a waiver of the rights contained in this Section 23 with respect to any future proposed conveyances as described herein.

24. MISCELLANEOUS.

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by Landlord and Tenant. No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this Agreement or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) **Memorandum/Short Form Lease.** Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum of Lease substantially in the form attached as **Exhibit 24(b)**. Either party may record this Memorandum of Lease at any time during the Term, in its absolute discretion. Thereafter during the Term, either party will, at any time upon fifteen (15) business days' prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease.

(c) **Limitation of Liability.** Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.

(d) **Compliance with Law.** Tenant agrees to comply with all federal, state and local laws, orders, rules and regulations ("**Laws**") applicable to Tenant's use of the Communication Facility on the Property. Landlord agrees to comply with all Laws relating to Landlord's ownership and use of the Property and any improvements on the Property.

(e) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(f) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement. Exhibits are numbered to correspond to the Section wherein they are first referenced. Except as otherwise stated in this Agreement, each party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution and performance of this Agreement and the transactions it contemplates.

(g) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(h) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term “including” will be interpreted to mean “including but not limited to”; (iii) whenever a party’s consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms “termination” or “expiration” are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; (viii) the singular use of words includes the plural where appropriate; and (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(i) **Affiliates.** All references to “Tenant” shall be deemed to include any Affiliate of New Cingular Wireless PCS, LLC using the Premises for any Permitted Use or otherwise exercising the rights of Tenant pursuant to this Agreement. “Affiliate” means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. “Control” of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

(j) **Survival.** Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(k) **W-9.** As a condition precedent to payment, Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant, including any change in Landlord’s name or address. A copy of the IRS Form 1-9 in its current form is attached hereto as **Exhibit 24(k)**.

(l) **Execution/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart.

(m) **Attorneys’ Fees.** In the event that any dispute between the parties related to this Agreement should result in litigation, the prevailing party in such litigation shall be entitled to recover from the other party all reasonable fees and expenses of enforcing any right of the prevailing party, including reasonable attorneys’ fees and expenses. Prevailing party means the party determined by the court to have most nearly prevailed even if such party did not prevail in all matters. This provision will not be construed to entitle any party other than Landlord, Tenant and their respective Affiliates to recover their fees and expenses.

(n) **WAIVER OF JURY TRIAL.** EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING UNDER ANY THEORY OF LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE TRANSACTIONS IT CONTEMPLATES.

(o) **No Additional Fees/Incidental Fees.** Unless otherwise specified in this Agreement, all rights and obligations set forth in the Agreement shall be provided by Landlord and/or Tenant, as the case may be, at no additional cost. No unilateral fees or additional costs or expenses are to be applied by either party to the other party, for any task or service including, but not limited to, review of plans, structural analyses, consents, provision of documents or other communications between the parties.

(p) **Further Acts.** Upon request, Landlord will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents, and assurances as Tenant may request from time to time in order to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all transactions and Permitted Use contemplated by this Agreement.

(o) **Estoppel.** Landlord acknowledges that there are not any owed or outstanding rental payments or fees due on the part of Tenant.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the Effective Date.

“LANDLORD”

City of Muskegon
a Michigan municipal corporation

By: _____
Print Name: Ken Johnson
Its: Mayor
Date: _____

By: _____
Print Name: Ann Meisch
Its: City Clerk
Date: _____

“TENANT”

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____
Print Name: _____
Its: _____
Date: _____

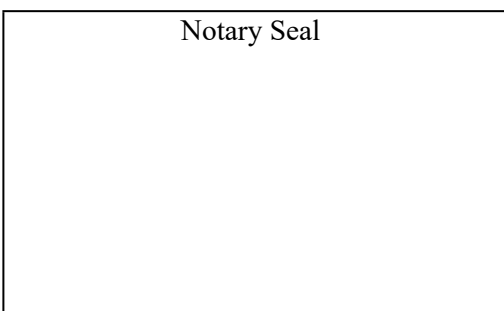
[ACKNOWLEDGMENTS APPEAR ON NEXT TWO PAGES]

TENANT ACKNOWLEDGMENT

STATE OF _____)
) SS.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of AT&T Mobility Corporation, the Manager of **New Cingular Wireless PCS, LLC, a Delaware limited liability company**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.



(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary Public in and for the State of _____

My appointment expires: _____

LANDLORD ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____)

I CERTIFY that on _____, 202__, _____ [name of representative] personally came before me and acknowledged under oath that he or she:

- (a) is the _____ [title] of **City of Muskegon, a Michigan municipal corporation**, the corporation named in the attached instrument;
- (b) was authorized to execute this instrument on behalf of the corporation; and
- (c) executed the instrument as the act of the corporation.

Notary Public: _____
My Commission Expires: _____

EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

Page ___ of ___

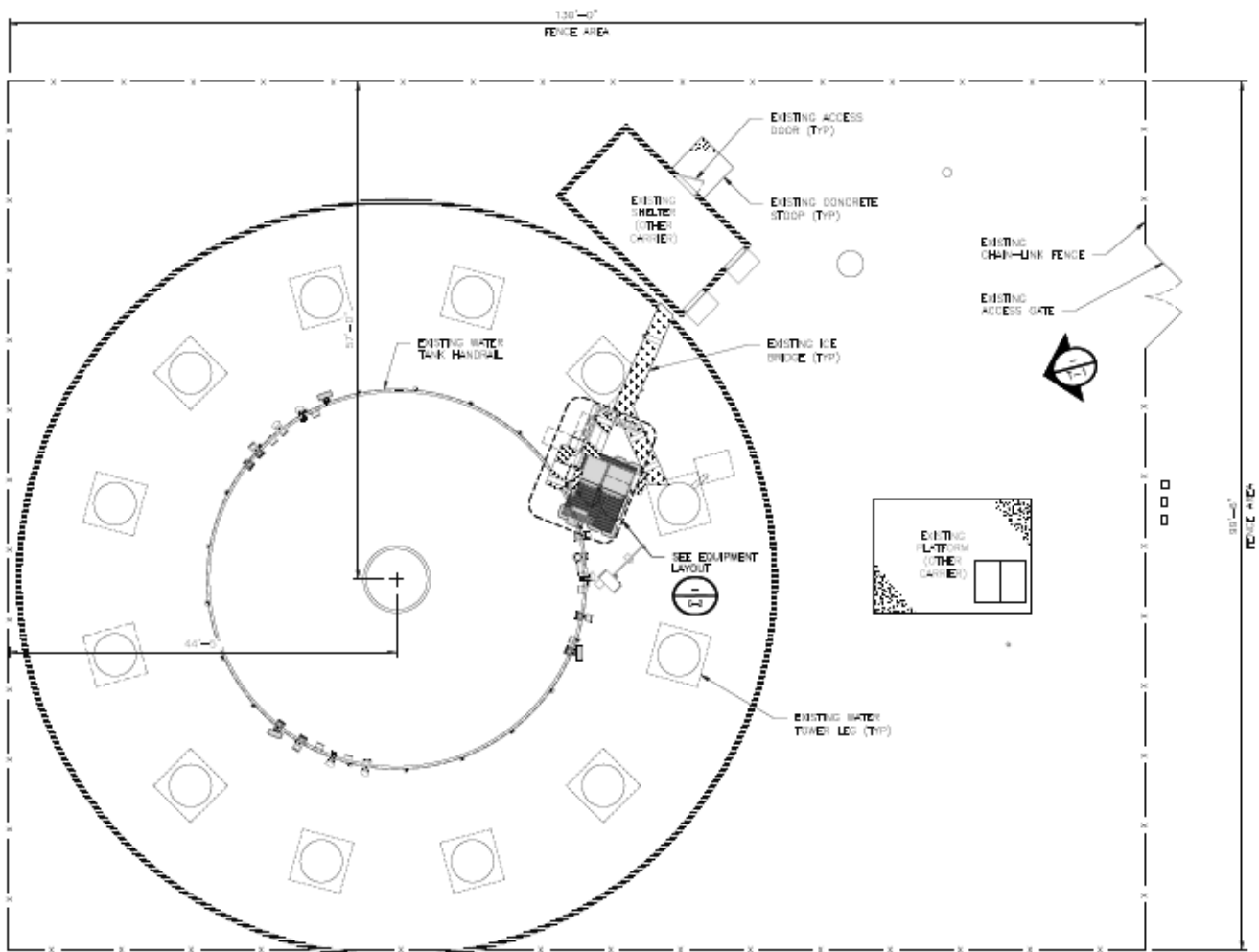
to the Structure Lease Agreement dated _____, 202__, by and between City of Muskegon, a Michigan municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property is legally described as follows:

Marshall Tank –

East 198 feet of west 660 feet of south 100 feet of Block 5.

The Premises are described and/or depicted as follows:



Notes:

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENT AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENT AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.
4. THE TYPE, NUMBER AND MOUNTING POSITIONS AND LOCATIONS OF ANTENNAS AND TRANSMISSION LINES ARE ILLUSTRATIVE ONLY. ACTUAL TYPES, NUMBERS AND MOUNTING POSITIONS MAY VARY FROM WHAT IS SHOWN ABOVE.

EXHIBIT 10(b)

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

[FOLLOWS ON NEXT PAGE]

**Recording Requested By
& When Recorded Return To:**

Prepared by, and
after recording return to:
MD7, LLC
(469) 965-9850
950 W. Bethany Drive, Suite 700
Allen, TX 75013
APN: _____

(Space Above This Line For Recorder's Use Only)

Cell Site No.: GRANMI5602

Cell Site Name: Muskegon Marshall WT (MI)
Fixed Asset No.: 10124756

State: Michigan

County: Muskegon

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement"), dated as of the last of the signature dates below (the **"Effective Date"**), is entered into by and among City of Muskegon, a Michigan municipal corporation, having a mailing address of 933 Terrace Street, Muskegon, MI 49443 (**"Lender"**), _____, a _____, having a mailing address of _____ (**"Landlord"**), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 (**"Tenant"**).

RECITALS:

- A. Tenant has entered into a certain Structure Lease Agreement dated _____, 202__, (the **"Lease"**) with Landlord, covering property more fully described in **Exhibit 1** attached hereto and made a part hereof (the **"Premises"**); and
- B. Lender has made a loan to Landlord in the original principal sum of _____ Dollars (\$_____), which loan has been secured by a certain _____ dated _____, and recorded on _____, as Document Number _____ in the Official Records of the County Recorder of _____ County, California (the **"Deed of Trust"**), upon that certain real property located at _____, in the City of _____, County of _____, State of California [APN: _____] (**"Property"**), a part of which Property contains the Premises; and
- C. Tenant desires to be assured of continued occupancy of the Premises under the terms of the Lease and subject to the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Lender hereby consents to the Lease to the extent that Lender's consent is required, if at all, pursuant to the Deed of Trust or any other agreement(s) pertaining to the Property.

2. So long as this Agreement will remain in full force and effect, the Lease is and will be subject and subordinate to the lien and effect of the Deed of Trust insofar as it affects the real property and fixtures of which the Premises forms a part (but not Tenant's trade fixtures and other personal property), and to all renewals, modifications, consolidations, replacements and extensions thereof, to the full extent of the principal sum secured thereby and interest thereon, with the same force and effect as if the Deed of Trust had been executed, delivered, and duly recorded among the above-mentioned public records, prior to the execution and delivery of the Lease.

3. In the event Lender takes possession of the Premises as mortgagee-in-possession or lender-in-possession or its substantive equivalent, including but not limited to, by deed in lieu of foreclosure or foreclosure of the Deed of Trust, Lender agrees not to affect or disturb Tenant's right to possession of the Premises and any of Tenant's other rights under the Lease in the exercise of Lender's rights so long as Tenant is not then in default, after applicable notice and/or grace periods, under any of the terms, covenants, or conditions of the Lease.

4. In the event that Lender succeeds to the interest of Landlord or other landlord under the Lease and/or to title to the Premises, Lender and Tenant hereby agree to be bound to one another under all of the terms, covenants and conditions of the Lease; accordingly, from and after such event, Lender and Tenant will have the same remedies against one another for the breach of an agreement contained in the Lease as Tenant and Landlord had before Lender succeeded to the interest of Landlord; provided, however, that Lender will not be:

- (a) personally liable for any act or omission of any prior landlord (including Landlord); or
- (b) bound by any rent or additional rent which Tenant might have paid for more than the payment period as set forth under the Lease (one month, year etc.) in advance to any prior landlord (including Landlord).

5. In the event that Lender or anyone else acquires title to or the right to possession of the Premises upon the foreclosure of the Deed of Trust, or upon the sale of the Premises by Lender or its successors or assigns after foreclosure or acquisition of title in lieu thereof or otherwise, Tenant agrees not to seek to terminate the Lease by reason thereof, but will remain bound unto the new owner so long as the new owner is bound to Tenant (subject to paragraph 4 above) under all of the terms, covenants and conditions of the Lease.

6. Lender understands, acknowledges and agrees that notwithstanding anything to the contrary contained in the Deed of Trust and/or any related financing documents, including, without limitation, any UCC-1 financing statements, Lender will acquire no interest in any furniture, equipment, trade fixtures and/or other property installed by Tenant on the Property. Lender hereby expressly waives any interest which Lender may have or acquire with respect to such furniture, equipment, trade fixtures and/or other property of Tenant now, or hereafter, located on or affixed to the Property or any portion thereof and Lender hereby agrees that same do not constitute realty regardless of the manner in which same are attached or affixed to the Property.

7. This Agreement will be binding upon and will extend to and benefit the successors and assigns of the parties hereto and to any assignees or subtenants of Tenant which are permitted under the Lease. The term "**Lender**", when used in this Agreement will be deemed to include any person or entity which acquires title to or the right to possession of the Premises by, through or under Lender and/or the Deed of Trust, whether directly or indirectly.

8. This Agreement may be executed in two (2) or more counterpart originals, and when the original counterpart signatures are assembled together, shall constitute one integrated instrument. All parties need not sign the same counterpart.

9. This Agreement will be governed by the laws of the state in which the Premises are located without regard to conflicts of law.

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed as of the last signature date below.

"LANDLORD"

City of Muskegon,
a Michigan municipal corporation

By: _____
Name: _____
Its: _____
Date: _____, 20__

"TENANT"

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____
Name: _____
Its: _____
Date: _____, 20__

"LENDER"

_____,
a _____

By: _____
Name: _____
Its: _____
Date: _____, 20__

[ACKNOWLEDGMENTS APPEAR ON THE FOLLOWING THREE (3) PAGES]

LANDLORD ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____)

I CERTIFY that on _____, 202__, _____ [name
of representative] personally came before me and acknowledged under oath that he or she:

- (a) is the _____ [title] of **City of Muskegon, a Michigan municipal corporation**, the corporation named in the attached instrument;
- (b) was authorized to execute this instrument on behalf of the corporation; and
- (c) executed the instrument as the act of the corporation.

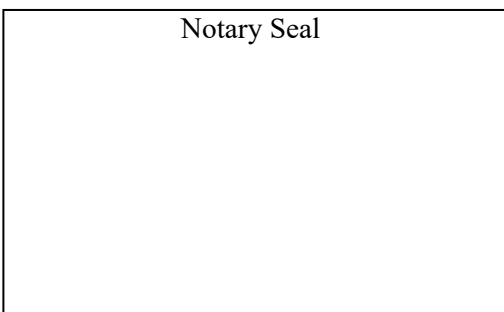
Notary Public: _____
My Commission Expires: _____

TENANT ACKNOWLEDGMENT

STATE OF _____)
) SS.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____
is the person who appeared before me, and said person acknowledged that he/she signed this instrument,
on oath stated that he/she was authorized to execute the instrument and acknowledged it as the
_____ of AT&T Mobility Corporation, the Manager of **New Cingular**
Wireless PCS, LLC, a Delaware limited liability company, to be the free and voluntary act of such party
for the uses and purposes mentioned in the instrument.

DATED: _____.



(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary Public in and for the State of _____

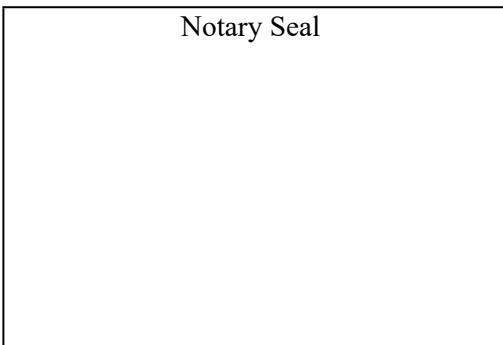
My appointment expires: _____

LENDER ACKNOWLEDGMENT

STATE OF _____)
)
COUNTY OF _____) SS.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the _____ of _____, _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.



(Signature of Notary)

(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of

My appointment expires: _____

EXHIBIT 1
DESCRIPTION OF PROPERTY AND PREMISES

The Property is legally described as follows:

The Premises is legally described as follows:

[One (1) Page Depiction of the Premises Suitable for Recording in _____ County
Appears on Following Page

EXHIBIT 11

ENVIRONMENTAL DISCLOSURE

Landlord represents and warrants that the Property, as of the Effective Date, is free of hazardous substances except as follows:

[INSERT AS APPLICABLE]

EXHIBIT 12
STANDARD ACCESS LETTER
[FOLLOWS ON NEXT PAGE]

{This Letter Goes On Landlord's Letterhead}

[Insert Date]

Building Staff / Security Staff
[Landlord, Lessee, Licensee]
[Street Address]
[City, State, Zip]

Re: Authorized Access granted to []

Dear Building and Security Staff,

Please be advised that we have signed a lease with [] permitting [] to install, operate and maintain telecommunications equipment at the property. The terms of the lease grant [] and its representatives, employees, agents and subcontractors ("representatives") 24 hour per day, 7 day per week access to the leased area.

To avoid impact on telephone service during the day, [] representatives may be seeking access to the property outside of normal business hours. [] representatives have been instructed to keep noise levels at a minimum during their visit.

Please grant the bearer of a copy of this letter access to the property and to leased area. Thank you for your assistance.

Landlord Signature

EXHIBIT 24(b)
MEMORANDUM OF LEASE
[FOLLOWS ON NEXT PAGE]

PARCEL #: 61-24-205-007-0003-00, 61-24-205-005-00001-10

**Prepared by, and
after recording return to:**

MD7, LLC
(469) 965-9850
950 W. Bethany Drive, Suite 700
Allen, TX 75013

Cell Site No.: GRANMI5602

Cell Site Name: Muskegon Marshall WT (MI)
Fixed Asset No.: 10124756

State: Michigan

County: Muskegon

**MEMORANDUM
OF
LEASE**

This Memorandum of Lease is entered into on this ____ day of _____, 202__, by and between City of Muskegon, a Michigan municipal corporation, having its principal office/residing at 933 Terrace Street, Muskegon, MI 49443 (hereinafter called “**Landlord**”), and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 (“**Tenant**”).

1. Landlord and Tenant entered into a certain Structure Lease Agreement (“**Agreement**”) on the ____ day of _____, 202__, for the purpose of installing, operating and maintaining a communication facility and other improvements. All of the foregoing is set forth in the Agreement.
2. The initial lease term will be ten (10) years commencing on February 1, 2024, with five (5) successive automatic five (5) year options to renew.
3. The portion of the land being leased to Tenant and associated easements are described in **Exhibit 1** annexed hereto.
4. The Agreement gives Tenant a right of first refusal in the event Landlord receives a bona fide written offer from a third party seeking any sale, conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the Premises, including without limitation any offer seeking an assignment or transfer of the Rent payments associated with the Agreement or an offer to purchase an easement with respect to the Premises.

5. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

LANDLORD:

City of Muskegon,
a Michigan municipal corporation

By: _____
Print Name: _____
Its: _____
Date: _____

TENANT:

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

By: _____
Print Name: _____
Its: _____
Date: _____

[ACKNOWLEDGMENTS APPEAR ON TWO NEXT PAGES]

LANDLORD ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____)

I CERTIFY that on _____, 202__, _____ [name of representative] personally came before me and acknowledged under oath that he or she:

- (a) is the _____ [title] of **City of Muskegon, a Michigan municipal corporation**, the corporation named in the attached instrument;
- (b) was authorized to execute this instrument on behalf of the corporation; and
- (c) executed the instrument as the act of the corporation.

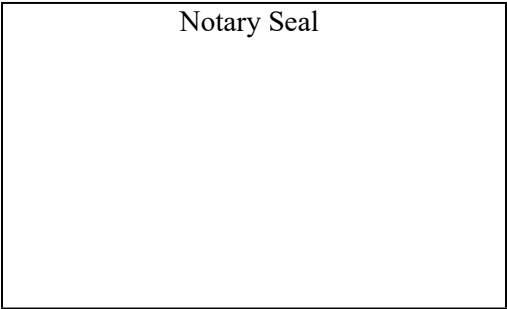
Notary Public: _____
My Commission Expires: _____

TENANT ACKNOWLEDGMENT

STATE OF _____)
) SS.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of AT&T Mobility Corporation, the Manager of **New Cingular Wireless PCS, LLC, a Delaware limited liability company**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.



(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary Public in and for the State of _____

My appointment expires: _____

EXHIBIT 1 TO MEMORANDUM OF LEASE
DESCRIPTION OF PROPERTY AND PREMISES

Page ____ of ____

to the Memorandum of Lease dated _____, 20____, by and between City of Muskegon, a Michigan municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property is legally described as follows:

Marshall Tank –

East 198 feet of west 660 feet of south 100 feet of Block 5.

The Premises are described and/or depicted as follows:

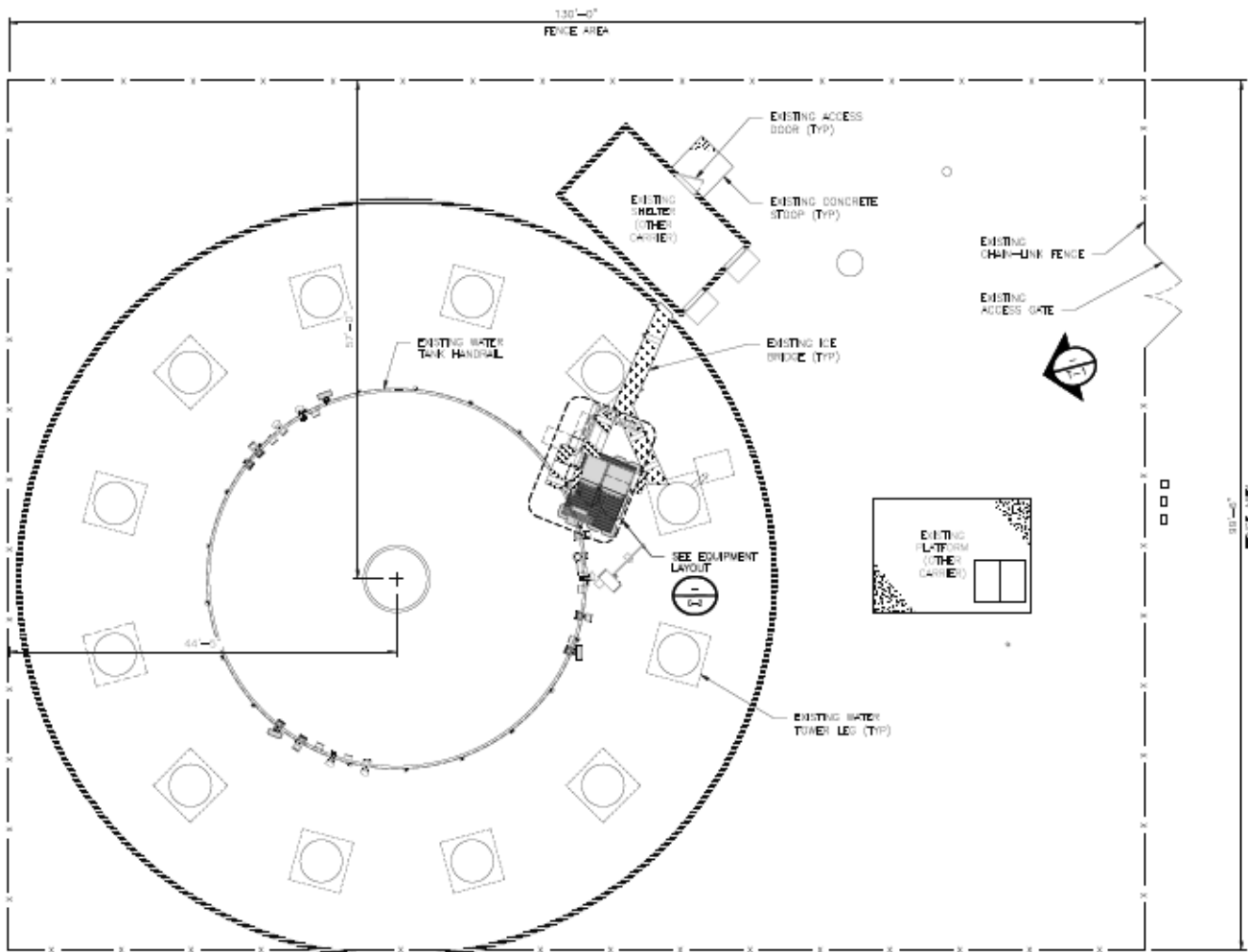


EXHIBIT 24(k)

IRS FORM W-9

Page 1 of 1

[IRS FORM W-9 (REVISED OCTOBER 2018)
APPEAR ON FOLLOWING PAGE]

Request for Taxpayer Identification Number and Certification

▶ Go to www.irs.gov/FormW9 for instructions and the latest information.

Give Form to the
requester. Do not
send to the IRS.

Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. ☐ Individual/sole proprietor or single-member LLC ☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. ☐ Other (see instructions) ▶ _____ ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>
	5 Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)
	6 City, state, and ZIP code	
	7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number									
				-			-		
or									
Employer identification number									
				-					

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ▶	Date ▶
------------------	----------------------------	--------

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)
Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.
If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 9, 2024	Title: Contract Award - 2024 Mill and Resurfacing Project							
Submitted by: Todd Myers, Deputy Director of Public Works	Department: Public Works							
Brief Summary: Staff requests approval to enter into a contract with Asphalt Paving Inc. in the amount of \$189,324.70 and to approve Change Order No. 1 in the amount of \$29,556 for a total award of \$218,880.70 for the repaving work on Irwin Ave., Wood St., Beach St., Glen/McGraft Ave., and Allen Ave.								
Detailed Summary & Background: Staff reviewed several areas of major streets in poor condition and solicited bids for repaving the following streets: - Wood St.: From Irwin Ave. north to Spring St. (approx. 225'). - Irwin Ave.: From Approx. 300' west of Wood St. to approx. 330' east of Wood St. - Beach Street: From the "fork" in the road near Margaret Drake Elliot Park northerly approx. 1,125' - Glen/McGraft: From Hackley Ave. to Addison St. (approx. 2,800'). - Allen Ave.: From Creston St. to Home St. (approx. 525'). City/DPW staff are planning to pave Allen Avenue, but the contractor will do the preparatory work. Asphalt Paving, Inc. (API) was the low bidder in the amount of \$189,324.70, with details shown on the included bid tab. In addition to award of the contract as originally bid, staff is requesting authorization for approval of the attached Change Order for an additional amount of \$29,556.00 to increase the area to be milled on the Glen/McGraft from Hackley Ave. to Addison St. by 1,960 SYD's and the amount of paving by 250 tons of asphalt. Due the favorable prices received, staff would like to widen the area to be milled and paved on Glen/McGraft.								
Goal/Focus Area/Action Item Addressed: <u>Key Focus Areas:</u> <u>Goal/Action Item:</u> 2027 GOAL 4: FINANCIAL INFRASTRUCTURE - Maximized efficient use of existing infrastructure								
Amount Requested: \$218,880.70	Budgeted Item: <table border="1"><tr><td>Yes</td><td>X</td><td>No</td><td></td><td>N/A</td><td></td><td></td></tr></table>	Yes	X	No		N/A		
Yes	X	No		N/A				
Fund(s) or Account(s): Streets (202)	Budget Amendment Needed: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td>X</td><td>N/A</td><td></td><td></td></tr></table>	Yes		No	X	N/A		
Yes		No	X	N/A				

Recommended Motion:

Authorize staff to enter into a contract with Asphalt Paving Inc. in the amount of \$189,324.70 and to approve Change Order No. 1 in the amount of \$29,556 for a total award of \$218,880.70 for the repaving work on Irwin Ave., Wood St., Beach St., Glen/McGraft Ave., and Allen Ave.

Approvals:

Immediate Division Head	X	
Information Technology		
Other Division Heads		
Communication		
Legal Review		

Guest(s) Invited / Presenting:

No

City of Muskegon
2024 Mill and Resurfacing
Tabulation of Bids

Bidder	Total Bid Amount
Asphalt Paving Inc.	\$ 189,324.70
Michigan Paving & Materials	\$ 215,455.00
TBD Constr. Services	\$ 219,650.00
Rieth-Riley Constr. Co., Inc.	\$ 321,055.00

CITY OF MUSKEGON
DETAILED CONTRACT CHANGE REQUEST

CONTRACTOR		CONTRACT						DATE	8/28/2024
Asphalt Paving Inc.		2024 Milling and Resurfacing						CHANGE ORDER No.	1
ITEM OF WORK DESCRIPTION, REASON, LOCATION OF CHANGE		UNIT OF MEASURE	QUANTITY PROPOSAL	QUANTITY AS BUILT	QUANTITY INCREASE +	QUANTITY DECREASE -	UNIT COST	AMOUNT INCREASE	AMOUNT DECREASE
1	Cold Milling HMA Surface	Syd	7350	N.A.	1,960		\$2.40	\$4,704.00	\$0.00
2	HMA, 4EML, 220 #/Syd	Ton	890	N.A.	250		\$99.42	\$24,855.00	\$0.00
3								\$0.00	\$0.00
4								\$0.00	\$0.00



CHANGE REQUEST EFFECTIVE DATE: _____

TOTALS \$29,559.00 \$0.00

ORIGINAL CONTRACT PRICE: _____

NET +/- \$29,559.00

REVISED CONTRACT PRICE: \$29,559.00

ENGINEERING DEPARTMENT		CONTRACTOR APPROVAL	CITY OF MUSKEGON APPROVAL
		AUTHORIZED REPRESENTATIVE AND DATE	AUTHORIZED REPRESENTATIVE AND DATE
PREPARED BY	DATE	PRINTED NAME AND TITLE	PRINTED NAME AND TITLE

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 9, 2024	Title: Amendment for Engineering Services - Olthoff Drive Extension Project							
Submitted by: Todd Myers, Deputy Director of Public Works	Department: Public Works							
Brief Summary: Hubbell, Roth & Clark, Inc. (HRC) performed the design and construction engineering for the Olthoff Drive Extension project. They have requested an additional \$30,600 to be added to their contract with the city as described herein.								
Detailed Summary & Background: HRC provided Design and Construction Engineering services for the Olthoff Drive Extension project. There were various additional services provided including redesigning the sanitary sewer location, adjusting the road grades to minimize coordination with the neighboring prison, and construction duration lasting 15 weeks versus the originally proposed 8 weeks. Construction was originally planned to be completed during the 2021 construction season but ended up being completed primarily in 2023 with the final paving completed in 2024. These changes were at the request of the primary tenant of the industrial park expansion/road extension. These costs will be paid for by a combination of MEDC grant funds, MDOT grant funds, and the water/sewer funds. This is not a specifically budgeted expense, but staff is confident the non-grant portions will fit within the existing budgets. Staff recommends approval of the request.								
Goal/Focus Area/Action Item Addressed: Key Focus Areas: Goal/Action Item: 2027 Goal 2: Economic Development Housing and Business								
Amount Requested: \$30,600	Budgeted Item: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td>X</td><td>N/A</td><td></td><td></td></tr></table>	Yes		No	X	N/A		
Yes		No	X	N/A				
Fund(s) or Account(s): Grants (482) and Utilities (590/591)	Budget Amendment Needed: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td>X</td><td>N/A</td><td></td><td></td></tr></table>	Yes		No	X	N/A		
Yes		No	X	N/A				
Recommended Motion: Authorize staff to approve the requested amendment from HRC, Inc. in the amount of \$30,600.								
Approvals: <table border="1"><tr><td>Immediate Division Head</td><td>X</td><td></td></tr></table>	Immediate Division Head	X		Guest(s) Invited / Presenting: No				
Immediate Division Head	X							

Information Technology			
Other Division Heads			
Communication			
Legal Review			



Agenda Item Review Form

Muskegon City Commission

Commission Meeting Date: September 9, 2024	Title: Washwater Pump Replacement Valves
Submitted by: Joshua Parmer, Water Filtration	Department: DPW- Water Filtration Plan
Brief Summary: Staff is requesting authorization to contract with Northern Boiler Mechanical Contractors for valve replacements on two Washwater Pump's located at the City Water Filtration Plant.	
Detailed Summary & Background: The Filtration plant has 3 washwater pumps that are critical to the filtration process. These pumps allow us to wash the filters as they build up filtered sediment, extending the life of the filter media by back-flushing treated water through the filter media. Pumps #2 and #3 are original to the 1936 construction of the filtration plant including their foot and isolation valves. The "foot" valve sits down in the finished water reservoir at the point where the washwater pump pulls water from the reservoir for washing. The foot valve on washwater pump #3 has failed and needs replacement; currently washwater Pump #3 is out of service, reducing the plant's redundancy to properly operate filters. The plan included with this item shows the foot valve and other proposed work as detailed below. Staff solicited bids for the replacement of washwater pump #3's foot valve. As part of the bid process staff requested an alternate bid to replace both foot valves, on washwater pump #2 as well as #3. It is reasonable to assume the washwater pump #2 foot valve is not far behind #3 in terms of failure. With the extent of work needed, it makes the most economic sense to replace both at the same time to ensure long service life for both pieces of critical infrastructure. Furthermore, the addition of a check valve after the pump discharge as well as a replaced isolation valve were included in the pricing requested. The check valve will prevent backwash water from flowing into the drinking water reservoir in the event of a foot valve failure. The aging isolation valve has proven to be difficult to operate and is in need of replacement, and with this project it can be replaced in a location that will allow easy access for future repairs. A proposal for bids was posted and 2 mechanical contractors bids were received, Northern Boiler and Franklin Holwerda Company. Staff recommends this project be awarded to Northern Boiler Mechanical Contractors for the work described above based on their low bid and their experience with similar work. The bid tab and other documents are included. This work fits within the filter plant capital improvement budget, but it will need to take the place of other work shown in the plan due to its urgency.	
Goal/Focus Area/Action Item Addressed: Key Focus Areas: Sustainability in financial practices and infrastructure Goal/Action Item: 2027 GOAL 4: FINANCIAL INFRASTRUCTURE - Reliable and efficient short and long term financial	

practices																		
Amount Requested: \$155,729	Budgeted Item: <table><tr><td>Yes</td><td>X</td><td>No</td><td></td><td>N/A</td><td></td><td></td></tr></table>			Yes	X	No		N/A										
Yes	X	No		N/A														
Fund(s) or Account(s): 591-901-801-092034	Budget Amendment Needed: <table><tr><td>Yes</td><td></td><td>No</td><td>X</td><td>N/A</td><td></td><td></td></tr></table>			Yes		No	X	N/A										
Yes		No	X	N/A														
Recommended Motion: Authorize staff to contract with Northern Boiler Mechanical Contractors for \$155,729 to perform foot, isolation, and check valve replacements at the Water Filtration Plant.																		
Approvals: <table><tr><td>Immediate Division Head</td><td>X</td><td></td></tr><tr><td>Information Technology</td><td></td><td></td></tr><tr><td>Other Division Heads</td><td></td><td></td></tr><tr><td>Communication</td><td></td><td></td></tr><tr><td>Legal Review</td><td></td><td></td></tr></table>		Immediate Division Head	X		Information Technology			Other Division Heads			Communication			Legal Review			Guest(s) Invited / Presenting: No	
Immediate Division Head	X																	
Information Technology																		
Other Division Heads																		
Communication																		
Legal Review																		

Bid Tabulation

Bid Date:	July 30, 2024	Bid Time (Local):	2:00 pm
Owner:	City of Muskegon		
Project Title:	Water Filtration Plant – Washwater Pump Check Valve Addition		
Project #:	2221055		

<i>Contractor</i>	<i>Bid Bond</i>	<i>Addendum No. 1</i>	<i>Base Bid Amount</i>	<i>Alternate No. 1 Amount</i>	<i>TOTAL with Alternate No. 1</i>	<i>Alternate No. 2 Amount</i>	<i>TOTAL with Alternate No. 2</i>
Franklin Holwerda Company	X	X	\$65,000.00	\$92,000.00	\$157,000.00	\$145,000.00	\$210,000.00
Northern Boiler Mechanical Contractor	X	X	\$55,757.00	\$18,996.00	\$74,753.00	\$99,972.00	\$155,729.00

Project Name: Washwater Pump Check Valve Addition
Project Number: 2230492

SECTION 00 42 00
BID PROPOSAL

Bid Proposal

Owner:	City of Muskegon		
Owner Address:	933 Terrace St, Muskegon, MI 49440		
Project Title:	Washwater Pump Check Valve Addition		
Bid Date & Time:	July 9, 2024 at 2:00 PM	Project #:	2230492

The undersigned, being familiar with the site, drawings, specifications, and related documents, proposes to furnish all required labor, materials, tools and equipment to construct the project in accordance with the lump sum on the following sheets.

Date Prepared: 7-29-2024

Receipt of Addenda

Receipt of Addenda 1 through _____ is hereby acknowledged.

Summary of Bids

Total Bid \$ 55,757.00

The Owner reserves the right to accept or reject any or all bids and to waive any irregularities in the bidding. No partial bids will be accepted.

Contractor's Signature

<u>Northern Boiler Mechanical Contractor (231) 206-1692</u>		<u>(231) 206-1692</u>
Contractor's Name		Telephone Number
<u>2025 Latimer Dr. Muskegon MI</u>	<u>49442</u>	
Business Address	City	Zip Code
<u>John Nic</u>	<u>President</u>	<u>7-30-2024</u>
Signature	Title	Date

Seal (if bidder is a corporation)

Bid Proposal

Owner:	City of Muskegon		
Owner Address:	933 Terrace St, Muskegon, MI 49440		
Project Title:	Washwater Pump Check Valve Addition		
Bid Date & Time:	July 9, 2024 at 2:00 PM	Project #:	2230492

ALTERNATE ACTIVITIES

The Contractor shall provide supplemental cost data for the alternates outlined in Section 01 23 00 Alternates of the Project Specifications. The lump sum bid shall include those items specified as "Base Bid". The alternate pricing shall include all associated activities required for a complete installation of that alternate.

The Owner may elect to choose any of the alternates listed below for which the Contractor shall provide pricing and the contract amount will be adjusted accordingly.

Suction Piping Alternate No. 1

1. Suction Piping Alternate No. 1 consists of removing the existing foot valve from the suction piping from Washwater Pump 3, and installing permanent pipe supports on the suction piping. Refer to Section 01 10 00 Summary of Work for description of the split between Owner and Contractor activities. Suction pipe accessories and pipe supports shall be per Section 40 05 13 Process Piping.

Suction Piping Alternate No. 1, add \$18,996.00 lump sum

Suction Piping Alternate No. 2

2. Suction Piping Alternate No. 2 consists of removing the existing foot valve from the suction piping from Washwater Pumps 2 and 3, cutting the suction piping and installing a restrained flange adapter, installing new foot valves per Section 40 05 51 Process Valves, and installing permanent pipe supports on the suction piping. Refer to Section 01 10 00 Summary of Work for description of the split between Owner and Contractor activities. Suction pipe accessories and pipe supports shall be per Section 40 05 13 Process Piping.

Suction Piping Alternate No. 2, add \$99,972.00 lump sum

3. Clarification: Northern Boiler is Not Responsible For Any Lead based Paint Testing or Abatement.

AIA® Document A310™ – 2010

Bid Bond

CONTRACTOR:

(Name, legal status and address)
**Northern Boiler and Mechanical
Contractors, Inc.
2025 Latimer Drive
Muskegon, MI 49442**

SURETY:

(Name, legal status and principal place
of business)

**Hudson Insurance Company
100 William Street, 5th Floor
New York, NY 10038**

OWNER:

(Name, legal status and address)

**City Of Muskegon
933 Terrace Street
Muskegon, MI 49440**

BOND AMOUNT: Five Percent (5%) of Amount Bid

This document has important legal
consequences. Consultation with
an attorney is encouraged with
respect to its completion or
modification.

Any singular reference to
Contractor, Surety, Owner or
other party shall be considered
plural where applicable.

PROJECT:

(Name, location or address, and Project number, if any)

Washwater Pump Check Valve Addition - City Water Piping Repairs - Project #2230492

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this **30th** day of **July, 2024**

(Witness)  (Witness)	Northern Boiler and Mechanical Contractors, Inc. (Principal) (Seal) (Title) Hudson Insurance Company (Surety) (Seal) (Title) Susan L Small, Attorney-in-Fact
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Init.

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BID BOND POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That HUDSON INSURANCE COMPANY, a corporation of the State of Delaware, with offices at 100 William Street, New York, New York, 10038, has made, constituted and appointed, and by these presents, does make, constitute and appoint

Alan P. Chandler, Robert Trobec, Jeffrey A. Chandler, Kathleen M. Ireland,

Ian J. Donald, Susan L. Small, John L. Budde, Krista L Pocket

of the state of Michigan

its true and lawful Attorney(s)-in-Fact, at New York City in the State of New York, each of them alone to have full power to act without the other or others, to make, execute and deliver on its behalf, as Surety, bid bonds for any and all purposes.

Such bid bonds, when duly executed by said Attorney(s)-in-Fact, shall be binding upon said Company as fully and to the same extent as if signed by the President of said Company under its corporate seal attested by its Secretary.

In Witness Whereof, HUDSON INSURANCE COMPANY has caused these presents to be of its Senior Vice President thereunto duly authorized, on this 21st day of June, 20 23 at New York, New York.



Attest.

Dina Daskalakis
Dina Daskalakis, Corporate Secretary

HUDSON INSURANCE COMPANY

By

Michael P. Cifone
Michael P. Cifone, Senior Vice President

STATE OF NEW YORK
COUNTY OF NEW YORK SS.

On the 21st day of June, 20 23 before me personally came Michael P. Cifone to me known, who being by me duly sworn did depose and say that he is a Senior Vice President of HUDSON INSURANCE COMPANY, the Company described herein and which executed the above instrument, that he knows the seal of said Company, that the seal affixed to said instrument is the corporate seal of said Company, that it was so affixed by order of the Board of Directors of said Company, and that he signed his name thereto by like order.

(Notarial Seal)



Ann M. Murphy
ANN M. MURPHY
Notary Public, State of New York
No. 01MU6067553
Qualified in Nassau County
Commission Expires December 10, 2025

CERTIFICATION

STATE OF NEW YORK
COUNTY OF NEW YORK SS.

The undersigned **Dina Daskalakis** hereby certifies:

THAT the original resolution, of which the following is a true and correct copy, was duly adopted by unanimous written consent of the Board of Directors of Hudson Insurance Company dated July 27th, 2007, and has not since been revoked, amended or modified:

"RESOLVED, that the President, the Executive Vice Presidents, the Senior Vice Presidents and the Vice Presidents shall have the authority and discretion, to appoint such agent or agents, or attorney or attorneys-in-fact, for the purpose of carrying on this Company's surety business, and to empower such agent or agents, or attorney or attorneys-in-fact, to execute and deliver, under this Company's seal or otherwise, bonds obligations, and recognizances, whether made by this Company as surety thereon or otherwise, indemnity contracts, contracts and certificates, and any and all other contracts and undertaking made in the course of this Company's surety business, and renewals, extensions, agreements, waivers, consents or stipulations regarding undertakings so made; and

FURTHER RESOLVED, that the signature of any such Officer of the Company and the Company's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seal when so used whether heretofore or hereafter, being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed."

THAT the above and foregoing is a full, true and correct copy of Power of Attorney issued by said Company, and of the whole of the original and that the said Power of Attorney is still in full force and effect and has not been revoked, and furthermore that the Resolution of the Board of Directors, set forth in the said Power of Attorney is now in force.



Witness the hand of the undersigned and the seal of said Company this 30th day of July, 2024

By

Dina Daskalakis
Dina Daskalakis, Corporate Secretary

Project Name: Washwater Pump Check Valve Addition
Project Number: 2230492

SECTION 00 42 00
BID PROPOSAL

Bid Proposal

Owner:	City of Muskegon		
Owner Address:	933 Terrace St, Muskegon, MI 49440		
Project Title:	Washwater Pump Check Valve Addition		
Bid Date & Time:	July 9, 2024 at 2:00 PM	Project #:	2230492

The undersigned, being familiar with the site, drawings, specifications, and related documents, proposes to furnish all required labor, materials, tools and equipment to construct the project in accordance with the lump sum on the following sheets.

Date Prepared: July 30, 2024

Receipt of Addenda

Receipt of Addenda 1 through 1 is hereby acknowledged.

Summary of Bids

Total Bid \$ 65,000.00

The Owner reserves the right to accept or reject any or all bids and to waive any irregularities in the bidding. No partial bids will be accepted.

Contractor's Signature

<u>Franklin Holwerda Company</u>	<u>616-538-3231</u>
Contractor's Name	Telephone Number
<u>2509 29th Street SW</u>	<u>Wyoming, MI</u>
Business Address	City
<u>49519</u>	<u>Zip Code</u>
	<u>President/Treasurer</u>
Signature	Title
<u>Micah Holt</u>	<u>7/30/2024</u>
	Date

Seal (if bidder is a corporation)

Bid Proposal

Owner:	City of Muskegon		
Owner Address:	933 Terrace St, Muskegon, MI 49440		
Project Title:	Washwater Pump Check Valve Addition		
Bid Date & Time:	July 9, 2024 at 2:00 PM	Project #:	2230492

ALTERNATE ACTIVITIES

The Contractor shall provide supplemental cost data for the alternates outlined in Section 01 23 00 Alternates of the Project Specifications. The lump sum bid shall include those items specified as "Base Bid". The alternate pricing shall include all associated activities required for a complete installation of that alternate.

The Owner may elect to choose any of the alternates listed below for which the Contractor shall provide pricing and the contract amount will be adjusted accordingly.

Suction Piping Alternate No. 1

1. Suction Piping Alternate No. 1 consists of removing the existing foot valve from the suction piping from Washwater Pump 3, and installing permanent pipe supports on the suction piping. Refer to Section 01 10 00 Summary of Work for description of the split between Owner and Contractor activities. Suction pipe accessories and pipe supports shall be per Section 40 05 13 Process Piping.

Suction Piping Alternate No. 1, add \$92,000.00 lump sum \$157,000.00

Suction Piping Alternate No. 2

2. Suction Piping Alternate No. 2 consists of removing the existing foot valve from the suction piping from Washwater Pumps 2 and 3, cutting the suction piping and installing a restrained flange adapter, installing new foot valves per Section 40 05 51 Process Valves, and installing permanent pipe supports on the suction piping. Refer to Section 01 10 00 Summary of Work for description of the split between Owner and Contractor activities. Suction pipe accessories and pipe supports shall be per Section 40 05 13 Process Piping.

Suction Piping Alternate No. 2, add \$145,000.00 lump sum \$210,000.00

NOTE: CANNOT BE COMPLETED BY 3/15/25 DUE TO QUOTED DELIVERY TIMES.

Project Name: Washwater Pump Check Valve Addition
Project Number: 2230492

SECTION 00 43 93
BID PROPOSAL CHECKLIST

Bid Proposal Checklist

Owner: City of Muskegon

Project Title: Washwater Pump Check Valve Addition

Project #: 2230492

This checklist is for the bidder's convenience and the Engineer's use. It should be reviewed thoroughly before submitting a bid.

- ☒ Bid submitted on time.
- ☒ Bid surety properly completed and enclosed.
- ☒ Addenda, if applicable, have been acknowledged and any revisions to the proposal completed.
- ☒ Bid proposal legally signed in ink.
- ☒ Contract Prices are completed in ink.
- ☒ All supplemental data required for equipment submitted as an alternate to Base Bid - equipment.

NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of Michigan)
) ss.
County of Muskegon)

Micah Holt, being first duly sworn, deposes
and says that:

1. He/She is President / Treasurer
(owner, partner, officer, representative, agent)
of Franklin Holwerda Company, the Bidder that has submitted the attached Bid
to the City of Muskegon;
2. He/She is fully informed respecting the preparation and contents of the attached Bid and of all
pertinent circumstances thereto;
3. Such Bid is genuine and is not a collusive or sham Bid;
4. Neither said Bidder nor any of his/her officers, partners, owners, agents, representatives, employees
or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed,
directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham Bid in
connection with the Contract for which the attached Bid has been submitted, or to refrain from
bidding in connection with such Contract; nor has in any manner, directly or indirectly, sought by
agreement, collusion, communication or conference with any other Bidder, firm or person to fix
the price or prices in the attached Bid or any other bid; nor to fix any overhead, profit or cost
element of the Bid price or the bid price of any other bidder; nor to secure through any collusion,
conspiracy, connivance or unlawful agreement any advantage against the City of Muskegon or any
person interested in the proposed Contract; and
5. The price or prices quoted in the attached Bid are fair and proper, and are not tainted by any
collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any part of
its agents, representatives, owners, employees or parties in interest, including this affiant.



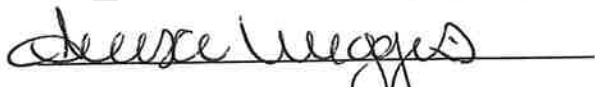
Signature

Micah Holt, President / Treasurer

Printed Name and Title

Subscribed and sworn to before me

This 30th day of July, 20 24



Teresa Wiggers, Admin. Assistant

Title

My Commission expires 10/27/28

CONSENT RESOLUTION OF THE BOARD
OF DIRECTORS OF FRANKLIN HOLWERDA COMPANY

WHEREAS, Robert Holt, Micah Holt, Douglas Holt and Josh Whitcomb are the sole members of the Board of Directors;

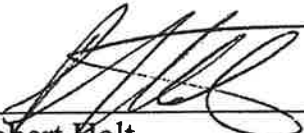
NOW THEREFORE, the following resolutions are adopted:

RESOLVED, that Robert Holt, Micah Holt, Douglas Holt, and Josh Whitcomb shall continue as Directors until their successors are elected.

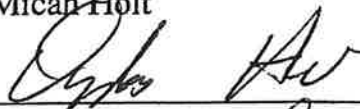
FURTHER RESOLVED that Robert Holt shall fill the office of C.E.O., Micah Holt shall fill the office of President and Treasurer, Doug Holt shall fill the office of Vice President, and Josh Whitcomb shall fill the office of Vice President and Secretary.

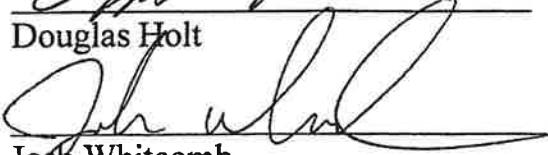
FURTHER RESOLVED that Robert Holt, Micah Holt, Douglas Holt and Josh Whitcomb have absolute authority to sign any contract documents.

Dated: January 1, 2020

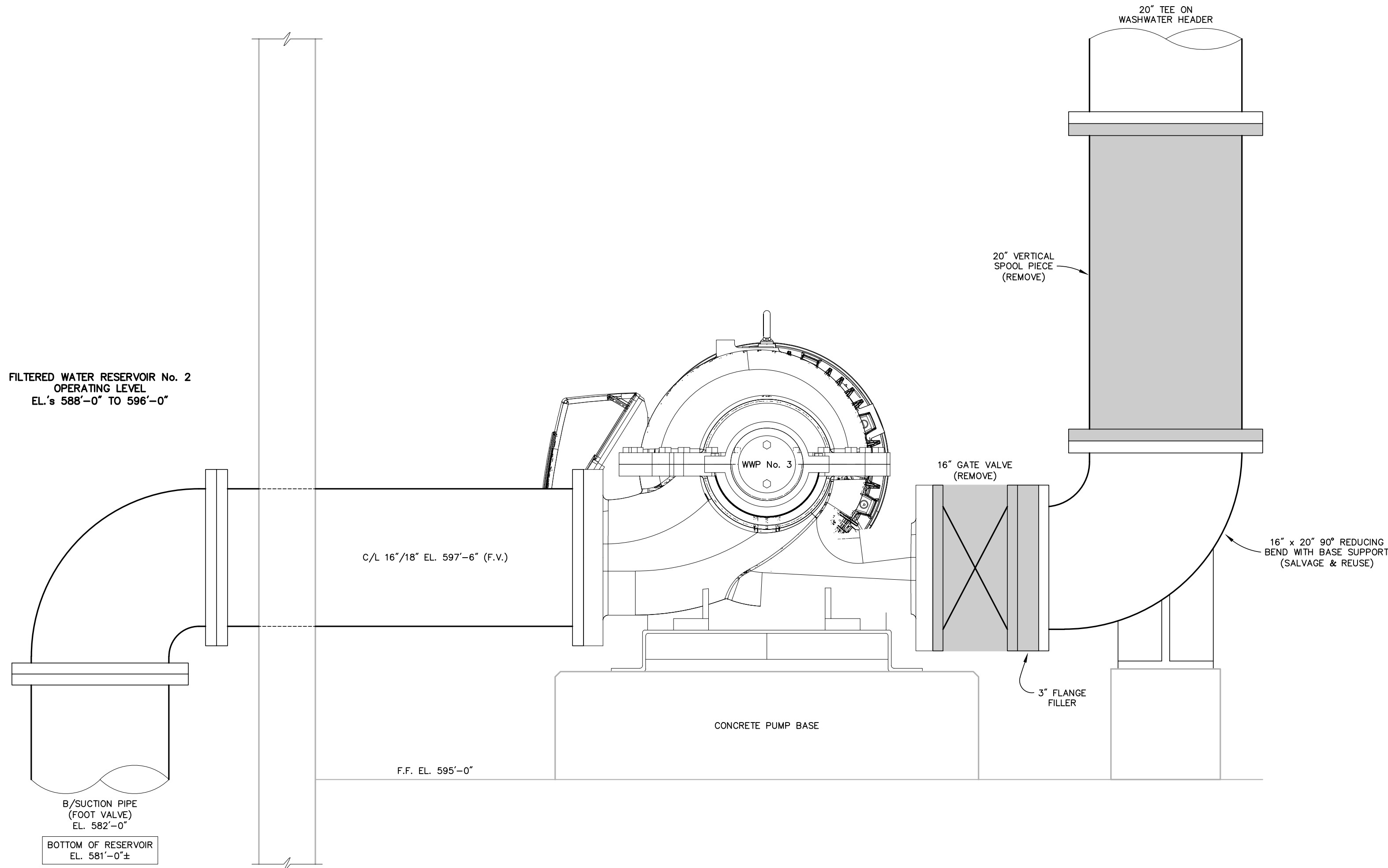

Robert Holt


Micah Holt


Douglas Holt


Josh Whitcomb

T:\CIVIL\PROJECTS\2023\2230492_CITY OF MUSKEGON\WPP\WPP_1\PROJ\2230492_PROCESSING - WSM\011 - Mar, 06 2024 - 05:54pm - Prein&Newhof



WASHWATER PUMP No. 3 DISCHARGE PIPING – EXISTING

SCALE : 1" = 1'-0"

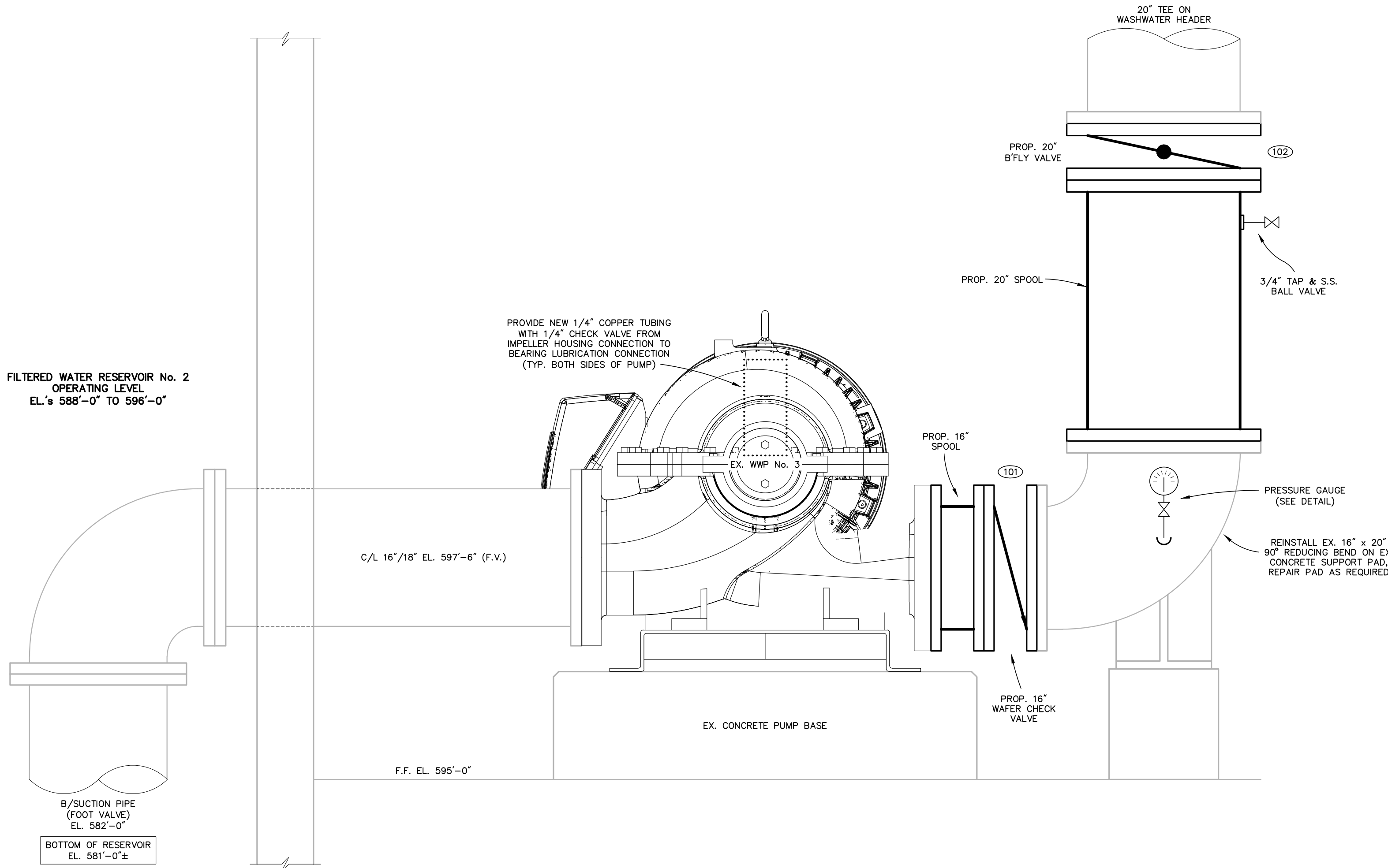
REMOVAL LEGEND

	CONTRACTOR TO REMOVE ALL COMPONENTS IDENTIFIED.
--	--

SUGGESTED CONSTRUCTION SEQUENCING

- COORDINATE WITH OWNER TO BEGIN WORK DURING LOW FLOW PERIODS.
- COORDINATE WITH OWNER TO HAVE VALVE B-23-2 CLOSED, ISOLATING WWP No. 2 AND WWP No. 3 FROM WWP No. 1. WWP No. 1 WILL BE UTILIZED FOR WASHING THE NORTH FILTERS. SOUTH FILTERS WILL BE OFFLINE.
- COORDINATE WITH OWNER TO DRAIN WASHWATER HEADER VIA AVAILABLE TAPS AND/OR LOOSENING FITTINGS ON WWP No. 3 DISCHARGE PIPING.
- INSTALL PROP. BUTTERFLY VALVE, SWABBED WITH CHLORINE SOLUTION PRIOR TO INSTALLATION. COORDINATE WITH OWNER TO RETURN WASHWATER HEADER TO SERVICE WITH PROPOSED VALVE CLOSED.
- COMPLETE REMAINING DEMOLITION, CONSTRUCTION, AND PAINTING WORK ON WWP No. 3 DISCHARGE PIPING AS SHOWN. ALL PIPING AND FITTINGS INSTALLED SHALL BE SWABBED WITH CHLORINE SOLUTION PRIOR TO INSTALLATION.
- COMPLETE DISINFECTION AND SAMPLING PER SPECIFICATIONS.
- COORDINATE WITH OWNER TO OPERATE WWP No. 3 ON A BACKWASH CYCLE, PERFORM VISUAL HYDROSTATIC TEST ON INSTALLED PIPING.

VALVE SCHEDULE						
No.	QTY.	SIZE (INCHES)	TYPE	FUNCTION	CONTROL	REMARKS
101	1	16	WAFER CHECK	WWP DISCHARGE CHECK	—	—
102	1	20	BFLY	WWP DISCHARGE ISOLATION	HANDWHEEL	—
103	2	18	FOOT VALVE	WWP SUCTION PIPING FOOT VALVE	—	IMMERSION SERVICE, PROVIDE IF SUCTION PIPING ALTERNATE No. 2 IS TAKEN

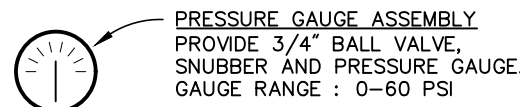


WASHWATER PUMP No. 3 DISCHARGE PIPING – PROPOSED

SCALE : 1" = 1'-0"

NOTES

- CONTRACTOR SHALL FIELD VERIFY SMALL DIAMETER PIPING DIMENSIONS AND PROVIDE PIPING AND FITTINGS TO MATCH EXISTING SIZE.
- CONTRACTOR SHALL FIELD VERIFY ALL INSTALLATION REQUIREMENTS PRIOR TO DEMOLITION.



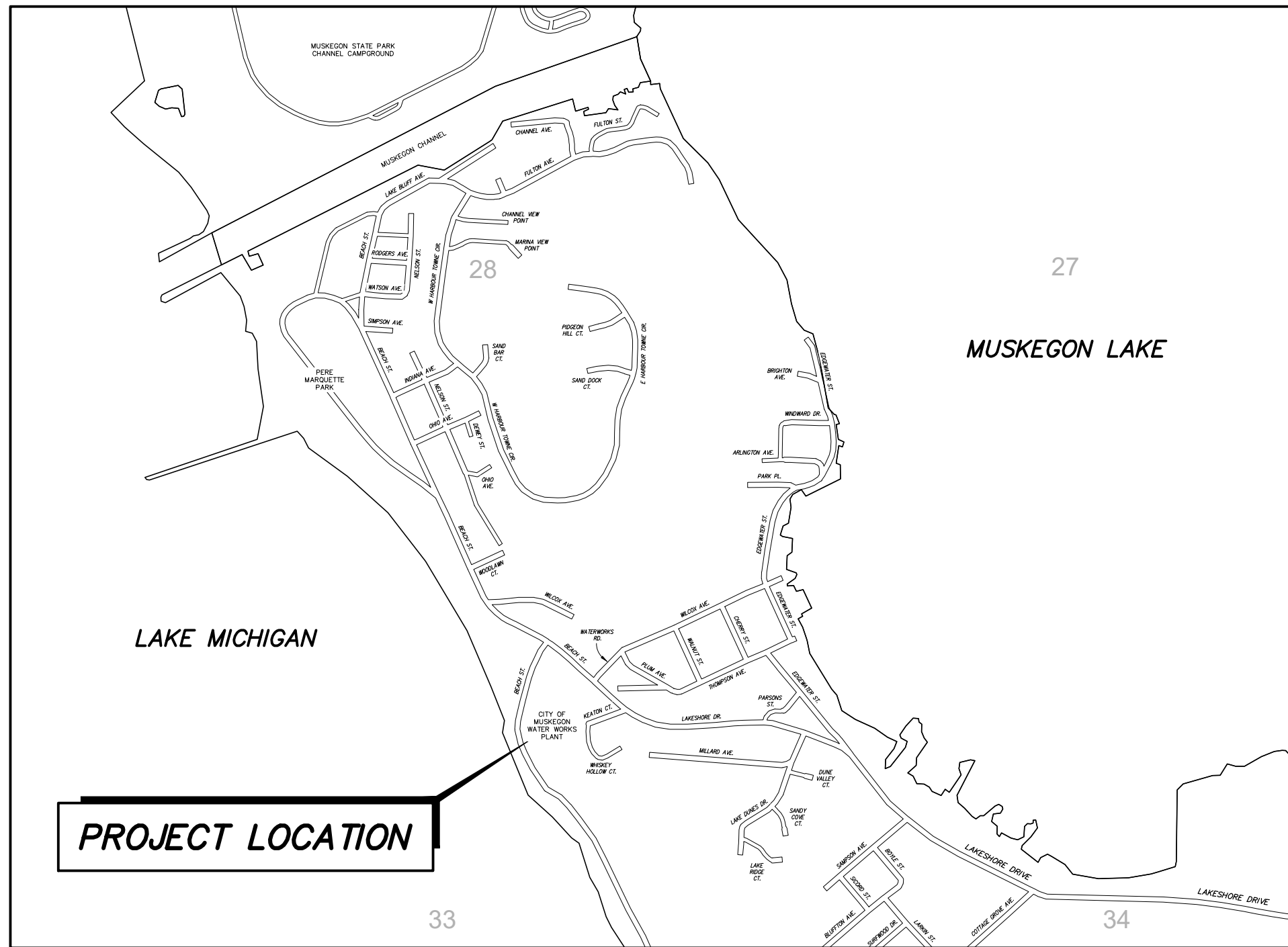
TO PROP. 3/4" TAP ON EX. BASE 90° BEND

PRESSURE GAUGE ASSEMBLY

SCALE : NONE

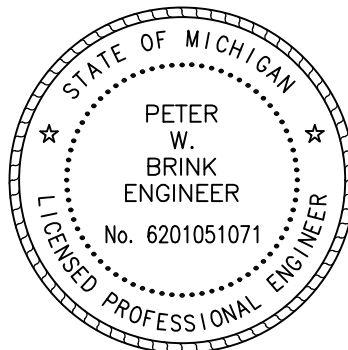
NOTE

PROVIDE 3/4" TAP, STAINLESS STEEL (S.S.) PIPING AND 3/4" S.S. BALL VALVE FOR THE PRESSURE GAUGE ASSEMBLY CONNECTION. ALL WETTED MATERIALS SHALL BE NSF 61 CERTIFIED FOR USE WITH DRINKING WATER.



PROJECT LOCATION MAP

SCALE : 1" = 1000'±



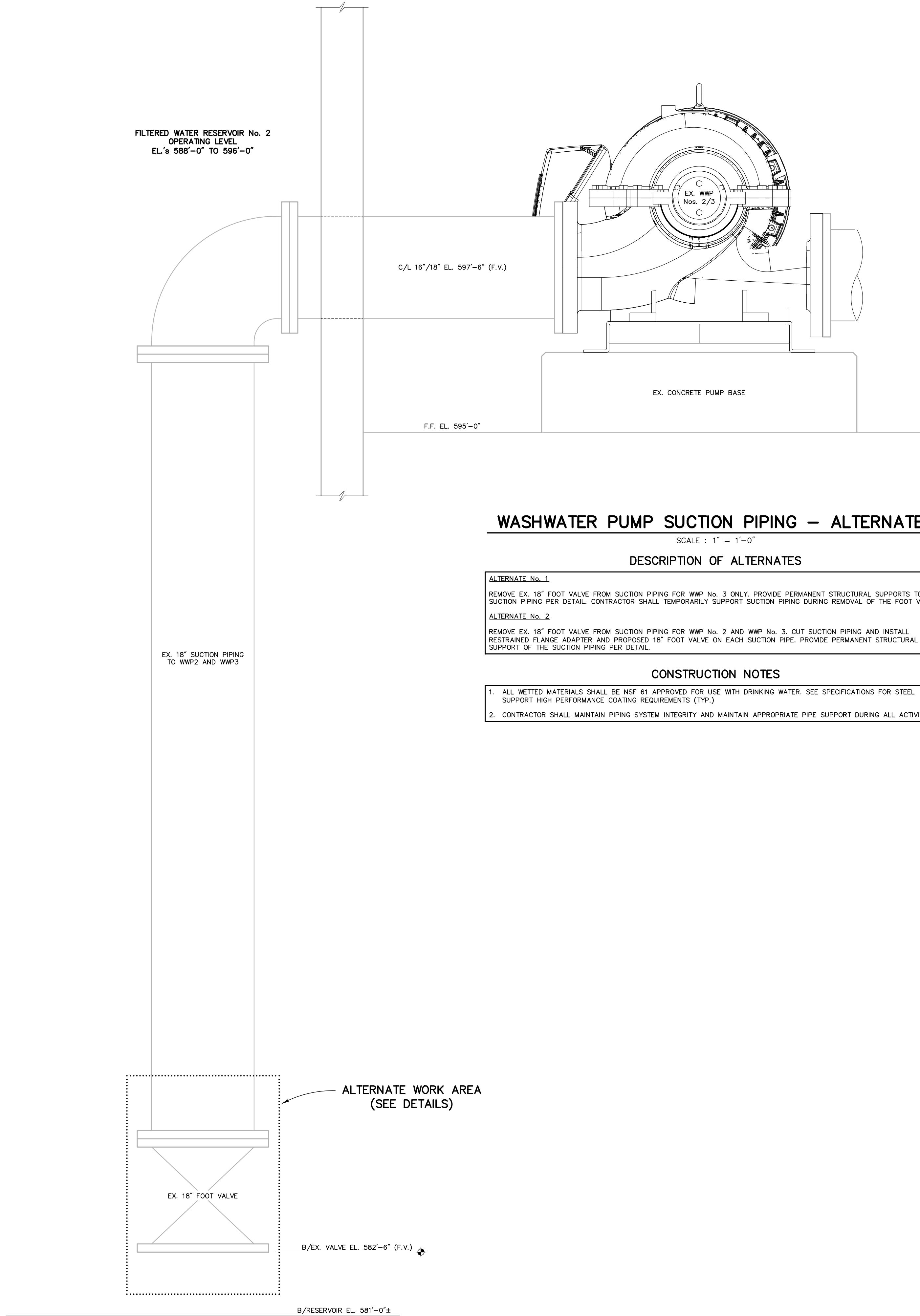
NO.	REVISIONS	BY	DATE	DRAWN
				SMYTH
				DATE MAR. '23
				CHECKED P.W.B.
				DATE MAR. '24

Prein&Newhof
Engineers•Surveyors•Environmental•Laboratory

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN
WATER FILTRATION PLANT IMPROVEMENTS
WASHWATER PUMP CHECK VALVE ADDITION

PROJECT NO.
2230492
SHEET NO.
1 OF 2

T:\CIVIL\PROJECTS\2023\2230492_CITY OF MUSKEGON_WFP IMP\LPD0\2230492_PROCESS.DWG - NSM\TH - Mar, 06 2024 - 05:55pm - PwdMwchd



WASHWATER PUMP SUCTION PIPING – ALTERNATES

SCALE : 1" = 1'-0"

DESCRIPTION OF ALTERNATES

ALTERNATE No. 1

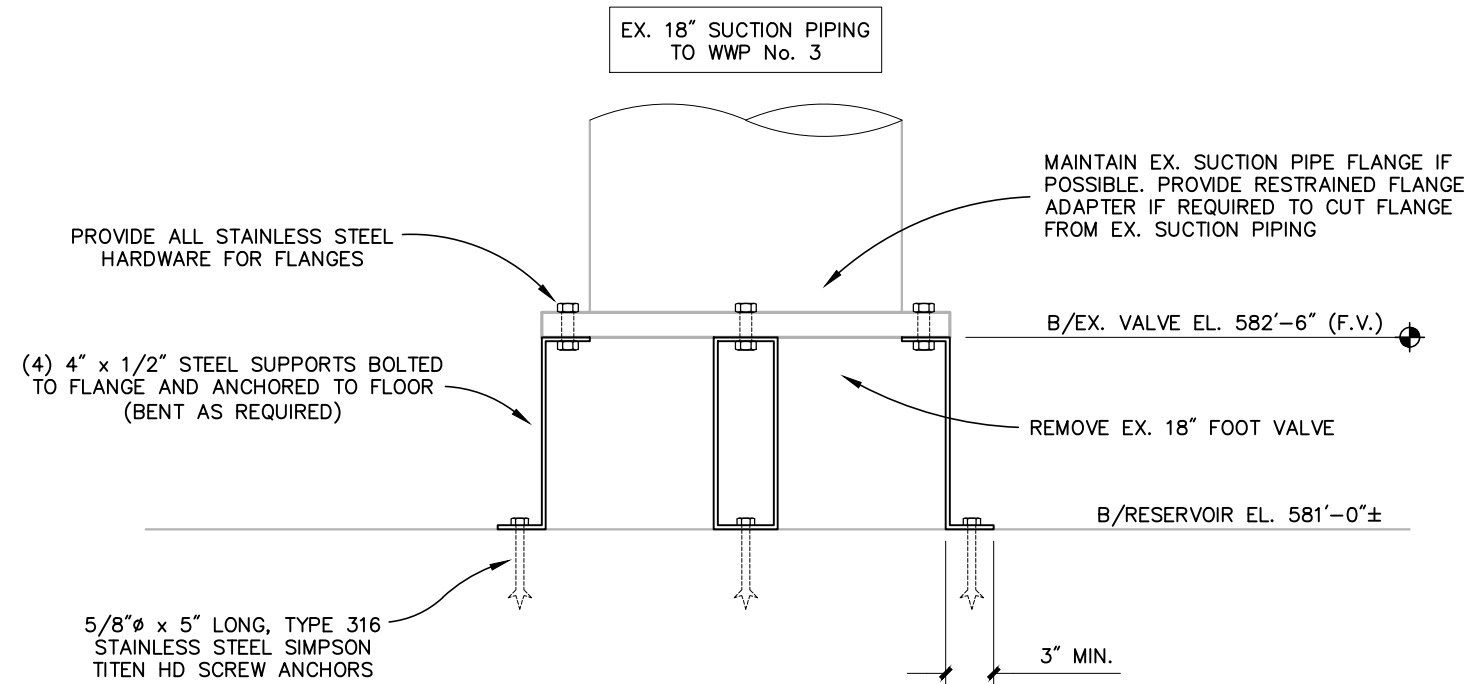
REMOVE EX. 18" FOOT VALVE FROM SUCTION PIPING FOR WWP No. 3 ONLY. PROVIDE PERMANENT STRUCTURAL SUPPORTS TO THE SUCTION PIPING PER DETAIL. CONTRACTOR SHALL TEMPORARILY SUPPORT SUCTION PIPING DURING REMOVAL OF THE FOOT VALVES.

ALTERNATE No. 2

REMOVE EX. 18" FOOT VALVE FROM SUCTION PIPING FOR WWP No. 2 AND WWP No. 3. CUT SUCTION PIPING AND INSTALL RESTRAINED FLANGE ADAPTER AND PROPOSED 18" FOOT VALVE ON EACH SUCTION PIPE. PROVIDE PERMANENT STRUCTURAL SUPPORT OF THE SUCTION PIPING PER DETAIL.

CONSTRUCTION NOTES

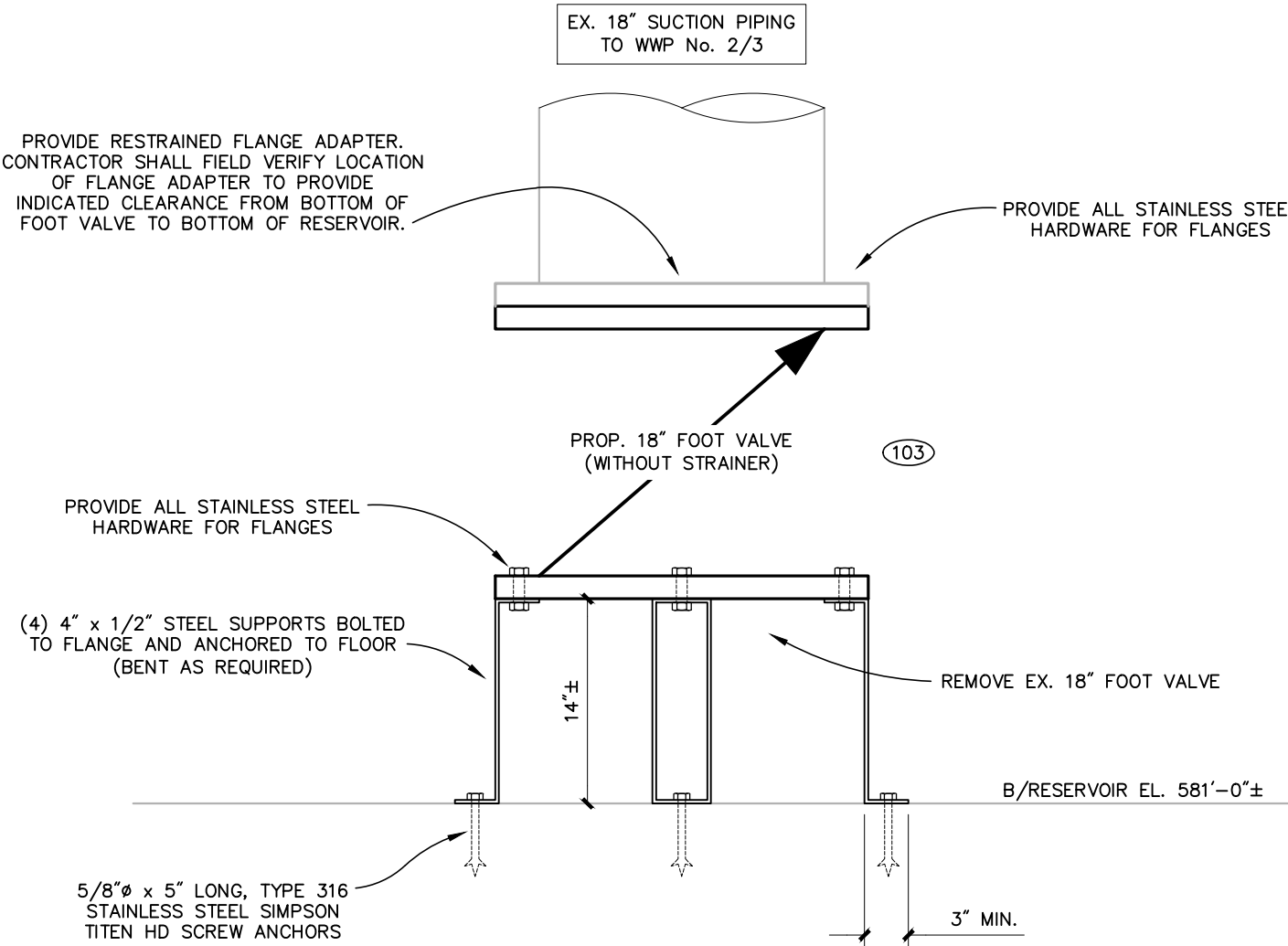
1. ALL WETTED MATERIALS SHALL BE NSF 61 APPROVED FOR USE WITH DRINKING WATER. SEE SPECIFICATIONS FOR STEEL SUPPORT HIGH PERFORMANCE COATING REQUIREMENTS (TYP.)
2. CONTRACTOR SHALL MAINTAIN PIPING SYSTEM INTEGRITY AND MAINTAIN APPROPRIATE PIPE SUPPORT DURING ALL ACTIVITY.



PIPE SUPPORT DETAIL

(ALTERNATE No. 1)

SCALE : 1" = 1'-0"



PIPE SUPPORT DETAIL

(ALTERNATE No. 2)

SCALE : 1" = 1'-0"

SUCTION PIPING ALTERNATES

NO.	R E V I S I O N S	BY	DATE	DRAWN
				SMYTH
				DATE MAR. '23
				CHECKED P.W.B.
				DATE MAR. '24

Prein&Newhof
Engineers•Surveyors•Environmental•Laboratory

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN
WATER FILTRATION PLANT IMPROVEMENTS
WASHWATER PUMP CHECK VALVE ADDITION

PROJECT NO.
2230492
SHEET NO.
2 OF 2

Water Filtration Plant Improvements

City of Muskegon
Muskegon County, Michigan

Washwater Pump Check Valve Addition

June 2024

2230492

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TABLE OF CONTENTS

Division 0 – Procurement and Contracting Requirements

Division 1 – General Requirements

Division 2 – Existing Conditions

Division 9 – Finishes

Division 40 – Process Integration

PLANS

[Intentionally left blank]

PROCUREMENT AND CONTRACTING REQUIREMENTS

DIVISION 0

TABLE OF CONTENTS

SECTION	TITLE
00 11 13	Advertisement
00 21 13	Instructions to Bidders
00 42 00	Bid Proposal
00 43 93	Bid Proposal Checklist
00 52 13	Agreement
00 61 13	Performance and Payment Bonds (to be furnished by Contractor)
00 72 00	General Conditions
00 73 00	Supplementary Conditions
00 73 16	Insurance Specifications
00 73 16.10	Insurance Certificates (to be furnished by Contractor)
Additional Documents	Notice of Requirement for Affirmative Action Anti-Kickback Act Adopted Labor Standards Provisions Non-Collusion Affidavit of Prime Bidder

[Intentionally left blank]

Advertisement

Owner: City of Muskegon

Project Title: Washwater Pump Check Valve Addition

Project #: 2230492

1. RECEIPT OF BIDS

Sealed bids for the above project will be received by the City of Muskegon of 933 Terrace Street, Muskegon, Michigan until:

2:00 pm (local time) on Tuesday, July 2, 2024

at which time the bids will be publicly opened and read aloud.

2. SCOPE OF PROJECT

The project consists of furnishing all material and constructing the following:

- Removal of the discharge piping associated with Washwater Pump #3 (WWP3) up to the discharge tee.
- Installation of a new discharge isolation valve and discharge check valve;
- Reconstruction of the discharge piping and small diameter instrumentation piping;
- Removal of existing foot valve from WWP3 (Alternate No. 1), replacement of foot valves at WWP2 and WWP3 suction piping (Alternate No. 2) including installation of permanent pipe supports (both Alternates).
- All associated equipment, valves, piping, and mechanical work.

Including all necessary appurtenances, disinfection, and restoration.

3. EXAMINATION OF SPECIFICATIONS

Contract documents may be examined online at <https://www.muskegon-mi.gov/muskegon/bid-postings> or at the offices of:

City of Muskegon, 933 Terrace Street, Muskegon, MI 49440
Prein&Newhof, 4910 Stariha Drive, Muskegon, MI 49441
Prein&Newhof, 3355 Evergreen Drive NE, Grand Rapids, MI 49525
And some local plan rooms.

4. DEPOSIT FOR DRAWINGS AND SPECIFICATIONS

Drawings and specifications are available online at <https://www.muskegon-mi.gov/muskegon/bid-postings>. Bidder assumes sole risk for any project specifications and drawings, electronic or hard copy, obtained other than directly from the City of Muskegon. Hard copy drawings and specifications are available for the fee of 40 dollars from the City of Muskegon. Fees are payable by cash or check only and are not refunded.

The Bidder is to complete the Bid Proposal documents that are included in the Project Specification book (online or hard copy), referring to the table of contents to identify the exact order of these documents. Regardless of how the bid documents are received, a hard copy (paper copy) of the Bid Proposal Documents must be submitted for bidding purposes. *No electronically submitted Proposals will be accepted.* The Bid Proposal Documents include: Bid Proposal Checklist, and Bid Proposal.

The Bidder must provide the signed Bid Proposal Documents in either type written or hand written (in ink) form and clearly and completely set forth all required lump sum amounts, unit prices or other costs in a legible and understandable manner. Illegibility of any work or figure in the proposal may be sufficient cause for rejection of the proposal by the Owners. No electronically submitted Proposals will be accepted.

Any conclusions or information obtained or derived from Contract Documents will be at the user's sole risk. Prein&Newhof will maintain in its Grand Rapids office the master copy (hard copy) of the Contract Documents from which all electronic copies are based. In the case of any contract discrepancy, the Master Copy (hard copy) shall be considered the controlling document.

5. FUNDING

The work to be performed under this contract will be financed and paid for by local funds.

6. BID SURETY

For bid surety requirements, see Section 00 21 13 Instructions to Bidders.

7. RIGHT TO REJECT BIDS

The Owner reserves the right to reject any or all bids and to waive any irregularities in bidding. No bid may be withdrawn after the scheduled closing time for receiving bids for at least one hundred twenty (120) days thereafter.

8. SITE INSPECTION

Access to the site will be limited to one occasion during the bid period. Access to the water treatment plant for site inspection will be granted on Wednesday, June 19th at 10:00AM. Please call Josh Parmer at 231-724-4104 to confirm attendance at the site inspection.

9. EQUAL OPPORTUNITY CLAUSE

The Equal Employment Opportunity Clause required under Executive Order 11246, the affirmative action commitment for disabled veterans and veterans of the Vietnam era, set forth in 41 CFR 60-250.4 the affirmative action clause for handicapped workers, set forth in 40 CFR 60-741.4 and the related regulations of the Secretary of Labor, 40 CFR Chapter 60, are incorporated by reference. Bidder certifies that it complies with the authorities cited above, and that it does not maintain segregated facilities or permit its employees to perform services at locations where segregated facilities are maintained, as required by 41 CFR 60-1.8

10. LOCAL PREFERENCE POLICY

The City Commission may give local preference on purchases and contractors to local businesses. If a contractor or business is located within the city limits of the City of Muskegon, a bid may be accepted at or within 2% of the lowest non-local bid. A contractor or business located within the County of Muskegon, a bid may be accepted at or within 1% of the lowest non-local bid.

Any contractor electing to pay prevailing wage to its employees may be granted an additional 1% allowance, up to a maximum of 3%. Prevailing wage will be paid according to the newest wage determination published by the U.S. Federal Government and agreed upon before awarding a contract. Contractor will be required to sign an affidavit ensuring proper payment to employees.

11. ADDITIONAL DOCUMENTS

The following documents are included at the end of Division 0 of the Contract Documents:

- Notice of Requirement for Affirmative Action
- Anti-Kickback Act
- Adopted Labor Standards Provisions
- Non-Collusion Affidavit of Prime Bidder

The Non-Collusion Affidavit shall be completed by the bidder and submitted with the Proposal documents.

12. COMMENCEMENT OF WORK

Construction activities within the water filtration plant are to begin after Labor Day of 2024. It is the intent of the Owner to consider award of the contract to the successful bidder at the July 9, 2024 City Council Meeting.

13. COMPLETION DATE

The project shall be completed in accordance with the following dates:

Substantial and Final Completion – March 15, 2025

Ann Marie Meisch
Muskegon City Clerk
933 Terrace Street
Muskegon, MI 49440
231-724-6705

Instructions To Bidders

Owner: City of Muskegon

Project Title: Washwater Pump Check Valve Addition

Project #: 2230492

1. CONTRACT DOCUMENTS

The contract documents consist of material outlined in Article 9 of the Agreement. Each Bidder shall carefully examine his copy of the contract documents for completeness. No claim will be allowed on the basis that the contract documents are not complete.

2. INTERPRETATION OF THE CONTRACT DOCUMENTS

It is the intent of these contract documents to be clear, complete and consistent. If Bidder is of the opinion that any portion of the contract documents is ambiguous, inconsistent or contains errors or omissions Bidder shall, prior to submitting its bid, in writing request Engineer to clarify that portion of the contract documents as an addendum. Requests must be received by the Engineer at least four business days prior to the bid. This interpretation or correction will be made a part of the contract documents as an addendum. Any such addendum shall be mailed, faxed, e-mailed or delivered only to each person recorded as having received/downloaded a copy of the contract documents directly from Prein&Newhof.

The last day an addendum will be issued is three (3) business days prior to the bid. Questions to be addressed in the addendum will be received through 5:00 p.m. five (5) business days prior to the bid.

Only written addenda issued by the Engineer shall be binding. Oral interpretations, information or instructions by any office or employee of the Owner or Engineer are not authorized and therefore are not binding.

Any conclusions or information obtained or derived from electronic media will be at the user's sole risk. Prein&Newhof's responsibility is limited to only the printed copies (also known as hard copies) that are delivered pursuant to the service under the contract with the client.

3. BIDDERS INVESTIGATION

The Bidder will be responsible for inspecting the site of the proposed work to determine for himself all conditions under which he will be obligated to work. It is also expected that he will investigate and make his own determination concerning the available facilities for receiving, transporting, handling and storing construction equipment and materials, and concerning other local conditions that may affect his work.

4. PROJECT FUNDING

Refer to Section 00 11 13 Advertisement to ensure compliance with funding requirements.

5. BID PROPOSAL PREPARATION

A. Name, Address and Legal Status of Bidder

The name and legal status of the Bidder, Corporation, Partnership or an Individual, shall be stated in the Proposal. A corporation Bidder shall name the state in which its Articles of Incorporation are held, and must give the title of the official having authority, under the by-laws, to sign contracts. A partnership Bidder shall give the full names and addresses of all partners. An L.L.C. Bidder shall provide the full names and addresses of all members.

Anyone signing a proposal as an agent of another must submit, with his proposal, legal evidence of his authority to act as an authorized agent of the party.

The place of residence of each Bidder, or the office address in the case of a firm or company, with county and state, must be given after a signature.

B. Experience and Qualifications

It is the intention of the Owner to award this contract to a Bidder that will perform and complete all work in compliance with the Contract Documents and in a workmanlike and professional manner. Bids are therefore only solicited from responsible Bidders known to be skilled, experienced and regularly engaged in work of similar character and magnitude to that covered by these contract documents.

After the opening of bids, when so requested by the Owner or Engineer, the Bidder will be required to provide documentation of the extent and nature of his experience in work of this kind and to furnish references as to his experience on projects of similar types and concerning contractor's ability to timely and within budget perform work of the type involved in this project. The successful Bidder shall submit a statement of his experience and financial status, a list of all jobs he now has underway, with the volume and percent completed. If the successful Bidder is an LLC, bidder shall provide, if requested, personal guarantees of its members.

In addition to the above, when so requested, the Bidder shall meet with the Owner's representatives and give further information in relation to his proposed construction plan, methodology, and schedule of operations, in order to determine the Bidder's qualifications, ability to perform the Work, and timely complete the Work in accordance with the contract requirements.

C. Bid Surety

Each proposal must be accompanied by a bid deposit in the form of a bid bond payable to the Owner in the amount of not less than 5% of the total price for the Contract. The bond shall be issued by an insurance company licensed to do business in the State of Michigan.

Any Bidder who has submitted a proposal to the Owner may withdraw his bid at any time prior to the scheduled time for opening bids. No Bidder may withdraw his bid after the opening for a period of one hundred twenty (120) days thereafter.

D. Return of Bid Deposits

The bid deposits of all Bidders, except the three lowest Bidders, will be returned within seven days after the opening of the bids. The bid deposits of the three lowest Bidders will be returned (1) within 48 hours after the contract shall have been awarded to the successful Bidder, the signed agreement has been delivered, and the required bonds have been approved by the Owner, or (2) after rejection of all bids.

E. Proposal Form

The Bidder is to complete the Bid Proposal Documents that are included in the Project Specification book (online or hard copy), referring to the table of contents to identify the exact order of these documents. Regardless of how the bid documents are received, a hard copy (paper copy) of the Bid Proposal Documents must be submitted for bidding purposes. *No electronically-submitted Proposals will be accepted.* The Bid Proposal Documents include: Bid Proposal Checklist and Bid Proposal.

The Bidder must provide the signed Bid Proposal Documents in either type written or hand written (in ink) form and clearly and completely set forth all required lump sum amounts, unit prices or other costs in a legible and understandable manner. Illegibility of any work or figure in the proposal may be sufficient cause for rejection of the proposal by the Owners. *No electronically-submitted Proposals will be accepted.*

Any conclusions or information obtained or derived from Contract Documents will be at the user's sole risk. Prein&Newhof will maintain the master copy (hard copy), from which all electronic copies are based in its Grand Rapids Office. In the case of any contract discrepancy, the Master Copy (hard copy) shall be considered the controlling document.

Three (3) copies of the proposal documents shall be submitted in a sealed envelope to:
City of Muskegon Clerk's Office
933 Terrace Street
Muskegon, MI 49440

The envelope shall be clearly marked on the exterior denoting the name of the firm submitting the proposal and the name of the particular RFP for which the proposal is offered. Label for this RFP shall be **"Proposal for City of Muskegon, Muskegon County, Michigan, Washwater Pump Check Valve Addition"** No electronically submitted Proposals will be accepted.

F. Proposal Data

Proposals shall be carefully prepared in strict accordance with contract requirements and these instructions and shall include all pertinent information required by the proposal

form. Failure of the bidder to comply in any respect shall be grounds for rejection of the bidder's proposal.

The proposal for work is on a lump sum basis.

No partial bids will be considered.

6. TIME AND LIQUIDATED DAMAGES

Bidder's attention is directed to the completion date(s) as indicated in Section 00 11 13 Advertisement and to the liquidated damage and expense clauses in the Agreement.

7. BONDS AND INSURANCE

See General Conditions, Article 6; Supplementary Conditions Article 6 and Section 00 73 16 Insurance Specifications.

8. AWARD AND EXECUTION OF THE CONTRACT

The contract shall be deemed as having been awarded when formal Notice of Award shall have been duly provided by the Owner upon the Bidder.

The Bidder to whom the contract shall have been awarded will be required to execute an Agreement in the form included in the Contract Documents and to furnish sureties, insurance policies and certificates all as required within fifteen (15) days after the award. In case of his refusal or failure to do so, he will be considered to have abandoned all his rights and interest in the award, and his bid deposit may be declared forfeited to the Owner and the work may be awarded to another Bidder.

9. COORDINATION

Refer to Section 01 10 00 Summary of Work, Section 1.05 Work Sequence and Coordination.

10. PERMITS

Bidder's attention is directed to the required permits as indicated in Section 01 10 00 Summary of Work, Section 1.07 Permits.

11. UTILITIES

Refer to Section 01 10 00 Summary of Work, Section 1.09 Utilities.

Bid Proposal

Owner:	City of Muskegon		
Owner Address:	933 Terrace St, Muskegon, MI 49440		
Project Title:	Washwater Pump Check Valve Addition		
Bid Date & Time:	July 2, 2024 at 2:00 PM	Project #:	2230492

The undersigned, being familiar with the site, drawings, specifications, and related documents, proposes to furnish all required labor, materials, tools and equipment to construct the project in accordance with the lump sum on the following sheets.

Date Prepared: _____

Receipt of Addenda

Receipt of Addenda _____ through _____ is hereby acknowledged.

Summary of Bids

Total Bid \$ _____

The Owner reserves the right to accept or reject any or all bids and to waive any irregularities in the bidding. No partial bids will be accepted.

Contractor's Signature

Contractor's Name		Telephone Number
Business Address	City	Zip Code
Signature	Title	Date

Seal (if bidder is a corporation)

[Intentionally left blank]

Bid Proposal

Owner:	City of Muskegon		
Owner Address:	933 Terrace St, Muskegon, MI 49440		
Project Title:	Washwater Pump Check Valve Addition		
Bid Date & Time:	July 2, 2024 at 2:00 PM	Project #:	2230492

ALTERNATE ACTIVITIES

The Contractor shall provide supplemental cost data for the alternates outlined in Section 01 23 00 Alternates of the Project Specifications. The lump sum bid shall include those items specified as “Base Bid”. The alternate pricing shall include all associated activities required for a complete installation of that alternate.

The Owner may elect to choose any of the alternates listed below for which the Contractor shall provide pricing and the contract amount will be adjusted accordingly.

Suction Piping Alternate No. 1

1. Suction Piping Alternate No. 1 consists of removing the existing foot valve from the suction piping from Washwater Pump 3, and installing permanent pipe supports on the suction piping. Refer to Section 01 10 00 Summary of Work for description of the split between Owner and Contractor activities. Suction pipe accessories and pipe supports shall be per Section 40 05 13 Process Piping.

Suction Piping Alternate No. 1, add _____ lump sum

Suction Piping Alternate No. 2

2. Suction Piping Alternate No. 2 consists of removing the existing foot valve from the suction piping from Washwater Pumps 2 and 3, cutting the suction piping and installing a restrained flange adapter, installing new foot valves per Section 40 05 51 Process Valves, and installing permanent pipe supports on the suction piping. Refer to Section 01 10 00 Summary of Work for description of the split between Owner and Contractor activities. Suction pipe accessories and pipe supports shall be per Section 40 05 13 Process Piping.

Suction Piping Alternate No. 2, add _____ lump sum

[Intentionally left blank]

Bid Proposal Checklist

Owner: City of Muskegon

Project Title: Washwater Pump Check Valve Addition

Project #: 2230492

This checklist is for the bidder's convenience and the Engineer's use. It should be reviewed thoroughly before submitting a bid.

- ☐ Bid submitted on time.
- ☐ Bid surety properly completed and enclosed.
- ☐ Addenda, if applicable, have been acknowledged and any revisions to the proposal completed.
- ☐ Bid proposal legally signed in ink.
- ☐ Contract Prices are completed in ink.
- ☐ All supplemental data required for equipment submitted as an alternate to Base Bid equipment.

[Intentionally left blank]

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between City of Muskegon, 933 Terrace St, Muskegon, MI 49440 ("Owner") and [Contractor Name & Address] ("Contractor").

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

- Removal of the discharge piping associated with Washwater Pump #3 (WWP3) up to the discharge tee.
- Installation of a new discharge isolation valve and discharge check valve;
- Reconstruction of the discharge piping and small diameter instrumentation piping;
- Removal of existing foot valve from WWP3 (Alternate No. 1), replacement of foot valves at WWP2 and WWP3 suction piping (Alternate No. 2) including installation of permanent pipe supports (both Alternates).
- All associated equipment, valves, piping, and mechanical work.

Including all necessary appurtenances, disinfection, and restoration.

ARTICLE 2—THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: *Water Filtration Plant Improvements – Washwater Pump Check Valve Addition*

ARTICLE 3—ENGINEER

- 3.01 The Owner has retained Prein&Newhof, 4910 Stariha Drive, Muskegon, MI 49441 ("Engineer") to act as Owner's representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.
- 3.02 The part of the Project that pertains to the Work has been designed by Prein&Newhof.

ARTICLE 4—CONTRACT TIMES

4.01 *Time is of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

- A. The Work will be substantially complete on or before **March 15, 2025** and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **March 15, 2025**.

4.03 ~~*Contract Times: Days*~~

- ~~A. The Work will be substantially complete within [number] days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within [number] days after the date when the Contract Times commence to run.~~

4.04 ~~*Milestones*~~

- ~~A. Parts of the Work must be substantially completed on or before the following Milestone(s):~~

- ~~1. Milestone 1 [event & date/days]~~
- ~~2. Milestone 2 [event & date/days]~~
- ~~3. Milestone 3 [event & date/days]~~

4.05 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. *Substantial Completion:* Contractor shall pay Owner **\$500** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
 2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **\$500** for each day that expires after such time until the Work is completed and ready for final payment.
 - ~~3. *Milestones:* Contractor shall pay Owner **[\$number*]** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 1, until Milestone 1 is achieved, or until the time specified for Substantial Completion is reached, at which time the rate indicated in Paragraph 4.05.A.1 will apply, rather than the Milestone rate.~~
 4. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.
- ~~C. *Bonus:* Contractor and Owner further recognize the Owner will realize financial and other benefits if the Work is completed prior to the time specified for Substantial Completion. Accordingly, Owner and Contractor agree that as a bonus for early completion, Owner shall pay Contractor **[\$number]** for each day prior to the time specified above for Substantial Completion (as duly adjusted pursuant to the Contract) that the Work is substantially complete. The maximum value of the bonus will be limited to **[\$number]**.~~

4.06 *Special Damages*

- A. Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

ARTICLE 5—CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

A. ~~For all Work other than Unit Price Work, a lump sum of \$[number].~~

~~All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.~~

B. ~~For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item).~~

Unit Price Work					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					\$

~~The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.~~

C. ~~Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment) \$[number].~~

D. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6—PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the 1st day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All

such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. **90** percent of the value of the Work completed (with the balance being retainage).
 - 1) If 50 percent or more of the Work has been completed, as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
 - b. **0** percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
 - B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to **98** percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less **100** percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.
- 6.03 *Final Payment*
- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.
- 6.04 *Consent of Surety*
- A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.
- 6.05 *Interest*
- A. All amounts not paid when due will bear interest at the rate of **0** percent per annum.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

- A. The Contract Documents consist of all of the following:
 1. This Agreement.
 2. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).

3. General Conditions.
4. Supplementary Conditions.
5. Specifications as listed in the table of contents of the project manual.
6. Drawings (not attached but incorporated by reference) consisting of 2 sheets with each sheet bearing the following general title: Water Filtration Plant Improvements.
7. Addenda (numbers [number] to [number], inclusive).
8. Exhibits to this Agreement (enumerated as follows):
 - a. **Contractor's Bid (pages 1 to 2, inclusive)**
 - b. Insurance Specifications (pages 1 to 11, inclusive).
 - c. The 2020 Standard Specifications for Construction adopted by the Michigan Department of Transportation are hereby incorporated into these contract documents.
9. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 Contractor's Representations

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.

4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of

Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

Owner:

City of Muskegon

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

933 Terrace St

Muskegon, MI 49440

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

(If **Owner** is a corporation, attach evidence of authority to sign. If **Owner** is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Contractor:

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

(If **Contractor** is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

License No.:

(where applicable)

State:

[Intentionally left blank]

PERFORMANCE BOND

Contractor Name: _____ Address <i>(principal place of business)</i> : _____ 	Surety Name: _____ Address <i>(principal place of business)</i> : _____
Owner Name: City of Muskegon Mailing address <i>(principal place of business)</i> : 933 Terrace St Muskegon, MI 49440	Contract Description <i>(name and location)</i> : Water Filtration Plant Improvements – Washwater Pump Check Valve Addition Contract Price: _____ Effective Date of Contract: _____
Bond Bond Amount: _____ Date of Bond: _____ <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: ☒ None ☐ See Paragraph 16	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal	Surety
_____ <i>(Full formal name of Contractor)</i>	_____ <i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature)(Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____ <i>(Signature)</i>	Title: _____ <i>(Signature)</i>
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____ <i>(Signature)</i>	Title: _____ <i>(Signature)</i>
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i>	

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond will arise after:
 - 3.1. The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice may indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement does not waive the Owner's right, if any, subsequently to declare a Contractor Default;
 - 3.2. The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
 - 3.3. The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 5.1. Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
 - 5.2. Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
 - 5.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
 - 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

- 5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
 - 5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
- 6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment, or the Surety has denied liability, in whole or in part, without further notice, the Owner shall be entitled to enforce any remedy available to the Owner.
- 7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety will not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
 - 7.1. the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 7.2. additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
 - 7.3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
- 8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
- 9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
- 10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
- 11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.
- 12. Notice to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears.
- 13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with

said statutory or legal requirement will be deemed deleted therefrom and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.

14. Definitions

- 14.1. *Balance of the Contract Price*—The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
 - 14.2. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
 - 14.3. *Contractor Default*—Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
 - 14.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
 - 14.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
16. Modifications to this Bond are as follows: **None**

PAYMENT BOND

Contractor Name: Address <i>(principal place of business)</i> :	Surety Name: Address <i>(principal place of business)</i> :
Owner Name: City of Muskegon Mailing address <i>(principal place of business)</i> : 933 Terrace St Muskegon, MI 49440	Contract Description <i>(name and location)</i> : Water Filtration Plant Improvements – Washwater Pump Check Valve Addition Contract Price: Effective Date of Contract:
Bond Bond Amount: Date of Bond: <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: ☒ None ☐ See Paragraph 18	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Payment Bond, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal	Surety
<i>(Full formal name of Contractor)</i>	<i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature)(Attach Power of Attorney)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
Attest: _____ <i>(Signature)</i>	Attest: _____ <i>(Signature)</i>
Name: _____ <i>(Printed or typed)</i>	Name: _____ <i>(Printed or typed)</i>
Title: _____	Title: _____
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i>	

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond will arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond will arise after the following:
 - 5.1. Claimants who do not have a direct contract with the Contractor
 - 5.1.1. have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2. have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2. Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1. Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2. Pay or arrange for payment of any undisputed amounts.
 - 7.3. The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 will not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation will not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract will be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfying obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action will be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit will be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted here from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. Definitions
 - 16.1. *Claim*—A written statement by the Claimant including at a minimum:
 - 16.1.1. The name of the Claimant;
 - 16.1.2. The name of the person for whom the labor was done, or materials or equipment furnished;
 - 16.1.3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
 - 16.1.4. A brief description of the labor, materials, or equipment furnished;

- 16.1.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- 16.1.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
- 16.1.7. The total amount of previous payments received by the Claimant; and
- 16.1.8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- 16.2. *Claimant*—An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond is to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
- 16.3. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
- 16.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 16.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
- 17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
- 18. Modifications to this Bond are as follows: **None**

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By



Endorsed By



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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

TABLE OF CONTENTS

	Page
Article 1—Definitions and Terminology.....	1
1.01 Defined Terms.....	1
1.02 Terminology	6
Article 2—Preliminary Matters	7
2.01 Delivery of Performance and Payment Bonds; Evidence of Insurance.....	7
2.02 Copies of Documents	7
2.03 Before Starting Construction	8
2.04 Preconstruction Conference; Designation of Authorized Representatives	8
2.05 Acceptance of Schedules	8
2.06 Electronic Transmittals	9
Article 3—Contract Documents: Intent, Requirements, Reuse	9
3.01 Intent.....	9
3.02 Reference Standards	10
3.03 Reporting and Resolving Discrepancies	10
3.04 Requirements of the Contract Documents	11
3.05 Reuse of Documents	11
Article 4—Commencement and Progress of the Work	12
4.01 Commencement of Contract Times; Notice to Proceed	12
4.02 Starting the Work.....	12
4.03 Reference Points	12
4.04 Progress Schedule	12
4.05 Delays in Contractor’s Progress	12
Article 5—Site; Subsurface and Physical Conditions; Hazardous Environmental Conditions	14
5.01 Availability of Lands	14
5.02 Use of Site and Other Areas.....	14
5.03 Subsurface and Physical Conditions.....	15
5.04 Differing Subsurface or Physical Conditions	16

5.05	Underground Facilities	18
5.06	Hazardous Environmental Conditions at Site	19
Article 6—Bonds and Insurance.....		22
6.01	Performance, Payment, and Other Bonds	22
6.02	Insurance—General Provisions	22
6.03	Contractor’s Insurance	24
6.04	Builder’s Risk and Other Property Insurance	25
6.05	Property Losses; Subrogation	26
6.06	Receipt and Application of Property Insurance Proceeds	27
Article 7—Contractor’s Responsibilities		27
7.01	Contractor’s Means and Methods of Construction	27
7.02	Supervision and Superintendence	28
7.03	Labor; Working Hours	28
7.04	Services, Materials, and Equipment	28
7.05	“Or Equals”	29
7.06	Substitutes	30
7.07	Concerning Subcontractors and Suppliers	31
7.08	Patent Fees and Royalties	32
7.09	Permits	33
7.10	Taxes	33
7.11	Laws and Regulations.....	33
7.12	Record Documents.....	34
7.13	Safety and Protection.....	34
7.14	Hazard Communication Programs	35
7.15	Emergencies	35
7.16	Submittals	36
7.17	Contractor’s General Warranty and Guarantee	38
7.18	Indemnification	39
7.19	Delegation of Professional Design Services	40
Article 8—Other Work at the Site		41
8.01	Other Work	41
8.02	Coordination	41
8.03	Legal Relationships.....	42

Article 9—Owner’s Responsibilities	43
9.01 Communications to Contractor	43
9.02 Replacement of Engineer	43
9.03 Furnish Data	43
9.04 Pay When Due.....	43
9.05 Lands and Easements; Reports, Tests, and Drawings	43
9.06 Insurance.....	43
9.07 Change Orders	43
9.08 Inspections, Tests, and Approvals.....	44
9.09 Limitations on Owner’s Responsibilities	44
9.10 Undisclosed Hazardous Environmental Condition.....	44
9.11 Evidence of Financial Arrangements.....	44
9.12 Safety Programs	44
Article 10—Engineer’s Status During Construction	44
10.01 Owner’s Representative.....	44
10.02 Visits to Site.....	44
10.03 Resident Project Representative.....	45
10.04 Engineer’s Authority	45
10.05 Determinations for Unit Price Work	45
10.06 Decisions on Requirements of Contract Documents and Acceptability of Work	45
10.07 Limitations on Engineer’s Authority and Responsibilities	45
10.08 Compliance with Safety Program.....	46
Article 11—Changes to the Contract	46
11.01 Amending and Supplementing the Contract	46
11.02 Change Orders	46
11.03 Work Change Directives.....	47
11.04 Field Orders.....	47
11.05 Owner-Authorized Changes in the Work.....	47
11.06 Unauthorized Changes in the Work.....	48
11.07 Change of Contract Price	48
11.08 Change of Contract Times.....	49
11.09 Change Proposals.....	49
11.10 Notification to Surety.....	51

Article 12—Claims.....	51
12.01 Claims.....	51
Article 13—Cost of the Work; Allowances; Unit Price Work	52
13.01 Cost of the Work	52
13.02 Allowances	56
13.03 Unit Price Work.....	56
Article 14—Tests and Inspections; Correction, Removal, or Acceptance of Defective Work	57
14.01 Access to Work.....	57
14.02 Tests, Inspections, and Approvals.....	57
14.03 Defective Work	58
14.04 Acceptance of Defective Work.....	58
14.05 Uncovering Work	59
14.06 Owner May Stop the Work	59
14.07 Owner May Correct Defective Work.....	59
Article 15—Payments to Contractor; Set-Offs; Completion; Correction Period	60
15.01 Progress Payments.....	60
15.02 Contractor’s Warranty of Title	63
15.03 Substantial Completion.....	63
15.04 Partial Use or Occupancy	64
15.05 Final Inspection	65
15.06 Final Payment.....	65
15.07 Waiver of Claims	66
15.08 Correction Period	67
Article 16—Suspension of Work and Termination	68
16.01 Owner May Suspend Work	68
16.02 Owner May Terminate for Cause.....	68
16.03 Owner May Terminate for Convenience.....	69
16.04 Contractor May Stop Work or Terminate	69
Article 17—Final Resolution of Disputes	70
17.01 Methods and Procedures.....	70
Article 18—Miscellaneous	70
18.01 Giving Notice	70
18.02 Computation of Times	70

18.03	Cumulative Remedies	70
18.04	Limitation of Damages	71
18.05	No Waiver	71
18.06	Survival of Obligations	71
18.07	Controlling Law	71
18.08	Assignment of Contract	71
18.09	Successors and Assigns	71
18.10	Headings.....	71

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Claim*
 - a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by

Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.

- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
 - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
 - d. A demand for money or services by a third party is not a Claim.
11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or

communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
 - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
 - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.

32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part

thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion of such Work.

- 43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
- 44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
- 45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
- 46. *Technical Data*
 - a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
 - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
 - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
- 47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
- 48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
- 49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - 1. does not conform to the Contract Documents;
 - 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - 3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
 - 1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 - 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 - 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.

4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 2. a preliminary Schedule of Submittals; and
 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.
1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
 4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
 - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
 - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

A. *Standards Specifications, Codes, Laws and Regulations*

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take

precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:

- a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
- b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work may be done at the Site prior to such date.

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. Abnormal weather conditions;
 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
 4. Acts of war or terrorism.
- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
 3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
 5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.

Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the

effect of the delay, disruption, or interference on the critical path to completion of the Work.

- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

- 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
- 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise;

(b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
 - 2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
 - 3. Technical Data contained in such reports and drawings.
- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.
- C. *Reliance by Contractor on Technical Data:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

- D. *Limitations of Other Data and Documents:* Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
 3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
 4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

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

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement

to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

- D. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

E. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
 - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

- F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities.

Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 2. complying with applicable state and local utility damage prevention Laws and Regulations;
 3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
 2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
 3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
 4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written

statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.

- E. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

F. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
 - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;

2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the

required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.

- C. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
- H. Contractor shall require:
 - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and

2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
 1. include at least the specific coverages required;
 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;

4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
 4. not seek contribution from insurance maintained by the additional insured; and
 5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.

- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
 - 1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
 - 2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.

1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at

Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.05 “Or Equals”

- A. *Contractor’s Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an “or equal” item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
 - b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor’s Expense:* Contractor shall provide all data in support of any proposed “or equal” item at Contractor’s expense.
- C. *Engineer’s Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each “or-equal” request. Engineer may require Contractor to furnish additional data about the proposed “or-equal” item. Engineer will be the sole judge of acceptability. No “or-equal” item will be ordered, furnished, installed, or utilized until Engineer’s review is complete and Engineer determines that the proposed item is an “or-equal,” which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer’s Determination:* Neither approval nor denial of an “or-equal” request will result in any change in Contract Price. The Engineer’s denial of an “or-equal” request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.

- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an “or-equal” item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 *Substitutes*

- A. *Contractor’s Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
 2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
 3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the item specified; and
 - 3) be suited to the same use as the item specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in

Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.

- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or

otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.

- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any

license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.

- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.11 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to

such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.

- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any

of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.16 Submittals

A. Shop Drawing and Sample Requirements

1. Before submitting a Shop Drawing or Sample, Contractor shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.
3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

B. Submittal Procedures for Shop Drawings and Samples: Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.

1. Shop Drawings

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.

2. Samples

- a. Contractor shall submit the number of Samples required in the Specifications.
- b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer

may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. Engineer's Review of Shop Drawings and Samples

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.
5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. Resubmittal Procedures for Shop Drawings and Samples

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two

resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.

3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

E. *Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
 - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
 - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.
 - d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.

- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and

2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
1. Observations by Engineer;
 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. Use or occupancy of the Work or any part thereof by Owner;
 5. Any review and approval of a Shop Drawing or Sample submittal;
 6. The issuance of a notice of acceptability by Engineer;
 7. The end of the correction period established in Paragraph 15.08;
 8. Any inspection, test, or approval by others; or
 9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity

directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.

- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.19 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.
- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.19;
 - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.

- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be

set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:

1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.

- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

9.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.
- E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any

Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;

3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.
- B. If Owner has issued a Work Change Directive and:
1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving

the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.

- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
 - 1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
 - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
 - 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit will be determined as follows:
 - 1. A mutually acceptable fixed fee; or
 - 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
 - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;

- c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
- d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
- e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
- f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

B. *Change Proposal Procedures*

1. *Submittal*: Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
2. *Supporting Data*: The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

3. *Engineer's Initial Review*: Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
 4. *Engineer's Full Review and Action on the Change Proposal*: Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12—CLAIMS

12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
 - 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
 - 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
 - 4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal

and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 Cost of the Work

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe

benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
5. Other costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.
 - c. *Construction Equipment Rental*
 - 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment,

machinery, or parts must cease when the use thereof is no longer necessary for the Work.

- 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
 - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:
1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.

2. The cost of purchasing, renting, or furnishing small tools and hand tools.
3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
6. Expenses incurred in preparing and advancing Claims.
7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. Contractor's Fee

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. Documentation and Audit:** Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances*: Contractor agrees that:
 - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.
- E. *Adjustments in Unit Price*
 - 1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

- b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and

5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved

by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then

Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.

- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
 - 2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. Review of Applications

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;

- c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
 6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;

- e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
 - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.

2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment

bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
1. correct the defective repairs to the Site or such adjacent areas;
 2. correct such defective Work;
 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as

to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
 - 2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
 - 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 - 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 - 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be

as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

SUPPLEMENTARY CONDITIONS

Water Filtration Plant Improvements – Washwater Pump Check Valve Addition

TABLE OF CONTENTS

	Page
Table of Contents.....	00800-1
Caption and Introductory Statements	00800-3
SC-1.01 Defined Terms	00800-3
SC-1.02 Terminology	00800-3
SC-2.03 Before Starting Construction	00800-4
SC-2.05 Acceptance of Schedules	00800-4
SC-3.01 Intent	00800-5
SC-3.02 Reference Standards	00800-5
SC-3.03 Reporting and Resolving Discrepancies	00800-6
SC-4.01 Commencement of Contract Times; Notice to Proceed	00800-6
SC-4.05 Delays in Contractor's Progress	00800-6
SC-5.03 Subsurface and Physical Conditions	00800-7
SC-5.04 Differing Subsurface or Physical Conditions	00800-9
SC-5.05 Underground Facilities	00800-10
SC-5.06 Hazardous Environmental Conditions at Site	00800-14
SC-6.02 Insurance—General Provisions.....	00800-15
SC-6.03 Contractor's Insurance	00800-15
SC-6.04 Builder's Risk and Other Property Insurance	00800-15
SC-6.05 Property Losses; Subrogation	00800-15
SC-6.06 Receipt and Application of Property Insurance Proceeds	00800-16
SC-7.01 <i>Contractor's Means and Methods of Construction</i>	00800-16
SC-7.05 "Or-Equals"	00800-16
SC-7.06 Substitutes	00800-16
SC-7.07 Concerning Subcontractors and Suppliers	00800-17
SC-7.08 Patent Fees and Royalties.....	00800-17
SC-7.11 Laws and Regulations	00800-17
SC-7.13 Safety and Protection	00800-18
SC-7.16 Submittals	00800-18
SC-7.17 Contractor's General Warranty and Guarantee	00800-18
SC-7.19 Delegation of Professional Design Services.....	00800-19
SC-9.06 <i>Insurance</i>	00800-20
SC-10.01 Owner's Representative	00800-20
SC-10.02 Visits to Site	00800-20
SC-10.03 Resident Project Representative	00800-20
SC-10.07 Limitations on Engineer's Authority and Responsibilities.....	00800-22
SC-15.01 Progress Payments.....	00800-22
SC-15.04 Partial Use or Occupancy	00800-23

SC-15.07	Waiver of Claims	00800-23
SC-17.01	Methods and Procedures	00800-23
SC-18.01	Giving Notice	00800-24

Caption and Introductory Statements

Supplementary Conditions

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC C-700 (2018 Edition). All provisions which are not so amended or supplemented remain in full force and effect.

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

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

ADDITIONS, DELETIONS AND CHANGES TO GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

SC-1.01 Defined Terms

SC-1.01 Add the following new paragraph immediately after Paragraph 1.01.A.22:

22.1 *Falsework*--temporary construction work on which a main work is wholly or partly built and/or supported until the main work is strong enough to support itself.

SC-1.01 Add the following new paragraph immediately after Paragraph 1.01.A.32:

32.1 *Project Manual* – the written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.

SC-1.02 Terminology

SC-1.02 Add the following new sentence immediately after the last sentence in Paragraph 1.02.B:

The use of any such term or adjective is not intended to and shall not be effective to relieve the Contractor of responsibility to comply with all Laws and Regulations applicable to the performance of the Work, or to perform the Work in accordance with the provisions of Article 7, or to comply with any other provision of the Contract Documents.

ARTICLE 2 - PRELIMINARY MATTERS

SC-2.03 *Before Starting Construction*

SC-2.03 Delete Paragraph 2.03.A in its entirety and insert the following in its place:

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement, Contractor shall submit to Owner and Engineer for timely review:
 - 1. A preliminary Progress Schedule indicating the times (number of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
 - 2. A preliminary Schedule of Submittals; and
 - 3. A preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

SC-2.05 *Acceptance of Schedules*

SC-2.05 Delete Paragraph 2.05.A in its entirety and insert the following in its place:

- A. Upon Owner's, Engineer's or Contractor's request at least ten days before submission of the first Application for Payment a conference, attended by Contractor, Owner, Engineer and others as appropriate, will be held to review for acceptability to Owner as provided below the schedules submitted in accordance with paragraph 2.03.A. If a schedule is not acceptable, Contractor shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. Upon notice by Owner, no progress payment shall be made to Contractor until acceptable

schedules are submitted and accepted by Owner.

1. The Progress Schedule will be acceptable to Owner if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Time, and if acceptable to Engineer. Such acceptance will not impose on Owner or Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
2. Contractor's Schedule of Submittals will be acceptable to Owner if acceptable to Engineer and if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Owner as to form and substance if it is acceptable to Engineer and if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

SC-3.01 *Intent*

SC-3.01 Add the following new sentence immediately after the last sentence in Paragraph 3.01.B:

Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.

SC-3.02 *Reference Standards*

SC-3.02.A.2 Delete Paragraph 3.02.A.2 in its entirety and insert the following in its place:

No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision

or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

SC-3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies

SC-3.03 Delete Sub-Paragraph 3.03.A.3 in its entirety and insert the following in its place:

3. Contractor shall not be entitled to any increase in the Contract Amount or Contract Time for any conflicts, errors, ambiguities or discrepancies in the Contract Documents that were known, or that should have been known to Contractor, or which could have been discovered by Contractor as part of its review of the bidding requirements and Contract Documents prior to bidding or its review of the Contract Documents prior to undertaking any part of the Work.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

SC-4.01 Commencement of Contract Times; Notice to Proceed

SC-4.01 Delete Paragraph 4.01.A in its entirety and insert the following in its place:

A. The Contract Times will commence to run on the day indicated in the Notice to Proceed.

SC-4.05 Delays in Contractor's Progress

SC-4.05 Add the following new paragraph immediately after Paragraph 4.05.G

H. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under Paragraph 4.05 within 30 days of the commencement of the delaying, disrupting, or interfering event.

ARTICLE 5 - SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

SC-5.03 *Subsurface and Physical Conditions*

SC-5.03.A Delete Paragraph 5.03.A in its entirety and insert the following in its place:

A. *Reports and Drawings:* The Contract Documents may identify:

1. Those soil borings, plans, drawings, surveys or other reports of explorations of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents;
2. Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, (Except Underground Facilities) that Engineer has used in preparing the Contract Documents; and
3. Technical Data contained in such *Reports and Drawings*.

The soil borings, plans, drawings, surveys, technical data, and other documents referenced in Paragraphs 5.03.A.1, 2 and 3 are collectively called "*Reports and Drawings*."

SC-5.03.C Delete Paragraph 5.03.C in its entirety and insert the following in its place:

C. *Reliance by Contractor Not Authorized.* Contractor may not rely upon the *Reports and Drawings* referenced in 5.03.A or make any claim against Owner, Engineer, or any of Owner's or Engineer's Consultants or Subcontractors related to the *Reports and Drawings*. This limitation includes but is not limited to:

1. The accuracy or completeness of such *Reports and Drawings* for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or

2. The accuracy or completeness of other data, interpretations, opinions, and information contained in, shown on, or indicated in the *Reports and Drawings*; or
3. Any Contractor interpretation of or conclusion drawn from any of the *Reports and Drawings* or any other Technical Data, data, interpretations, opinions or information referenced in the *Reports and Drawings*.

The *Reports and Drawings*, including the information contained therein, are offered to the Contractor only as information relied upon by Engineer in the preparation of the Contract Documents, and the Contractor is solely responsible for confirming actual conditions. Neither the Engineer nor the Owner, nor the Consultants or Subcontractors of either have any responsibility for any conclusion, interpretation or analysis contained therein or made by the Contractor based upon the Contractor's review of the *Reports and Drawings*.

Neither Owner nor Engineer has any responsibility for and does not warrant that the soils or water table encountered during construction will be as shown in the *Reports and Drawings*.

SC-5.03.D

Delete Paragraph 5.03.D in its entirety and insert the following in its place:

- D. Contractor warrants that before submitting a bid the Contractor has determined the soil and subsoil conditions, including the water table elevation and the conditions to be encountered by Contractor in the performance of the Work and that said conditions and factors have been evaluated by Contractor and incorporated into his Contract with Owner. Contractor further warrants that the Contractor is fully aware of the soil conditions, subsoil conditions, water table and all applicable State and Federal Regulations related to the excavation, removal, transportation, placement and relocation of the materials involved in the Work to be performed by the Contractor and that Contractor will complete the Work under whatever

conditions he may encounter or create without extra cost, expense to or claim against the Owner or Engineer, their Consultants or Subcontractors.

Contractor has identified all locations where the Contractor's operations are near public roadways, the properties of railroads or contiguous physical structures. Work shall not take place until Contractor has made all arrangements necessary to identify the location and/or elevation of the roadways, the properties of railroads or contiguous physical structures and foundation or appurtenances and has taken all necessary steps to protect the roadways, the properties of railroads or contiguous physical structures from damage. Contractor is solely responsible for any and all damage to roadways, the properties of railroads or contiguous physical structures and any personal injury, death or property damage or consequential damages arising from Contractor's operations.

SC-5.04 *Differing Subsurface or Physical Conditions*

SC-5.04.A Delete Paragraph 5.04.A in its entirety and insert the following in its place:

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:
 - 1. is of such a nature as to require a change in the Contract Documents; or
 - 2. is of an unusual nature and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, within 48 hours after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor

shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so. If notice as provided in the section is not given, no change in Contract Price shall be considered or allowed.

SC-5.04.B Delete Paragraph 5.04.B in its entirety and insert the following in its place:

- B. *Engineer's Review:* After receipt of written notice as required by Paragraph 5.04.A, Engineer will review the information provide by Contractor. If Engineer, in Engineer's sole discretion, determines that additional explorations and/or tests are needed to evaluate Contractor's belief that there are differing subsurface or physical conditions, then Contractor, at Contractor's sole expense, shall promptly undertake those additional explorations and/or tests, and provide the results to Engineer. Engineer will then review the information provided by Contractor along with any other information Engineer believes is pertinent, and advise Owner in writing (with a copy to Contractor) of Engineer's findings, conclusions and recommendations.

If after receipt of written notice as required by Paragraph 5.04.A, Engineer, in Engineer's sole discretion, determines that additional explorations and/or tests are not needed to evaluate Contractor's belief that there are differing subsurface or physical conditions, Engineer will review the information provided by Contractor, along with any other information Engineer believes is pertinent, and advise Owner in writing (with copy to Contractor) of Engineer's findings, conclusions and recommendations.

Owner reserves the right at its own expense to undertake additional exploration and/or testing. This reservation in no way waives the responsibility of the Contractor to undertake additional explorations and/or tests, if required, as set forth above.

SC-5.05 *Underground Facilities*

SC-5.05.A Delete Paragraph 5.05.A in its entirety and insert the following in its place:

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on

information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others.

1. The Underground Facilities shown on or indicated in the Contract Documents are located according to the information available to the Engineer at the time of the preparation of the Contract Documents. Neither the Engineer nor the Owner guarantee the accuracy or completeness of any such information or data, including but not limited to information provided by the Owner;
2. The Contractor is solely responsible for identifying the actual location of all Underground Facilities and shall verify the location and/or elevations of the Underground Facilities prior to undertaking construction;
3. At all locations where the Contractor's operations are near, will cross or contact Underground Facilities, no part of the Work shall commence until Contractor has made all arrangements necessary to identify the location and/or elevation of the Underground Facility, including contacting MISS DIG, has notified the owner of the Underground Facility, and has taken all necessary steps to protect the Underground Facility from damage.
4. The cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding Underground Facilities at the Site;
 - b. complying with applicable state and local utility damage prevention Laws and Regulations;
 - c. locating all Underground Facilities shown or indicated in the Contract Documents;
 - d. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the

Work, by exposing such Underground Facilities during the course of construction;

- e. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction;
 - f. the safety and protection of all such Underground Facilities and related above ground structures, including but not limited to shoring, bracing, supporting and maintenance of all Underground Facilities and related above ground structures affected by the Contractor's operations;
 - g. repairing any damage to Underground Facilities and related above ground structures resulting from the Work; and
 - h. any personal injury, death or property damage or consequential damages arising from Contractor's Work.
5. In the event of the interruption of or damage to an Underground Facility as the result of Contractor's operations, the Contractor shall immediately notify the Underground Facility owner and shall take all steps necessary to cooperate with and assist the Underground Facility owner in the restoration and repair of the Underground Facility. Said repair work shall be continuous and shall not result in any delay of the Project or increased cost or expense to Owner, or claim against Owner, Engineer or their Consultants.

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

- B. *Notice by Contractor:* If an Underground Facility is uncovered or revealed at or adjacent to the Site which was not shown or indicated in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required paragraph 7.15), identify the owner of such Underground Facility

and give written notice to that owner and to Owner and Engineer.

SC-5.05.C Delete Paragraph 5.05.C in its entirety and insert the following in its place:

- C. *Engineer's Review:* Engineer will review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. If Engineer concludes that a change in the Contract Documents is required, Engineer shall prepare recommendations to the Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. At all times, Contractor shall be solely responsible for the safety and protection of such Underground Facility.

SC-5.05.F. Delete Paragraph 5.05.F.1 in its entirety and insert the following in its place:

F. *Possible Price and Times Adjustment*

- 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated in the Contract Documents, subject to the following:
 - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and

- d. Contractor gave the notice required in Paragraph 5.05.B.

SC-5.06 *Hazardous Environmental Conditions at Site*

SC-5.06.A Delete Paragraph 5.06.A in its entirety and insert the following in its place:

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. The following reports regarding Hazardous Environmental Conditions at the Site were utilized by the Engineer in the preparation of the Contract Documents:

a. *None*

2. The following drawings regarding Hazardous Environmental Conditions at the Site were utilized by the Engineer in the preparation of the Contract Documents:

a. *None*

3. Technical Data contained in such *Reports and Drawings*.

SC-5.06.B Delete Paragraph 5.06.B in its entirety and insert the following in its place:

B. *Reliance by Contractor Not Authorized*: Contractor may not make any Claim against Owner, Engineer or the Consultants of either with respect to:

1. The completeness of such reports, drawings and/or Technical Data, for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor, the cost of Work and safety precautions and programs incident thereto; or

2. The accuracy of any Technical Data, or any other data, interpretations, opinions and information contained in such reports or shown or indicated on such drawings; or

3. Any Contractor interpretation of or conclusion drawn from any

such report, drawing or Technical Data.

ARTICLE 6 - BONDS AND INSURANCE

6.02 *Insurance—General Provisions*

SC-6.02 Delete Paragraph 6.02.A in its entirety and insert the following in its place:

A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Insurance Specification.

SC-6.02 Delete Paragraphs 6.02.B through 6.02.N in their entirety and replace with Insurance Specification.

6.03 *Contractor's Insurance*

SC-6.03 Delete Paragraph 6.03.A in its entirety and insert the following in its place:

A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Insurance Specification.

SC-6.03 Delete Paragraphs 6.03.B through 6.03.C in their entirety and replace with Insurance Specification.

6.04 *Builder's Risk and Other Property Insurance*

SC-6.04 Delete the last sentence of Paragraph 6.04.A and insert the following in its place:

The specific requirements applicable to the builder's risk insurance are set forth in the Insurance Specification.

SC-6.04 Delete Paragraphs 6.04.B through 6.04.E in their entirety and replace with Insurance Specification.

6.05 *Property Losses; Subrogation*

SC-6.05 Delete Paragraphs 6.05.A through 6.05.D in their entirety and replace with Insurance Specification.

6.06 *Receipt and Application of Property Insurance Proceeds*

- SC-6.06 Delete Paragraphs 6.06.A through 6.06.C in their entirety and replace with Insurance Specification.

ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES

SC-7.01 *Contractor's Means and Methods of Construction*

- SC-7.01.A Add the following new sentence immediately after the last sentence in 7.01.A:

Nothing in the design, specifications or Contract Documents shall be deemed to constitute a specific means, method, technique, sequence, or procedure of construction. Contractor shall be solely responsible for ensuring that the completed Work conforms accurately to the Contract Documents.

SC-7.05 *"Or-Equals"*

- SC-7.05.A Add the following sub-paragraph immediately after Paragraph 7.05.A.1.b.2:

- 3) the item will be functionally equal to the named item of material or equipment. Contractor warrants and assumes sole responsibility for the adequacy, performance and functioning of the "or-equal" material or equipment.

SC-7.06 *Substitutes*

- SC-7.06.A.3.f Add the following sub-paragraph immediately following paragraph 7.06.A.3.d:

- f. Contractor warrants that, if approved and incorporated into the Work, the "substitute item" will be functionally equal to the named item of material or equipment. Contractor assumes sole responsibility for the adequacy, performance and functioning of the "substitute" item of material or equipment.

SC-7.07 Concerning Subcontractors and Suppliers

SC-7.07.D Delete Paragraph 7.07.D in its entirety and replace with the following paragraph:

- D. No later than two (2) business days after the bid opening, the Contractor shall submit to the Owner and Engineer for acceptance a list of the names and addresses of the Contractor's Subcontractors, Suppliers and such other individuals and entities as the Owner requests.

SC-7.07 Add the following sub-paragraphs immediately following paragraph 7.07.M:

- N. Contractor shall require all Subcontractors, prior to commencement of any Work by the Subcontractor, to secure and keep in force the insurance coverages set forth in and required by the Insurance Specification.
- O. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors and Suppliers, whether initially or as a replacement, performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.

SC-7.08 Patent Fees and Royalties

SC-7.08.B Delete paragraph 7.08.B in its entirety.

SC-7.11 Laws and Regulations

SC-7.11.D Add the following new paragraph immediately after Paragraph 7.11.C:

- D. Contractor shall be solely responsible for compliance with all Federal and State Occupational Safety and Health Act ("OSHA") requirements related to the Work and the Site, including, if applicable, the requirements of the Michigan Occupational Safety and Health Act ("MIOSHA"). Neither Owner nor Engineer shall have any responsibility for construction site safety or OSHA or MIOSHA compliance. Contractor will indemnify and hold harmless Owner and Engineer from all claims, costs, fees, fines, penalties and expenses (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court, administrative proceeding, and dispute resolution costs) related in any way to claims related

to construction site safety, OSHA or MIOSHA violations or charges.

SC-7.13 *Safety and Protection*

SC-7.13.A Amend the first sentence of Paragraph 7.13.A to read as follows:

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work, including but not limited to the enforcement of safety precautions and programs of all Subcontractors.

SC-7.13.D Amend Paragraph 7.13.D to read as follows:

- E. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense.

SC-7.16 *Submittals*

SC-7.16.B.1 Amend paragraph 7.16.B.1.a to read as follows:

- a. Contractor shall submit to Engineer for approval eight (8) copies of all shop drawings.

SC-7.16.B.2 Amend paragraph 7.16.B.2.a to read as follows:

- a. Contractor shall submit to Engineer for approval eight (8) duplicates of each Sample.

SC-7.16.E Add the following new paragraph immediately after Paragraph 7.16.E.1.d:

- e. Contractor shall submit to Engineer for approval eight (8) duplicates of each submittal.

SC-7.17 *Contractor's General Warranty and Guarantee*

SC-7.17.A Delete Paragraph 7.17.A in its entirety and replace with the following paragraph:

Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee. Contractor's warranty and guarantee that all Work will be in accordance with the Contract Documents and will not be defective includes but is not limited to all materials and equipment incorporated into the Work. Unless a longer duration is required by the Project Specifications, Contractor's warranty and guarantee that all Work will be in accordance with the Contract Documents and will not be defective will extend for at least one year after the date of Substantial Completion.

SC-7.17.D.8 Amend paragraph 7.17.D.8 to read as follows:

8. Any inspection, test, review, or approval by Engineer, the Resident Project Representative (if one is assigned to the Site), or by others;

SC-7.17.D.9 Amend Paragraph 7.17.D.9 to read as follows:

9. Any correction of defective Work by Owner; or

SC-7.17.D.10 Add the following new paragraph immediately after Paragraph 7.17.D.9:

10. Any acceptance by Owner, or any failure to do so.

SC-7.19 *Delegation of Professional Design Services*

SC-7.19.B Add the following new sentence immediately after the last sentence in 7.19.B:

The design professional must be licensed in the state or states where the Project is located.

SC-7.19.D Delete Paragraph 7.19.D in its entirety and replace with the following paragraph:

Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, drawings, calculations, specifications, Submittals, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.

ARTICLE 9 – OWNER’S RESPONSIBILITIES

SC-9.06 Insurance

SC-9.06.A. Delete Paragraph 9.06.A in its entirety and replace with the following paragraph:

- A. Owner’s responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in the Insurance Specifications.

ARTICLE 10 - ENGINEER’S STATUS DURING CONSTRUCTION

SC-10.01 Owner’s Representative

SC-10.01.A Delete Paragraph 10.01.A in its entirety and insert the following in its place:

- A. Engineer will be Owner’s representative during the construction period. The Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. The authority and responsibilities of the Engineer as set forth in the Contract Documents shall not be restricted, extended or otherwise modified without the written consent of the Engineer and the Owner. Nothing in the Contract Documents shall create for the benefit of the Contractor, any Subcontractor, Supplier or other individual or entity, any contractual relationship between Engineers and any such Contractor, Subcontractor, Supplier or other individual or entity.

SC-10.02 Visits to Site

SC-10.02.A Amend Paragraph 10.02.A by striking the following words from the first sentence:

“at intervals appropriate to the various stages of construction”

SC-10.03 Resident Project Representative

SC-10.03.C Add the following new paragraphs immediately after Paragraph 10.03.C:

- C. If Engineer furnishes a Resident Project Representative (RPR), the RPR

will be Engineer's employee or agent at the Site. The RPR's authority and responsibility is expressly limited to making observations of the progress that has been made and the quality of the various aspects of Contractor's executed Work, and reporting same to Engineer. RPR will not be required to make exhaustive or continuous observations or inspections on the Site to check the quality or quantity of the Work. RPR's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. In addition to the limitations set forth in Paragraph 10.07, The RPR does not have the authority or responsibility to:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
3. Undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor's superintendent.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.
5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals.
8. Authorize Owner to occupy the Project in whole or in part.
9. Interpret for Contractor or Owner any provision of the Contract Documents.

10. Stop the Work for any reason.

SC-10.07 Limitations on Engineer's Authority and Responsibilities.

- SC-10.07.B Add the following sentence immediately after the last sentence in Paragraph 10.07.B:

Engineer may not stop the work or interfere with the progress of the Work. No decision made by the Engineer in good faith either to exercise or not exercise any authority or responsibility delegated to Engineer in the Contract Documents or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall be construed as interference with the progress of the Work. Engineer shall have no authority or responsibility to recommend alternate or possible safety activities or changes for the safety of the project, Contractor, Subcontractors, Suppliers, Owner, employees, third persons or their property.

- SC-10.07.F Add the following new paragraph immediately after Paragraph 10.07.E:

F. Engineer will not be responsible for Contractor's failure to pay Subcontractors, Suppliers, employees, taxes, fees, permits, patent fees, copyright fees, royalties, licenses or monies due to any individual or entity.

SC-15.01 Progress Payments

- SC-15.01.C Delete Paragraph 15.01.C.3.a and insert the following in its place:

a. Inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work; or

- SC-15.01.C Delete the period at the end of the sentence in Paragraph 15.01.C.4.e and insert the following in its place:

, or

- SC-15.01.C Add the following new paragraphs immediately after Paragraph 15.01.C.4.e:

f. for Contractor's failure to construct the Work or any part of the Work in conformance with the Contract Documents, or

- g. for defective Work.

SC-15.04 *Partial Use or Occupancy*

SC-15.04 Delete Paragraph 15.04.A.4 in its entirety and insert the following in its place:

- 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of the Insurance Specifications regarding builder's risk or other property insurance.

SC-15.07 *Waiver of Claims*

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

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising (1) from unsettled Liens, (2) from defective Work, (3) from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, (4) from outstanding Claims by Owner, (5) from Contractor's continuing obligations under the Contract Documents, and (6) from late completion by Contractor, including without limitation liquidated damages or other damage.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

SC-17.01 *Methods and Procedures*

SC-17.01.B Delete Paragraph 17.01.B.1 in its entirety and insert the following in its place:

- 1. At Owner's sole option, Owner may demand in writing arbitration of the dispute;

SC-17.01.C Add the following new paragraph immediately after Paragraph 17.01.B

SC-17.01.C *Arbitration of Claims at Election of Owner*

- 1. If the Owner elects in writing to demand arbitration as set forth in Paragraph 17.01.1, the dispute will be decided by arbitration in accordance with the rules of the American Arbitration Association in effect as of the Effective Date of the Agreement
- 2. The demand for arbitration will be filed in writing with the Contractor

and with the selected arbitrator, and a copy will be sent to Engineer for information.

3. The award rendered by the arbitrator(s) shall be consistent with the agreement of the parties, in writing, and include: (i) a concise breakdown of the award; and (ii) a written explanation of the award specifically citing the Contract Document provisions deemed applicable and relied on in making the award.
4. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal except as provided by the controlling law governing vacating or modifying an arbitration award.
5. The fees and expenses of the arbitrators and any arbitration service shall be shared equally by Owner and Contractor.

ARTICLE 18 – MISCELLANEOUS

18.01 *Giving Notice*

SC-18.01 Delete Paragraph 18.01.A.3 in its entirety.

INSURANCE SPECIFICATION

Insurance Required to be Purchased and Maintained by the Contractor

Contractor shall comply with all requirements of this Insurance Specification. Contractor shall purchase and maintain (i.e. keep in force) insurance which conforms to the requirements of this Insurance Specification.

1.1 Insurance—General Provisions

- 1.1.1** Contractor shall obtain and maintain insurance as required in this Insurance Specification.
- 1.1.2** All insurance required by the Contract to be purchased and maintained by Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverage's. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- 1.1.3** Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Insurance Specification, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is maintaining the policies, coverage's, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- 1.1.4** Failure of Owner to demand such certificates or other evidence of the Contractor's full compliance with these insurance requirements, or failure of Owner to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the Contractor's obligation to obtain and maintain such insurance.
- 1.1.5** If Contractor does not purchase or maintain all of the insurance required of Contractor by the Contract, Contractor shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

- 1.1.6 If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16 of the General Conditions of the Contract.
- 1.1.7 Without prejudice to any other right or remedy, if Contractor has failed to obtain required insurance, Owner may elect to obtain equivalent insurance to protect Owner's interests at the expense of the Contractor, and the Contract Price shall be adjusted accordingly.
- 1.1.8 Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- 1.1.9 The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

1.2 Contractor's Insurance - Liability

- 1.2.1 **Owner's & Contractor's Protective Liability:** Contractor shall purchase and maintain an Owner's & Contractor's Protective Liability Policy ("OCP" Policy). The OCP policy shall name the Owner, the Engineer, their consultants, agents, and employees, as the insureds (hereinafter collectively called the "named insureds"). The OCP policy will protect the named insureds for any actual or alleged liability arising out of the work performed by the Contractor, the Subcontractor(s), or Suppliers, on this Project. The OCP policy will provide primary, non-contributing coverage.
- 1.2.2 **Workers' Compensation and Employer's Liability:** Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
 - 1.2.2.1 Claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 - 1.2.2.2 United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 - 1.2.2.3 Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).
 - 1.2.2.4 Foreign voluntary worker compensation (if applicable).
- 1.2.3 **Commercial General Liability—Claims Covered:** Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
 - 1.2.3.1 Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.

- 1.2.5 Automobile liability:** Contractor shall purchase and maintain comprehensive automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle, including owned, non-owned, and hired motor vehicles. In light of standard policy provisions concerning (a) loading and unloading, and (b) definitions pertaining to motor vehicles licensed for road use versus unlicensed or self-propelled construction equipment, it is recommended that the comprehensive automobile liability insurance policy and the commercial general liability policy be written by the same insurance carrier, though not necessarily in one the policy. The comprehensive automobile liability policy shall be written on an occurrence basis.
- 1.2.6 Umbrella or excess liability:** Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, aviation liability and automobile liability insurance described in the paragraphs above and in Section 1.2.10 below. The coverage afforded shall be at least as set for in Section 1.5.6. But if no box is checked in Section 1.5.6, then the umbrella/excess liability coverage limits will be \$2,000,000 per occurrence and \$2,000,000 general aggregate. The umbrella or excess liability insurance policy(ies) shall be an occurrence policy(ies)
- 1.2.7 Contractor's pollution liability insurance:** Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.
- 1.2.8 Railroad Protective Liability:** Contractor shall purchase and maintain a Railroad Protective Liability policy, where such an exposure exists, to provide coverage in the name of each railroad company having jurisdiction over rights-of-way across which Work under the Contract Documents is to be performed. The form of the policy and the limits of liability shall be determined by the railroad company(ies) involved.
- 1.2.9 Contractor's professional liability insurance:** If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall purchase and maintain applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied

through the purchasing and maintenance of such insurance by such Subcontractor.

1.2.10 Aviation Liability Insurance: If required on this project as indicated by a check mark in Section 1.5.10, Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the ownership, maintenance or use of Manned or Unmanned Aerial Vehicles, including but not limited to drone(s).

1.2.10.1 Minimum Scope and Limit of Insurance: Aviation Liability Insurance on an “occurrence” basis, including products and completed operations, property damage, bodily injury with limits no less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate. This coverage may also be provided by endorsement to the Contractor’s Commercial General Liability policy.

1.3 The policies of insurance required to be purchased and maintained by the Contractor shall:

1.3.1 Additional insureds: The Contractor’s commercial general liability, automobile liability, umbrella or excess, pollution liability policies and aviation liability insurance, shall include and list as additional insureds the Owner and Engineer, and the following individuals and entities:

Name	Address	Telephone
Prein& Newhof	4910 Stariha Drive, Muskegon, MI 49441	231-(798) 0101

The additional insured coverage shall include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and every additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements. Each additional insured endorsement shall state that each additional insured is entitled to the same rights as the named insured in the event of cancellation, including but not limited to prior notice of cancellation.

1.3.2 Deductible Liability: Any and all deductibles in the policies described in this Insurance Specification shall be assumed by, for the account of, and be the sole responsibility of Contractor. The amount of any deductible is subject to approval by the Owner.

1.3.3 Insurance will be primary: The insurance required to be purchased and maintained by the Contractor under this Insurance Specification shall be primary

(i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the Owner, Engineer, and any other insureds. Any insurance, self-insurance or self-retention maintained by the Owner, Engineer, or any other insureds, shall be in excess of the insurance purchased and maintained by the Contractor under this Insurance Specification, and shall not contribute with it.

1.3.4 Coverages: Include at least the specific coverage's provided in this Insurance Specification.

1.3.5 Minimum Limits: Be written for not less than the limits of liability provided in this Insurance Specification and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.

1.3.6 Notice of Cancellation: Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least ten (10) days prior written notice has been given to Contractor. Within three (3) days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.

1.3.7 Duration: Remain in effect at least until final payment (and longer if expressly required in this Insurance Specification or the Supplementary Conditions) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.

1.3.8 Be appropriate for the Work being performed and provide protection to Contractor, Owner, Engineer, and any other additional insured, from claims that may arise out of or result from Contractor's, Sub-contractor's or Supplier's performance of the Work, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

1.3.9 The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

1.4 Contractor's Insurance - Property

Builder's Risk: If required on this project as indicated by a check mark in Section 1.5.7, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in this Insurance Specification, or the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1.4.1.1 Include the interests of Owner, Contractor, Subcontractors, Engineer, and the officers, directors, partners, employees, agents, consultants and

subcontractors, of any of them, and any other individuals or entities required by this Insurance Specification and/or the Supplementary Conditions to be insured under such builder's risk policy. Each of whom shall be listed as a named insured (the parties required to be insured shall collectively be referred to as "insureds").

- 1.4.1.2** Be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by this Insurance Specification and/or the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
- 1.4.1.3** Cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
- 1.4.1.4** Cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
- 1.4.1.5** Extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
- 1.4.1.6** Extend to cover damage or loss to insured property while in transit.
- 1.4.1.7** Allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.

- 1.4.1.8** Allow for the waiver of the insurer's subrogation rights, as set forth below.
- 1.4.1.9** Provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
- 1.4.1.10** Not include a co-insurance clause.
- 1.4.1.11** Include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
- 1.4.1.12** Include performance/hot testing and start-up.
- 1.4.1.13** Be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer, with 30 days written notice to each other Insured.
- 1.4.2 Notice of Cancellation or Change:** All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this section shall contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least ten (10) days prior written notice has been given to the purchasing policyholder. Within three (3) days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- 1.4.3 Deductibles:** Contractor shall pay for costs not covered because of the application of a policy deductible.
- 1.4.4 Partial Occupancy or Use by Owner:** If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04 of the General Conditions of the Contract, then Owner, through Contractor, will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- 1.4.5 Additional Insurance:** If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this section, it may do so at Contractor's expense.
- 1.4.6 Insurance of Other Property:** If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.
- 1.4.7 Waiver of Rights:** All policies purchased in accordance with this Section 1.4, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against

any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in this Insurance Specification, or the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.

1.4.8 Sub-Contractors Waiver of Rights

Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in this Insurance Specification or the Supplementary Conditions, as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

1.4.9 Receipt and Application of Property Insurance Proceeds

Any insured loss under the builder's risk and other policies of insurance required by this section will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by this section shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of the Contract or applicable Laws and Regulations.

If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

1.5 Minimum limits

1.5.1 The minimum limits for the insurance required by this Insurance Specification shall provide coverage for not less than the following amounts or greater where required by Laws or Regulations:

1.5.2 Owner's & Contractor's Protective Liability Policy

1.5.2.1	Each Occurrence	\$1,000,000
1.5.2.2	General – Aggregate	\$2,000,000

1.5.3 Contractor's Commercial General Liability Policy

1.5.3.1	General – Aggregate	\$2,000,000
1.5.3.2	Products – Completed Operations Aggregate	\$2,000,000
1.5.3.3	Personal and Advertising Injury	\$1,000,000
1.5.3.4	Each Occurrence	\$1,000,000
1.5.3.5	Fire damage	\$50,000
1.5.3.6	Medical Expense	\$5,000

1.5.4 Comprehensive Automobile Liability Policy (In accordance with Michigan's No Fault Statute)

1.5.4.1	Combined Single Limit of	\$1,000,000
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1.5.5 Worker's Compensation and Employer's Liability Policy

1.5.5.1	Michigan	Statutory Limits
1.5.5.2	Employer's Liability	
1.5.5.2.1	Each accident	\$ 500,000
1.5.5.2.2	Disease – each employee	\$ 500,000
1.5.5.2.3	Disease – policy limit	\$ 500,000
1.5.5.3	Federal, if applicable (e.g. FELA, Longshoreman's, etc. . . .)	Statutory Limits

1.5.5 Excess or Umbrella Liability Policy

Unless increased limits are required as checked below, the limits shall be:

1.5.6.1	General Aggregate	\$2,000,000
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1.5.6.2	Each Occurrence	\$2,000,000
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Owner may select increased limits for this project as checked below; otherwise, the above limits shall apply if neither below option is checked:

Option One ☐

1.5.6.1	General Aggregate	\$5,000,000
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1.5.6.2	Each Occurrence	\$5,000,000
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Option Two ☐

1.5.6.1	General Aggregate	\$10,000,000
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1.5.6.2	Each Occurrence	\$10,000,000
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1.5.7	Builder's Risk "all risk" policy	Full Replacement Cost
☒	Check if required	

1.5.8	Contractor's Pollution Liability Policy	\$1,000,000
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1.5.9	Railroad Protective Liability	\$
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☐	Check if required	\$
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1.5.10 Aviation Liability Insurance

☐ Check if required

1.5.10.1	General – Aggregate	\$2,000,000
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1.5.10.2	Products – Completed Operations Aggregate	\$2,000,000
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1.5.10.4	Each Occurrence	\$1,000,000
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1.5.11 Other insurance

☐	Check if required (List Type)	\$
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CERTIFICATE OF LIABILITY INSURANCE

OP ID: JF

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER - - - -	Phone:	CONTACT NAME:	
	Fax:	PHONE (A/C, No, Ext):	FAX (A/C, No):
		E-MAIL ADDRESS:	
		PRODUCER CUSTOMER ID #:	
		INSURER(S) AFFORDING COVERAGE	
		NAIC #	
INSURED Owner's Name and Address - -	INSURER A: INSURANCE COMPANY		AM BEST FINANCIAL
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		
	INSURER F:		

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
- - - -	GENERAL LIABILITY						EACH OCCURRENCE	\$ 1,000,000
	☐ COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
	☐ CLAIMS-MADE ☐ OCCUR						MED EXP (Any one person)	\$
	☒ Owner's & Contractor's Prot						PERSONAL & ADV INJURY	\$
	☐						GENERAL AGGREGATE	\$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COM/OP AGG	\$
	☐ POLICY ☐ PRO-JECT ☐ LOC							\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	\$
	☐ ANY AUTO						BODILY INJURY (Per person)	\$
	☐ ALL OWNED AUTOS						BODILY INJURY (Per accident)	\$
	☐ SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident)	\$
	☐ HIRED AUTOS							\$
☐ NON-OWNED AUTOS							\$	
	UMBRELLA LIAB	☐ OCCUR					EACH OCCURRENCE	\$
	EXCESS LIAB	☐ CLAIMS-MADE					AGGREGATE	\$
	DEDUCTIBLE							\$
	RETENTION \$							\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS	OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y / N	N / A				E.L. EACH ACCIDENT	\$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

Contractor's Name and Address - -	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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CERTIFICATE OF LIABILITY INSURANCE

OP ID: JF

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER - - - -	Phone:	CONTACT NAME:	
	Fax:	PHONE (A/C, No, Ext):	FAX (A/C, No):
		E-MAIL ADDRESS:	
		PRODUCER CUSTOMER ID #:	
		INSURER(S) AFFORDING COVERAGE	
		NAIC #	
INSURED Contractor's Name and Address - -	INSURER A: INSURANCE COMPANY		AM BEST FINANCIAL
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		
	INSURER F:		

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
-	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC						EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000
-	AUTOMOBILE LIABILITY ☒ ANY AUTO ☒ ALL OWNED AUTOS ☒ SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$
-	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DEDUCTIBLE RETENTION \$						EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$ \$
-	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y / N If yes, describe under DESCRIPTION OF OPERATIONS below						☒ WC STATUTORY LIMITS ☐ OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
-	Builder's Risk "ALL RISK" PROPERTY POLLUTION LIABILITY						CONTENTS Full Replacement Cost \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Name of Additional Insured

CERTIFICATE HOLDER**CANCELLATION**

Owner's Name and Address -	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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AFFIRMATIVE ACTION

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO INSURE EQUAL EMPLOYMENT OPPORTUNITY AND PROHIBITING DISCRIMINATION IN EMPLOYMENT

(Federal Executive Order 11243)

Michigan: Elliot-Larson Civil Rights Act

The attention of bidders is particularly called to the requirements for ensuring that employees and applicants for employment are not discriminated against.

During the performance of this contract, the contractor agrees as follows:

The contractor will not discriminate against any employee or applicant for employment because of religion, race, color, national origin, age, sex, height, weight, familial status, marital status, disability, sexual orientation or gender identity, or status as a Vietnam Era Veteran. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment, without regard to their religion, race, color, national origin, age, sex, height, weight, familial status, marital status, disability, sexual orientation or gender identity, or veteran background. Such action shall include, but not be limited to, the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship.

LOCAL EMPLOYMENT EFFORT

The City of Muskegon requires that the contractor must hire local trades and labor employees from the City of Muskegon, County of Muskegon and/or this SMSA (Standard Metropolitan Statistical Area) for the duration of this project, insofar as these are available to perform the necessary work. Supervisory and/or technical staff officials are exempt from this requirement.

LABOR STANDARDS PROVISION

EMPLOYMENT AND PREVAILING WAGE AND SALARY REQUIREMENTS

The attention of bidders is particularly called to the requirements covered in these documents concerning the payment of not less than the prevailing wage and salary rates specified, and in regard to conditions of employment with respect to certain categories and classifications of employees.

All laborers and mechanics employed by this contract shall be paid unconditionally and not less than once each week, and without subsequent deduction or the rebate on any account (except such payroll deductions as are permitted by the applicable regulations issued by the City of Muskegon).

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION

Executive Order 11246

1. The Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Adopted Equal Employment Specifications."
2. The goals and the timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

GOALS FOR PARTICIPATION IN EACH TRADE

TRADE	MINORITY	FEMALE
ALL	14%	6.9%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or Federally-assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the Contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the Contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
4. As used in this Notice, and in the Contract resulting from this solicitation, the "covered area" is the City of Muskegon, County of Muskegon, and State of Michigan.

ANTI-KICKBACK ACT

NOTICE TO CONTRACTORS: The Contractor shall comply with the applicable regulations of the Secretary of Labor, United States Department of Labor, made pursuant to the Copeland Anti-Kickback Act (Title 40 U.S.C., Section 276c), and any amendment or modifications thereof, shall cause appropriate provisions to be inserted in subcontracts to insure compliance therewith by all subcontractors subject thereto, and shall be responsible for the submission of affidavits required by subcontractor thereunder, except as said Secretary of Labor may specifically provide for reasonable limitations, variations, tolerance, and exemptions from the requirements thereof.

Copeland “Anti-Kickback” Act Policy

The Copeland “Anti-Kickback” Act prohibits contractors or subcontractors engaged in building construction or repair from persuading an employee to give up any part of the compensation to which he or she is entitled under his or her employment contract.

NOTICE TO MUNICIPAL EMPLOYEES: *Any employee who offers or approves the offer of a business consideration must ensure that it is ethical and proper in all respects. The offer of a business consideration cannot reasonably be interpreted as an attempt to gain an unfair business advantage or otherwise reflect negatively on the reputation of the City of Muskegon and/or the recipient. The business consideration shall not violate this anti-kickback policy.*

The City of Muskegon’s (Muskegon) staff, representatives, and contractors are prohibited from receiving unreasonable compensation from grantors, grantees, contractors, applicants, or any other person or individual for the purpose of receiving preferential treatment of any kind. The guidelines below define Muskegon’s policy toward kickbacks and the penalties for offering kickbacks to Muskegon employees, representatives or contractors.

Definition: “Kickback” for the purposes of this policy (excluding de minimis gifts), means substantial money, fees, commission, gifts, gratuity, object of value, or offer of employment, which is provided or offered, directly or indirectly, to any City of Muskegon employee, contractor or contracted employee, vendor or vendor employee, or consultant for the purpose of improperly obtaining or rewarding favorable treatment in connection with a City of Muskegon project or contract.

This policy prohibits any person or organization from:

Providing or attempting to provide or offering to provide kickbacks;
Soliciting, accepting or attempting to accept kickbacks; or
Including, directly or indirectly, the amount of kickbacks in any contract awarded by City of Muskegon, contractors, or subcontractors.

Any employee found to be in violation of this policy will be subject to an investigation by the City of Muskegon’s Compliance Officer to determine if the policy was infringed upon.

Depending on the results of the investigation, appropriate discipline will be determined. The employee may be subject to civil or criminal penalties as provided under U.S. law.

Any applicant, grantee, contractor, consultant, or vendor in violation of this policy will be prohibited from participation in any City of Muskegon project, contract, or activity and may be subject to additional civil or criminal penalties as provided under U.S. law (Title 40 U.S.C., Section 276c).

Muskegon reserves the right to recover damages from any person who knowingly engages in such prohibited conduct and from any person whose employee, contractor, or subcontracted employee provides, accepts, or charges a kickback.

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ADOPTED LABOR STANDARDS PROVISIONS

The following clause is applicable unless this contract is exempt under the rules and regulations of the Secretary of Labor issued pursuant to Executive Order No. 11246 of September 24, 1965 (30FR 12319), as amended. During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or natural origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action 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. The contractor agrees to post in conspicuous place, available to employees and applicants for employment, notices to be provided by the contracting officer setting for the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 1246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with the procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the provision of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to and subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provide, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction. The contractor may request the United States to enter into such litigation to protect the interests of the United States.

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NON-COLLUSION AFFIDAVIT OF PRIME BIDDER

State of _____)
County of _____) ss.

_____, being first duly sworn, deposes and says that:

1. He/She is _____
(owner, partner, officer, representative, agent)
of _____, the Bidder that has submitted the attached Bid to the City of Muskegon;
2. He/She is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances thereto;
3. Such Bid is genuine and is not a collusive or sham Bid;
4. Neither said Bidder nor any of his/her officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted, or to refrain from bidding in connection with such Contract; nor has in any manner, directly or indirectly, sought by agreement, collusion, communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or any other bid; nor to fix any overhead, profit or cost element of the Bid price or the bid price of any other bidder; nor to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the City of Muskegon or any person interested in the proposed Contract; and
5. The price or prices quoted in the attached Bid are fair and proper, and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any part of its agents, representatives, owners, employees or parties in interest, including this affiant.

Signature

Printed Name and Title

Subscribed and sworn to before me

This _____ day of _____, 20____

Title

My Commission expires _____

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GENERAL REQUIREMENTS

DIVISION 1

TABLE OF CONTENTS

SECTION	TITLE
01 10 00	Summary of Work
01 23 00	Alternates
01 31 19	Project Meetings
01 33 00	Submittals
01 51 00	Temporary Utilities
01 75 00	Starting and Adjusting

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PART 1 - GENERAL

1.01 GENERAL

- A. Related Sections: Some Sections of the Specifications (Divisions 1 through 40) may include a paragraph titled "Related Sections." This paragraph is an aid to the Project Manual user and is not intended to include all Sections that may be related. It is the Contractor's obligation to coordinate all Sections whether indicated under "Related Sections" or not.

1.02 SUMMARY OF WORK

- A. The work covered by the Contract Documents consists of improvement to the **Water Filtration Plant**, located at **1900 Beach St, Muskegon, MI 49441**. Included in this work is furnishing all supervision, labor, materials, equipment, activities and related costs necessary for completing the improvements. Work includes but is not limited to:

- Removal of the discharge piping associated with Washwater Pump 3 (WWP3) up to the discharge tee.
- Installation of a new discharge isolation valve and discharge check valve;
- Reconstruction of the discharge piping and small diameter instrumentation piping;
- **Alternate No. 1** - Removal of existing foot valve from WWP3, including installation of permanent pipe supports;
- **Alternate No. 2** - Replacement of foot valves at Washwater Pump 2 (WWP2) and WWP3 suction piping including installation of permanent pipe supports;
- All associated equipment, valves, piping, and mechanical work.

Including all necessary appurtenances, disinfection, and restoration.

- B. The Contractor shall visit the site of the work and shall completely inform himself relative to construction hazards and procedure, labor, and all other conditions and factors, local and otherwise, which would affect execution and completion of the work and its cost. Such considerations shall include the arrangement and condition of the existing structures and facilities, the availability and cost of labor and facilities for transportation, handling and storage of materials and equipment. All such factors shall be properly investigated and considered in the preparation of the Contractor's proposal. There will be no subsequent financial adjustment for lack of such prior information.
- C. The Contractor shall guarantee all equipment and work for one year from the date of substantial completion.
- D. Phasing:
1. The existing Washwater Pump 1 (WWP1) and 2 (WWP2) shall remain in operation throughout the project, except for work that is required to be done within the finished water reservoirs as part of Alternate Nos. 1 and/or 2.
 2. The proposed isolation butterfly valve on the WWP 3 discharge piping shall be installed during a period when no backwash pump is required to operate. Contractor shall coordinate with the Owner to determine appropriate time for installation of the isolation valve. Refer to the project sequencing notes on the Drawings.

3. WWP3 shall not be started and trial operation shall not commence until satisfactory disinfection per Section 40 05 13 is attained.
4. If either Alternate is taken, work will be required to be done within Finished Water Reservoir 2. Prior to Contractor mobilization to the site, the Owner will isolate and drain the reservoir to the lowest possible level, which may leave approximately 12-18 inches of water in the bottom of the reservoir. The Contractor shall complete work and clean the work area after the conclusion of the work. The Owner will provide bacteriological testing of the reservoir internal surfaces after Contractor disinfection of the reservoir.

1.03 STANDARD SPECIFICATIONS

Where a standard construction method or contract procedure is not specifically covered by the Contract Documents or shown on the plan, the most recent edition of the Michigan Department of Transportation (MDOT) Standard Specifications for Construction shall apply. Specific references made in these documents will be abbreviated as follows: MDOT 000.00.

1.04 CONTRACTOR USE OF SITE AND PREMISES

- A. Limit use of site and premises to allow Owner access to and operation of all existing treatment facilities.
- B. The water filtration plant facilities shall remain operational during the entire project to assure the treated water requirements of the distribution system are met. Construction shall proceed and Contractor shall coordinate with the Owner such that satisfactory operation of the Filtration Plant is maintained.

It is not possible to remove the Filtration Plant from service during the work. Contractor may coordinate with the Owner to have flows reduced or adjusted in particular areas of the plant to the extent possible.

The Contractor shall not encumber the site with material and equipment that would interfere with operation.

- C. Access to Site
 1. During construction, all roadways, streets, alleys, and loading docks may not be obstructed unless special permission is received from Owner.
- D. Construction Operations: Limited to areas noted on Drawings. Limits of construction shall be confined to property owned by the Owner. Contractor shall coordinate access, site utilization, and work area limits with the Owner.
- E. Time Restrictions for Performing Work: Work shall be performed during normal business hours. No night or weekend or Holiday work allowed unless permission is received from the Owner.
- F. Utility Outages and Shutdowns: Any utility outages required shall be approved in advance by the Owner. Temporary utilities shall be provided by the Contractor to ensure the full functionality of the facility during temporary outages.
- G. During performance of the work, the Contractor shall, at all times, keep the site or sites of the work and adjacent premises as free from material, debris and rubbish as is practical and shall remove it from any portion of the sites, if in the opinion of the Engineer, such material, debris or rubbish constitutes a nuisance or is objectionable.

At the conclusion of the work, all erection plant tools, temporary structures and materials belonging to the Contractor shall be promptly removed from the construction site and he shall remove and promptly dispose of all water, dirt, rubbish or any other foreign substances.

The Contractor shall thoroughly clean all equipment and materials installed by him and shall deliver such materials and equipment undamaged in a bright, clean, polished and new-appearing condition.

Areas of work shall be clean and dust free prior to beginning operation of new equipment.

1.05 WORK SEQUENCE AND COORDINATION

- A. The Contractor shall maintain the Owner's ability to operate its Filtration Plant at all times during the construction process. Contractor shall provide all temporary pumping, power, etc necessary as a result of work by the Contractor.
- B. All equipment and materials shall be on site or securely stored and insured by Contractor prior to commencement of any on site construction activities.
- C. The Contractor shall be responsible for sequencing construction operations in an efficient manner and to minimize the length of service interruptions. Contractors shall coordinate and cooperate with each other such that the necessary work items and dates can be met.
- D. The Contractor may submit a written proposal for changing elements of the sequence of events. Any changes to the sequence of events shall be reviewed and approved by the Owner and Engineer in writing prior to initiation of such by the Contractor.
- E. If either Alternate is taken and work is required in the finished water reservoir, the Contractor shall coordinate timing of work with Owner to ensure the reservoir can be taken out of service.
- F. Suggested construction sequencing of the major items of work can be found on the Plans.

1.06 PROGRESS SCHEDULE

To enable the work to be laid out and prosecuted in an orderly and expeditious manner, the Contractor shall submit to the Engineer a proposed progress schedule within 20 days after the signing of the Contract. This schedule shall indicate the construction starting date and completion date for each of the various operations to be performed under this Contract. This schedule shall be in the form of a bar chart or of a network diagram showing, in a visual and logical manner, the various work functions or activities necessary to complete the work under this Contract, and the critical relationships between these activities. Activities conducted to insure operational status of the water filtration plant shall be outlined. Required interruption of service to complete activities under this contract shall be addressed in a manner that includes scope of work, preparation tasks prior to service interruption that will minimize down time, estimate of duration of service interruption, and activities that will be requested of the Owner. The Engineer and the Owner will review the proposed progress schedule to determine conformity to the Contract Documents. If such conformity is demonstrated, the Engineer will accept the proposed schedule.

During the course of the Contract, the Contractor shall submit to the Engineer every 60 days a revised progress schedule indicating any anticipated change from the original progress schedule. The revised schedule shall include provisions for performing work authorized under approved Change Orders. If the Engineer determines that the modifications in the revised progress schedule are reasonable and that they conform to the Contract Documents, the Engineer will accept the revised schedule.

If the Contractor fails to adhere to the approved progress schedule as revised, he shall promptly adopt such other or additional means and methods of construction as will make up for the time lost, and will assure completion in accordance with such schedule.

Once construction has commenced it shall continue through to completion without interruption.

1.07 PERMITS

- A. General: The Contractor shall obtain all permits necessary for construction of this project not obtained by the Owner. The Contractor shall pay for any charges or bonds required by agencies for permits, inspections or similar charges to construct this project as shown on the Drawings.

1.08 DATUM PLANE

All elevations indicated or specified refer to the NAVD 1988 datum and are expressed in feet and decimal parts thereof, or in feet and inches.

Retrofit activity shall integrate new facilities with existing. Existing facility dimension data was established by field measurement. The Contractor shall field verify actual site conditions.

1.09 UTILITIES

- A. The Contractor shall immediately notify the Owner of any contact with or damage to Underground Utilities. Contractor shall be solely responsible for the safety, protection of, and repairing any damage done to any Work, surface and subsurface structures and utilities at no additional cost.

1.10 PROTECTION OF NATURAL RESOURCES

- A. The Contractor shall not permit any sand or debris of any kind to enter the existing ditches, streams, storm sewers, trench drains or culverts.

1.11 PROTECTION OF ADJACENT STRUCTURES AND LANDSCAPING

The Contractor shall be entirely responsible for all damage to water pipes, electric conduits or cables, drains, sewers, gas mains, poles, telephone and telegraph lines, railroad bridges and tracks, streets, pavements, sidewalks, curbs, fences, street and highway bridges and culverts, building foundations, retaining walls or other structures of any kind met with during the progress of the work, and shall be liable for damages to public or private property resulting therefrom.

The cost of protection, replacement in their original positions and conditions or payment for damages thereto of pipe lines and structures affected by the work and the removal, relocation and rebuilding of pipe lines and structures called for on the Drawings or specified shall be deemed included in the contract lump sum. No additional payment will be made therefor.

The Contractor shall, at all times in performance of the work, employ approved methods and exercise reasonable care and skill so as to avoid unnecessary delay, injury, damage or destruction of public utility installations and structures; and shall, at all times in the performance of the work, avoid unnecessary interference with, or interruption of, public utility services, and shall cooperate fully with the Owner and utility owners thereof to that end.

All pipe lines carrying liquid shall be adequately protected from freezing. All fire hydrants, valves and appurtenances on the various water systems shall be maintained in service, and temporary connections shall be provided where necessary.

Any fence, or part thereof, that is damaged or removed during the course of the work shall be replaced or repaired by the Contractor and shall be left in as good a condition as before the start of work. The manner in which the fence is repaired or replaced and the materials used in such work shall be subject to the approval of the Engineer. The cost of all labor, materials, equipment, and work for the replacement or repair of any fence shall be deemed included in the appropriate Contract Item or Items, or if no specific Item is provided therefor, as part of the overhead cost of the work, and no additional payment will be made therefore.

1.12 PERFORMANCE TEST AND TRIAL OPERATION

Performance tests of the backwash pump with the proposed piping and valve improvements will be required and will be made in the presence of the Owner, Contractor, and Engineer. All areas where work has been performed shall be thoroughly cleaned before beginning any performance tests. Operating personnel and power will be provided by the Owner. If any part of the work does not meet Owner and Engineer specifications, the Contractor shall correct the situation to the approval of the Engineer. The Contractor shall provide personnel and bear all costs of correcting any malfunctions in the work under this Contract.

1.13 DISINFECTION

Contractor shall take precautions to prevent contaminating the clear well during Alternate work activity in the clear well. Clean clothing and boot covers shall be used during all work in the clear well. Proposed piping and the existing clear well shall be disinfected and tested. Coordination of disinfection activity shall be the responsibility of the Contractor.

Disinfection of the existing clear well shall be conducted by the Contractor. The Contractor shall be responsible for cleaning water facilities to the satisfaction of the Owner and Engineer prior to commencing disinfection. Disinfection of completed construction will be done by Contractor prior to placement in operation. Application of chlorine, sampling, and testing will be in conformance with AWWA Standard C653-20 Disinfection of Water Treatment Plants. Contractor shall submit a disinfection plan to the Owner and Engineer for review.

Bacteriological testing must include two consecutive safe samples tank 24 hours apart. Bacteriological test samples will be secured by the Owner and analyzed at the WTP. More details on the disinfection process and where it fits into the work sequence can be found on the sequencing page of the plans.

1.14 WARRANTY

The Contractor shall warranty and guarantee all equipment and work for a minimum of one year from the dates of substantial completion. Greater warranty duration may be required by the project specifications for specific equipment and/or work.

1.15 SAFETY

The Contractor is solely responsible for safety in accordance with the General Conditions. For work in the Clear well, Contractor is responsible for all work, entry, and exit requirements in compliance with MiOSHA.

PART 2 - PRODUCTS

*** Not Used ***

PART 3 - EXECUTION

*** Not Used ***

END OF SECTION

[Intentionally left blank]

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. Administrative and procedural requirements for Alternates.

1.02 SEQUENCING AND SCHEDULING

- A. Coordinate related Work and modify or adjust adjacent Work as necessary to ensure that Work affected by each accepted Alternate is complete and fully integrated into the project.
- B. Schedule: A "Schedule of Alternates" is included at the end of this Section. Specification Sections referenced in the Schedule contain requirements for materials and methods necessary to achieve the Work described under each Alternate.
 - 1. Include as part of each Alternate, miscellaneous devices, accessory objects and similar items incidental to or required for a complete installation whether or not mentioned as part of the Alternate.

PART 2 - PRODUCTS

Not Applicable

PART 3 - EXECUTION

3.01 SCHEDULE OF ALTERNATES

Contractor shall supply an additional price in the Proposal for each of the following Alternates:

- A. Alternate No. 1 consists of removing the existing foot valve from the suction piping from Washwater Pump 3, and installing permanent pipe supports on the suction piping. Refer to Section 01 10 00 Summary of Work for description of the split between Owner and Contractor activities. Suction pipe accessories and pipe supports shall be per Section 40 05 13 Process Piping.
- B. Alternate No. 2 consists of removing the existing foot valve from the suction piping from Washwater Pumps 2 and 3, cutting the suction piping and installing a restrained flange adapter, installing new foot valves per Section 40 05 51 Process Valves, and installing permanent pipe supports on the suction piping. Refer to Section 01 10 00 Summary of Work for description of the split between Owner and Contractor activities. Suction pipe accessories and pipe supports shall be per Section 40 05 13 Process Piping.

END OF SECTION

[Intentionally left blank]

PART 1 - GENERAL

1.01 GENERAL:

Project meetings for coordination of Contractor activity with the operation of the Water Filtration plant will be held as detailed in this section with additional meetings as requested by the Owner or Engineer, as dependent on the staging requirements for specific portions of the project. Meetings will be held at a location chosen by the Owner.

1.02 PRE-CONSTRUCTION MEETING

- A. Schedule: Meeting shall be prior to the start of work at a time and place designated by the Engineer. Contractor shall be required to attend with major Subcontractors.

1.03 PROGRESS MEETINGS

- A. Schedule: Meetings will be scheduled at a time and place designated by the Engineer. Contractor shall attend all progress meeting and shall have Subcontractors attend as relevant to the current status of the project.

PART 2 - PRODUCTS

*** Not Applicable ***

PART 3 - EXECUTION

*** Not Applicable ***

END OF SECTION

[Intentionally left blank]

PART 1 - GENERAL

1.01 SECTION INCLUDES

- A. Data to be furnished by the Contractor.

1.02 CONSTRUCTION PROGRESS SCHEDULE

- A. See requirements for Contractor submission of a construction progress schedule in Section 01 10 00 – “Summary of Work.”

1.03 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

- A. General: Where required by the Specifications, the Contractor shall submit descriptive information which will enable the Engineer to advise the Owner whether the Contractor's proposed materials, equipment, or methods of work are in general conformance to the design concept and in compliance with the Drawings and Specifications. The information to be submitted shall consist of drawings, specifications, descriptive data, certificates, samples, test results and such other information, all as specifically required in the Specifications. Shop drawings shall be in accordance with the General Conditions and Supplementary Conditions and the requirements outlined herein.
- B. Submittal Content and Format: Submittals shall be numbered consecutively and distinctly present the following:
 - 1. All working and erection dimensions.
 - 2. Arrangements and sectional views.
 - 3. Necessary details, including complete information for making connections between work under this Contract and work under other Contracts.
 - 4. Electrical wiring connections between all equipment furnished under the Contract, including all internal wiring between internal components of equipment and controls.
 - 5. Kinds of materials and finishes.
 - 6. Parts lists and description thereof.
 - 7. Drawings for mechanical and electrical equipment shall present, where applicable, such data as dimensions, weight, and performance characteristics. These data shall show conformance with the performance characteristics and other criteria incorporated in the Contract Documents.
- C. Contractor Responsibility
 - 1. Contractor shall be responsible for the accuracy and completeness of the information contained in each submittal and shall assure that the material, equipment or method of work shall be as described in the submittal. The Contractor shall verify that the material and equipment described in each submittal conform to the requirements of the Specifications and Drawings. If the information shows deviations from the Specifications or Drawings, the Contractor shall insure that there is no conflict with other submittals and notify the Engineer in each case where submittal may affect the work of another Contractor or the Owner. The Contractor shall insure coordination of submittals among the related crafts and Subcontractors.
 - 2. The Contractor shall be responsible to check and verify all field measurements, all dimensions on shop and setting drawings and all schedules required for the work of all the various trades.
 - 3. The Contractor may authorize in writing a material or equipment supplier to deal directly with the Engineer or with the Owner with regard to a submittal. These dealings shall be limited to contract interpretations.

4. The Contractor shall stamp each submittal with stamp, initialed and signed, certifying to review of the submittal by the Contractor, verification of field measurements and compliance with Contract Documents.
- D. Transmittal Procedure
1. Submittals shall be submitted promptly in accordance with dates in proposals, approved schedules and in such sequence that there is no delay in the Work or the work of any other Contractor. Submittals may be submitted by mail or electronically per the requirements listed below.
 2. Submittals regarding material and equipment shall be accompanied by clear identification of the equipment and any variations from these Specifications.
 3. A unique number, sequentially arranged, shall be noted on the transmittal form accompanying each item's submittal. Original submittal numbers shall have the following format "XXX-Y"; where "XXX" is the originally assigned submittal number, and "Y" is a sequential letter assigned for resubmittals, i.e., A, B, or C being the 1st, 2nd and 3rd resubmittals, respectively. Submittal 025-B, for example, is the second resubmittal of submittal 25.
- E. Electronic Transmittal Procedure – Submittals shall be submitted electronically via the Prein&Newhof Plan Room in accordance with the above “Transmittal Procedure” requirements as well as the following requirements and procedures.
1. Contractor shall be given a Login ID and Password to the Prein&Newhof Plan room. The website for the Prein&Newhof Plan Room is <http://www.preinnewhof.com/plan-room/>.
 2. Upon logging into the website, the Contractor will have access to a project folder labeled with the name of the Owner and Project. This folder will only be accessible to the Contractor, the Owner, and the Engineer.
 3. Login and password will not be provided to Subcontractors. If the Contractor provides their login information to their Subcontractors, the Contractor assumes responsibility for the Subcontractor’s actions.
 4. The Contractor may request automatic notifications by email of an “Upload” of both submitted and reviewed documents.
 5. Within the “Project Folder” there will be a “To Be Reviewed” folder and a “Reviewed” Folder. Contractor shall upload submittals in PDF format to the “To Be Reviewed” subfolder. The time and date of the upload will be logged and automatic email notifications will be sent.
 6. All submittals shall be prepared in accordance with this Section 01 33 00 of the specifications. Electronic submittals shall have the following naming format:

Submittal Number – Specification Section – Description.pdf

For example –001-033000-Concrete Mix Design.pdf

A letter shall be added after the submittal number for resubmittals. For example, 001B-033000-Concrete Mix Design.pdf would be the second resubmission.
 7. Within 15 days, reviewed submittals will be posted in the “Reviewed” folder. Automatic email notifications of the upload will be sent.
 8. The Engineer will update the “Shop Drawing Status Log” and post it in the Project Folder as submittals are received, where it will be accessible by the Owner, Contractor, and Engineer.
 9. Contractor shall submit any submittal requiring an Engineer’s seal as a hard copy. In addition, all submittals with an original size greater than 11 inches by 17 inches shall be submitted as a hard copy. All hard copy submittals shall also be submitted electronically.
- F. Deviation from Contract: If the Contractor proposes to provide material or equipment which does not conform to the Specifications and Drawings, he shall indicate so under "deviations" on the

transmittal form accompanying the submittal copies. Contractor shall prepare reason for a change, including cost differential, and request a change order to cover the deviations.

- G. Submittal Completeness: Submittals which do not have all the information required to be submitted, including deviations, are not acceptable and will be returned without review. Submittals which do not clearly identify specified product and relevant data, and submittals containing non-project specific data, will be rejected.
- H. Review Procedure
1. When the contract documents require a submittal, the Contractor shall submit five (5) copies of all submittal data (or one (1) electronic copy if submitting electronically), of which two (2) copies will be retained by the Engineer. For samples this number may vary. For samples, submit the number stated in each Specifications Section.
 2. If the review indicates that the material, equipment or work method is in general conformance with the design concept and complies with the Drawings and Specifications, submittal copies will be marked "NO EXCEPTIONS TAKEN". In this event the Contractor may begin to implement the work method or incorporate the material or equipment covered by the submittal.
 3. If the review indicates limited corrections are required, submitted copies will be marked "FURNISH AS CORRECTED". The Contractor may begin implementing the work method by the submittal in accordance with the noted corrections. Where submittal information will be incorporated in Operation and Maintenance data, a corrected copy shall be provided.
 4. If the review reveals that the submittal is insufficient or contains incorrect data, submitted copies will be marked "REVISE AND RESUBMIT". Except at its own risk, the Contractor shall not undertake work covered by this submittal until it has been revised, resubmitted and returned marked either "NO EXCEPTIONS TAKEN" or "FURNISH AS CORRECTED".
 5. If the review indicates that the material, equipment or work method is not in general conformance with the Drawings and Specifications, copies of the submittal will be marked "REJECTED". Submittals with deviations which have not been identified clearly may be rejected. Except at its own risk the Contractor shall not undertake the work covered by such submittals until it has been revised, resubmitted and returned marked either "NO EXCEPTIONS TAKEN" or "FURNISH AS CORRECTED".
 6. If the review indicates that the material or equipment is not from an acceptable manufacturer, as indicated in the Specifications, copies of the submittal will be marked "REJECTED". Except at its own risk, the Contractor shall not undertake the work covered by such submittals until it has been revised, resubmitted and returned marked either "NO EXCEPTIONS TAKEN" or "FURNISH AS CORRECTED".
 7. If the review indicates "ACKNOWLEDGED RECEIPT", the submittal under review has been appropriately noted and filed. No further action is required for a submittal so noted.
 8. If the review indicates "ON HOLD", the submittal is being held in the office of the Engineer pending the submittal of additional information, etc. so that the review can be completed. No further action on the submittal shall be taken until the information needed has been received and the submittal is returned marked either "NO EXCEPTIONS TAKEN" or "FURNISH AS CORRECTED".
- I. Effect of Review of Contractor's Submittal
1. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges. Recovery of the administrative and review costs will be discussed prior to completing review of all resubmittals as the project progresses.

2. Review of Drawings, methods of work, or information regarding materials or equipment the Contractor proposes to provide, shall not relieve the Contractor of its responsibility for errors therein and shall not be regarded as an assumption of risks or liabilities by the Engineer or the Owner, or by an officer or employee thereof, and the Contractor shall have no claim under the contract on account of the failure, or partial failure, of the method of work, material, or equipment so reviewed.
3. Review of Drawings also shall not relieve the Contractor of responsibility for the proper fitting and construction of the work nor for the furnishing of materials or work required by the Contract and not indicated on the Drawings.
4. A mark of "NO EXCEPTIONS TAKEN" or "FURNISH AS CORRECTED" shall mean that the Owner has no objection to the Contractor, upon its own responsibility, using the plan or method of work proposed, or providing the materials or equipment proposed.

1.04 LIST OF SHOP DRAWING SUBMITTALS

A. Requirements

1. Within two (2) weeks after Notice of Award, the Contractor shall submit for review by the Engineer an anticipated list of shop drawing submittals and submittal dates. If more than one shop drawing submittal is anticipated for a specification section, the Contractor shall identify what will be included in each submittal.

1.05 OPERATION AND MAINTENANCE DATA

A. Requirements

1. Compile product data for all equipment and associated controls systems furnished and installed under this Contract. Provide all necessary information for Owner's operation and maintenance of products furnished.
2. Prepare data in the form of an instructional manual for use by Owner's personnel. Prepare three (3) copies or complete sets compiled, bound in hard stock, and indexed.
3. A USB drive shall be provided of the entire manual in electronic, PDF, format. The electronic PDF shall include suitable bookmarks by section for ease of navigation.
4. The manuals shall include detailed operation and maintenance instructions for all equipment, the name and phone number of the manufacturer, and a complete parts list.
5. Submittal of operation and maintenance manuals shall be prior to final payment request.
6. Each hard copy of the manual shall be prepared and arranged as follows:
 - a. One hard copy of all approved shop drawings and diagrams for all equipment furnished. If the Contractor originally submitted the shop drawings electronically, a hard copy of each shall be printed and provided by the Contractor in each O&M manual. All sheets larger than 8-1/2 by 11 inches shall be folded to 8-1/2 by 11 inches.
 - b. One copy of each manufacturer's operation, lubrication, maintenance instructions and spare parts list for all equipment and controls furnished. All equipment operating, lubrication and maintenance instructions and procedures and parts lists shall be furnished on 8-1/2 by 11 inch commercially printed typed forms. Such forms shall include equipment name, serial number and other identifying references.
 - c. One valve schedule, giving the valve number, location, fluid and fluid destination for each valve installed, prepared on 8-1/2 by 11 inch printed or typed forms as specified. All valves in the same piping system shall be grouped together in the schedule. A sample of the valve numbering system to be used will be furnished by the Engineer.
 - d. List of electrical relay settings and control and alarm contact settings.
 - e. Electrical interconnection wiring diagram for equipment furnished including all control and lighting systems.

- f. Each copy of the manual shall be assembled in one or more binders, each with title page, typed table of contents, and heavy section dividers with copper reinforced holes and numbered plastic index tabs. Each manual shall be divided into sections paralleling the Special Specifications equipment specifications. Binders shall be 3-ring, hard-back type. All data shall be punched for binding and composition and printing shall be arranged so that punching does not obliterate any data. The cover and binding edge of each manual shall have the project title and manual title printed thereon, all as approved by Engineer.
 - g. Where more than one binder is required they shall be labeled Vol. 1, Vol. 2, and so on. The table of contents for the entire set, identified by volume number, shall appear in each binder.
- 7. When the work reaches 80 percent completion, the Contractor shall submit to the Engineer one (1) electronic copy of the Operation and Maintenance Manual with all specified material that is available at that time. The submittal shall accompany the Contractor's partial payment request for the specified completion. Manual shall be complete prior to request for final payment.
 - 8. The costs of the Operation and Maintenance Manual shall be included in the Contract Price and no separate payment will be made therefor.

1.06 RECORD DOCUMENTS

A. Requirements

- 1. The Contractor shall maintain on the construction site a minimum of one (1) complete set of contract documents amended by "RED LINE" or highlight inclusion to reflect the most immediate status methods, materials, and locations and routings of construction. Supplementary sketches shall be included, if necessary, to clearly indicate all work as constructed.
- 2. At conclusion of work, the Contractor shall submit to the (Engineer) one (1) complete amended record set of these site documents.
- 3. Submittal shall be prior to final payment.
- 4. Failure of the Contractor to maintain an up-to-date set of Record Drawings on the project site shall be reason to withhold payments.

PART 2 - PRODUCTS

*** Not Used ***

PART 3 - EXECUTION

*** Not Used ***

END OF SECTION

[Intentionally left blank]

PART 1 - GENERAL

1.01 GENERAL

- A. This section covers provision of temporary utilities by the Contractor or Owner during the Work.

1.02 TEMPORARY SERVICES

- A. Temporary Water: Within the limits of the available water supply from the existing plant water system, the Owner will furnish necessary water to the Contractor without charge, provided the Contractor coordinates use with the Owner and takes reasonable means to conserve it. The Contractor shall be responsible for the distribution of the water.
- B. Temporary Sanitary Facilities: The General Contractor shall provide temporary facilities for use of all workers on the project. Maintain in clean, sanitary condition and remove same, and all contents upon completion of the work.

PART 2 - PRODUCTS

*** Not Used ***

PART 3 - EXECUTION

*** Not Used ***

END OF SECTION

[Intentionally left blank]

PART 1 - GENERAL

1.01 GENERAL

- A. Prior to Substantial Completion, Contractor shall conduct startup and adjustment of all portions of the work to provide a fully functional washwater pumping system. All equipment provided shall be subject to the requirements of this section and further requirements in each section where specific equipment is specified.

PART 2 - PRODUCTS

*** Not Used ***

PART 3 - EXECUTION

3.01 GENERAL

Due to the sequencing required to maintain operation of the Water Filtration plant during construction, specified startup activities for equipment shall be required each time an individual unit is placed in operation. Training of the Owner for a specific type of equipment shall only be required once.

3.02 PERFORMANCE TEST AND TRIAL OPERATION

Performance tests of the new facilities will be required and will be made in the presence of the Owner, Contractor, and Engineer. All areas where work has been performed shall be thoroughly cleaned before beginning any performance tests. Operating personnel and power will be provided by the Owner. If any part of the equipment does not meet specifications, the Contractor shall correct the situation to the approval of the Engineer. The Contractor shall provide personnel and bear all costs of correcting any malfunctions in the work under this Contract.

A two week trial operation period shall be conducted for each system component. Training of Water Filtration plant personnel shall be conducted as requested by the Owner during the performance test and trial operation period. The performance test will be considered complete when the Contractor has corrected any malfunctions in the work and the Owner indicates the test has been completed to his satisfaction. Equipment testing and performance testing shall be conducted as construction proceeds.

END OF SECTION

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EXISTING CONDITIONS
DIVISION 2
TABLE OF CONTENTS

SECTION	TITLE
02 41 00	Demolition

[Intentionally left blank]

PART 1 - GENERAL

1.01 SUMMARY

- A. The work covered by this section consists of furnishing all supervision, labor, materials, and equipment necessary to demolish all specified piping and accessories as shown in the Drawings, and to remove debris from the site in accordance with all federal, state and local regulations.
- B. This Section requires demolition and abandonment of site piping, and demolition, removal and off-site disposal of materials, as shown in the Drawings.

1.02 SUBMITTALS

- A. Submit under provisions of Section 01 33 00 – “Submittals.”
- B. Contractor shall propose a schedule of operations including coordination for shutoff, capping, and continuation of utility services as required.
 - 1. Provide detailed sequence of demolition and removal work to ensure uninterrupted progress of Owner’s operations.

1.03 JOB CONDITIONS

- A. The bidder shall be responsible for inspecting the site of the proposed work and to determine for himself all conditions under which he will be obligated to work. It is also expected that the bidder will obtain firsthand information concerning the available facilities for receiving, transporting, disposing, handling and storing demolished equipment and materials, and concerning other local conditions that may affect the work.
- B. Salvaged Materials: Items of salvable value to Contractor not designated to be turned over to the Owner may be removed from structure as work progresses. Transport salvaged items from site as they are removed.
 - 1. Storage or sale of removed items will not be permitted on site.
- C. Protections: Ensure safe passage of persons around area of demolition. Conduct operations to prevent damage to adjacent buildings, structures, and other facilities and injury to persons.
 - 1. Provide interior and exterior shoring, bracing, or support to prevent movement, settlement, or collapse of structures to be demolished and adjacent facilities to remain.
- D. Damages: Promptly repair damages caused to adjacent facilities by demolition operations.
- E. Utility Services: Maintain existing utilities indicated to stay in service and protect against damage during demolition operations.
 - 1. Do not interrupt existing utilities serving occupied or used facilities, except when authorized in writing by authorities having jurisdiction. Provide temporary services during interruptions to existing utilities, as acceptable to governing authorities.
- F. Comply with requirements of NFPA 241, “Safeguarding Construction, Alteration, and Demolition Operations.”

- G. Coordination with Water Filtration Plant Operation: Work shall be conducted in such a manner as to avoid hazards to persons and property. Contractor shall erect barriers, fences, guard rails, enclosures, and shoring to protect personnel, structures, and utilities remaining intact.
- H. Mechanical trade shall remove equipment, piping, and other items pertaining to their respective trade. This shall include temporary removal and reinstallation where necessary.

PART 2 - PRODUCTS

*** Not Used ***

PART 3 - EXECUTION

3.01 DEMOLITION

- A. Pollution Controls: Use water sprinkling, temporary enclosures, and other suitable methods to limit dust and dirt rising and scattering in air. Comply with governing regulations pertaining to environmental protection.
 - 1. Do not use water when it may create hazardous or objectionable conditions such as ice, flooding, and pollution.
 - 2. All work where applicable shall conform to the State of Michigan Soil Erosion and Sedimentation Part 91, Act 451 of the Public Acts of 1994, as amended and related ordinances.
- B. Clean adjacent structures and improvements of dust, dirt, and debris caused by demolition operations. Return adjacent areas to condition existing prior to start of work.
- C. Care shall be taken to assure that demolition activity does not damage other facilities. Contractor shall make good, without additional cost to the Owner, work damaged by demolition activity.

3.02 SALVAGED MATERIALS

- A. General: Remove carefully to avoid damages. Materials for reuse on this project (if any) are to be incorporated into new work if indicated.
 - 1. Salvage the following items for reuse by the Contractor:
 - a. 16"x20" Base 90 Reducing Bend with Base Support
 - 2. The Owner intends to keep select items. Prior to demolition, remove and turn over to the Owner the following:
 - a. Existing foot valves (if removed via either Alternate),
 - b. Existing 18-inch diameter flange filler (from WWP 3 discharge).
- Contractor shall verify that all items the Owner wishes to keep have been removed before beginning demolition.
- 3. Except for items indicated to be retained as Owner's property, other removed and salvaged materials not indicated for reuse shall become Contractor's property and removed from site with further disposition at Contractor's option.

3.03 DISPOSAL OF DEMOLISHED MATERIALS

- A. General: Remove weekly from site accumulated debris, rubbish, and other materials resulting from demolition operations.
 - 1. Burning of combustible materials from demolished structures will not be permitted on site.
- B. Removal: Transport materials removed from demolished structures and legally dispose of offsite.

END OF SECTION

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FINISHES
DIVISION 9
TABLE OF CONTENTS

SECTION	TITLE
09 96 00	High Performance Coatings

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PART 1 - GENERAL

1.01 SUMMARY

- A. This section includes surface preparation, painting, and finishing of exposed interior and exterior items and surfaces.
 - 1. Surface preparation, priming, and finish coats specified in this section are in addition to shop priming and surface treatment specified under other sections.
 - 2. Coatings in this specification include shop and field applications. Contractor is responsible for complying with State of Michigan environmental coating compliance standards and volatile organic (VOC) regulations for shop and field applications of coatings. The State of Michigan has adopted Ozone Transport Commission Phase II Model Rule for Architectural and Industrial Maintenance (AIM) coatings.
- B. Paint all exposed surfaces except surfaces or items that are specifically indicated not to be painted or to remain natural. Where an item or surface is not specifically mentioned, paint the same as similar adjacent materials or surfaces. If color or finish is not designated, the Engineer will select from standard colors or finishes available.
- C. Painting is not required on pre-finished items, finished metal surfaces, concealed surfaces, operating parts, and labels unless otherwise noted.
 - 1. Pre-finished items not to be painted include the following factory-finished components, but not limited to:
 - a. Acoustic materials.
 - b. Architectural woodwork and casework.
 - c. Finished mechanical and electrical equipment.
 - d. Light fixtures.
 - e. Distribution cabinets.
 - 2. Concealed surfaces not to be painted include wall or ceiling surfaces in the following generally inaccessible areas:
 - a. Foundation spaces.
 - b. Furred areas.
 - c. Utility tunnels.
 - d. Pipe spaces.
 - e. Duct shafts.
 - 3. Finished metal surfaces not to be painted include unless otherwise noted:
 - a. Anodized aluminum.
 - b. Stainless steel.
 - c. Chromium plate.
 - 4. Operating parts not to be painted include moving parts of operating equipment such as the following:
 - a. Linkages.
 - b. Sensing devices.
 - c. Motor and fan shafts.
 - d. Hardware
 - 5. Labels: Do not paint over Underwriter's Laboratories, Factory Mutual or other code-required labels or equipment name, identification, performance rating, or nomenclature plates.

1.02 REFERENCES

- A. Reference Organizations and Documents
 - 1. American National Standards Institute (ANSI):
 - a. ANSI A13.1 Scheme for the Identification of Piping Systems

SECTION 09 96 00
HIGH PERFORMANCE COATINGS

- b. ANSI Z535.1 Safety Color Code
 - c. ANSI/ASC 29.4 Abrasive Blasting Operations – Ventilation and Safe Practice
 2. American Society for Testing Materials (ASTM)
 - a. ASTM D 16 Standard Terminology for Paint, Related Coatings, Materials, and Applications.
 - b. ASTM D 4285 Standard Test Method for Indicating Water or Oil in Compressed Air.
 - c. ASTM D 6386 Standard Practice for Preparation of Galvanized Iron & Steel
 - d. ASTM D 6944 Standard Test Method for Measuring Humidity with a Psychrometer.
 - e. ASTM F 1869 Standard Test Method for Measuring Moisture Vapor Emission Rate of Concrete Subfloor Using Anhydrous Calcium Chloride.
 3. American Water Works Association (AWWA)
 - a. AWWA D102-17 Coating Steel Water Storage Tanks
 - b. AWWA C210 Liquid-Epoxy Coating Systems for the Interior and Exterior of Steel Water Pipelines
 - c. AWWA C218 Coating the Exterior of Aboveground Steel Water Pipelines and Fittings
 4. International Concrete Repair Institute (ICRI)
 - a. 310.2R-2013 Selecting & Specifying Surface Preparation for Sealers, Coatings, Polymer Overlays, & Concrete Repair
 - b. 320.1R-1996 Guide for Selecting Application Methods for the Repair of Concrete Surfaces
 - c. 710.2-2014 Guide for Horizontal Waterproofing of Traffic Surfaces
 5. NACE International (NACE)
 - a. NACE 6D-173 A Manual for Painter Safety
 - b. NACE 6G-164 Surface Preparation Abrasives for Industrial Maintenance Painting
 - c. NACE TPC2 Coating and Lining for Immersion Service: Chapter 1 Safety, Surface Preparation, Chapter 3 Curing, and Chapter 2 Inspection
 - d. NACE 6F-163 Surface Preparation of Steel of Concrete Tank Interiors
 - e. NACE RP0892 Standard Recommended Practice, Lining over Concrete in Immersion Service.
 - f. NACE RP0288 Standard Recommended Practice, Inspection of Linings on Steel and Concrete.
 - g. NACE SP0188 Standard Practice for Discontinuity (Holiday) Testing of Protective Linings
 6. National Association of Pipe Fabricators (NAPF)
 - a. NAPF 500-03 Surface Preparation Standard for Ductile Iron Pipe and Fittings in Exposed Locations Receiving Special External Coatings and/or Special Internal Linings
 7. National Fire Protection Association (NFPA)
 - a. NFPA 101 Life Safety Code
 8. NSF International (NSF)
 - a. NSF/ANSI/CAN Standard 61 Drinking Water System Components
 - b. NSF/ANSI/CAN Standard 600
 9. Ozone Transport Commission (OTC)
 - a. OTC Phase II Phase II Model Rule for Architectural and Industrial Maintenance (AIM) Coatings
 10. The Society for Protective Coatings (SSPC)
 - a. SSPC-SP 10 Near White Metal Blast Cleaning

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|----|---------------|--|
| b. | SSPC-SP 11 | Power Tool Cleaning to Bare Metal |
| c. | SSPC-PA 1 | Painting Application Specification |
| d. | SSPC-PA 2 | Measurement of Dry Coating with Magnetic Gauges |
| e. | SSPC-PA 3 | A Guide for Safety in Paint Application |
| f. | SSPC-Guide 12 | Guide for Illumination of Industrial Painting Projects |

1.03 DEFINITIONS

- A. "Paint" as used herein means all coating systems materials, primers, emulsions, enamels, stains, sealers and fillers, and other applied materials whether used as prime, intermediate, or finish coats.

1.04 SUBMITTALS

- A. Product Data: for each paint system specified, including block fillers and primers.
1. Provide the manufacturer's technical information including label analysis and instructions for handling, storage, and application of each material proposed for use.
 2. List each material and cross-reference the specific coating, finish system, and application. Identify each material by the manufacturer's catalog number and general classification.
 3. Product data sheets shall indicate the mixing and thinning directions, and recommended spray nozzles and pressures.
- B. Samples for verification purposes: Provide samples of each color and material to be applied, with texture to simulate actual conditions, on representative samples of the actual substrate. Define each separate coat, including block fillers and primers. Use representative colors when preparing samples for review. Resubmit until required sheen, color, and texture are achieved.
- C. Provide safety data sheets (SDS).

1.05 QUALITY ASSURANCE

- A. Engage an experienced applicator that has experience in industrial or heavy commercial painting system applications and experience in painting wastewater or water treatment plants. The submission of five (5) successful paint projects of similar nature will be required if the Engineer is not familiar with the Subcontractor's work.
- B. Single-Source Responsibility: Provide primers and undercoat paint produced by the same manufacturer as the finish coats.
- C. Material Quality: Provide the manufacturer's paint material of the various coatings as specified. Paint material containers not displaying manufacturer's product identification will not be acceptable.
- D. Compatibility: Materials specified herein are compatible and complete systems. Any incompatible primers or barrier coats shall be removed and re-primed as directed by the Engineer. Notify the Engineer in writing of any anticipated problems using specified coating systems with substrates primed by others.
- E. Paint sample areas to establish standards on quality of workmanship as directed by the Engineer and to establish a basis for acceptability of the coating work. Project mock-ups and samples approved by the Engineer shall stay in place the remainder of the project to provide a standard of quality to which production work will be compared.

1.06 DELIVERY, STORAGE, AND HANDLING

- A. Deliver materials to the job site in the manufacturer's original, unopened packages and containers bearing manufacturer's name and label and the following information:
 - 1. Product name or title of material.
 - 2. Product description (generic classification or binder type).
 - 3. Manufacturer's lot number.
 - 4. Manufacturer's stock number and date of manufacture.
 - 5. Contents by volume, for pigment and vehicle constituents.
 - 6. Thinning instructions.
 - 7. Application instructions.
 - 8. Color name and number.
 - 9. Expiration date (after which the product should not be used).
- B. Containers that have been broken, opened, water marked and contain caked, lumpy or otherwise damaged materials are unacceptable and shall be removed from the work site immediately.
- C. Store materials not in use in tightly covered containers in a well-ventilated area at a minimum ambient temperature of 45 deg F (7 deg C). Maintain containers used in storage in a clean condition, free of foreign materials and residue. The Contractor shall exercise every precaution in the storage of paints, solvents, cleaning fluids, rags and similar materials to eliminate the risk of spontaneous combustion or other hazardous conditions. Portable fire extinguishing equipment shall be provided in a convenient location for emergency access. All painting materials stored on the job site shall be stored in a location consistent to the manufacturer's storage requirements. The Contractor shall take all safety precautions in accordance with Section 7 of AWWA d-102 and NFPA Bulletin No. 101.

1.07 PROJECT/SITE CONDITIONS

- A. Apply paints only when the temperature of surfaces to be painted and surrounding air temperatures are between 50 deg F (10 deg C) and 90 deg F (32 deg C). These temperatures need to be maintained throughout the minimum cure time as recommended by the manufacturer.
- B. The coatings shall be supplied for normal use without thinning. If it is necessary to thin the coating for proper application in cool weather or obtain better coverage for a protected coating of urethane application, the thinning shall be done in accordance with manufacturer's recommendations.
- C. Do not apply paint to wet or damp surfaces, or during snow, rain, fog, or mist. No paint shall be applied when it expected that the relative humidity will exceeds 85 percent or that the air temperature will drop below manufacturer's requirements within 18 hours after the application of the paint. Dew or moisture condensation should be anticipated and if such conditions are prevalent, painting shall be delayed until the Engineer is satisfied that the surface is dry.
- D. Air quality permits, requirements, and other construction related permits shall be the responsibility of the Contractor. Copies of the permits shall be attached to the Field Superintendents copy of the specifications and shall be on the job site at all times.
- E. Adjacent Work – Protect work of other trades covered in these specifications and in other sections and in other sections against damage by painting and finishing work. Correct any damage by repairing, cleaning, replacing, or repainting any of the damaged areas as acceptable to the Engineer.
- F. Provide "Wet Paint" signs as required to protect freshly painted surfaces from the damage.

PART 2 - PRODUCTS

2.01 MANUFACTURERS

- A. Manufacturer: All materials specified herein shall be base bid as manufactured by the Tnemec Company, Inc., Kansas City, MO. These products are specified to establish standards of quality and are approved for use on this project. The listing or description of these products shall not be construed so as to eliminate from competition other products of equal performance, which are similar in design, function, and performance. The products were selected by application, performance requirements, and ASTM Testing.

2.02 PAINT MATERIALS

- A. Material Compatibility: Provide block fillers, finish coat materials, and related materials that are compatible with one another and the substrates indicated under conditions of service and application, as demonstrated by the manufacturer based on testing and field experience.
- B. Colors: Provide color selections made by the Owner from the manufacturer's full range of standard colors.

PART 3 - EXECUTION

3.01 EXAMINATION

- A. The Contractor shall examine Work-in-Place that work included in this section is dependent. Any defects that may influence the satisfactory performance of any work of this section shall be corrected in accordance with the requirements governed by the section under which the defects are noted. The Contractor shall be solely responsible for assuring that Work-in-Place is acceptable to satisfy the requirements of this section. Commencement of work under this section shall be construed as Work-in-Place being acceptable to the Contractor.
- B. Coordination of Work: Review other sections in which primers are provided to ensure compatibility of the total system for various substrates on request. Furnish information on characteristics of finish materials to ensure use of compatible primers.
 - 1. Notify the Engineer about anticipated problems using the materials specified over substrates primed by others.

3.02 PREPARATION:

- A. General Procedures: Remove hardware and hardware accessories, plates, machined surfaces, lighting fixtures, and similar items in place that are not to be painted, or provide surface-applied protection prior to surface preparation and painting. Remove these items if necessary for complete painting of the items and adjacent surfaces. Following completion of painting operations in each space or area, have items reinstalled by workers skilled in the trades involved.
 - 1. Clean surfaces before applying paint or surface treatments. Remove oil and grease prior to cleaning. Schedule cleaning and painting so that dust and other contaminants from the cleaning process will not fall on wet, newly painted surfaces.
- B. Surface Preparation: Clean and prepare surfaces to be painted in accordance with the manufacturer's instructions and SSPC for each particular substrate condition and as specified.
 - 1. Provide barrier coats over incompatible primers or remove and re-prime. Notify the Engineer in writing of problems anticipated with using the specified finish-coat material with substrates primed by others.

2. Ferrous Metals: Clean non-galvanized ferrous-metal surfaces that have not been shop coated; remove oil, grease, dirt, loose mill scale, and other foreign substances.
 - a. All the surfaces to be coated shall be blast cleaned in accordance with the surface preparation standard listed in the schedule.
 - b. The abrasive used for blast cleaning shall be an approved low dusting abrasive and shall have a gradation such that the abrasive will produce a uniform profile of 1 to 2.5 mils, as measured with extra coarse Testex Replica Tape.
 - c. All abrasive and coating residue shall be removed from steel surfaces with a commercial grade vacuum cleaner equipped with a brush-type cleaning tool, or by double blowing. If the double blowing method is used, the exposed top surfaces of all structural steel, including flanges, longitudinal stiffeners splice plates, hangers, etc., shall be vacuumed after the double blowing operations are completed. The airline used for blowing the steel clean shall have an in-line water trap and the air shall be free of oil and water as it leaves the air line. The steel shall then be kept dust free and primed within eight (8) hours after blast cleaning.
 - d. Touch up bare areas and shop-applied prime coats that have been damaged. Wire-brush, clean with solvents recommended by the paint manufacturer, and touch up with the same primer as the shop coat.
 3. Ductile Iron: NAF 500-03-04 Abrasive Blast Cleaning of Ductile Iron Pipe
 4. Copper Pipe: Abrade surface to generate a profile for mechanical adhesion.
- C. Materials Preparation: Carefully mix and prepare paint materials in accordance with manufacturer's directions.
1. Maintain containers used in mixing and application of paint in a clean condition, free of foreign materials and residue.
 2. Stir material before application to produce a mixture of uniform density; stir as required during application. Do not stir surface film into material. Remove film and, if necessary, strain material before using.
 3. Use only thinners approved by the paint manufacturer, and only within recommended limits.
 4. Epoxy, Coal Tar Epoxy and Urethane Coatings:
 - a. The coating shall be mixed with a high shear mixer (such as Jiffy Mixer) in accordance with the manufacturer's directions, to a smooth, lump-free consistency. Paddle mixers or paint shakers are not permitted. Mixing shall be done, as far as possible, in the original containers and shall be continued until all of the metallic powder or pigment is in suspension. Care shall be taken to ensure that all of the coating solids that may have settled to the bottom of the container are thoroughly dispersed. The coating shall then be strained through a screen having openings no larger than those specified for a No. 50 sieve in ASTM E11. After straining, the mixed primer shall be kept under continuous agitation up to and during the time of application.

3.03 APPLICATION

- A. Apply paint in accordance with manufacturer's directions and good painting practices under SSPC. Use applicators and techniques best suited for substrate and type of material being applied.
- B. Do not paint over dirt, rust, scale, grease, moisture, scuffed surfaces, fraying surfaces or conditions detrimental to formation of a durable paint film.
 1. Paint colors, surface treatments, and finishes are indicated in "schedules."
 2. Provide finish coats that are compatible with primers used.
 3. The number of coats and film thickness required is the same regardless of the application method. Do not apply succeeding coats until the previous coat has cured as recommended

- by the manufacturer. Sand between applications where sanding is required to produce an even smooth surface in accordance with the manufacturer's directions.
4. Apply additional coats when undercoats, stains, or other conditions show through final coat of paint until paint film is of uniform finish, color, and appearance. Give special attention to ensure that surfaces, including edges, corners, crevices, welds, and exposed fasteners, receive a dry film thickness equivalent to that of flat surfaces.
 5. The term "exposed surfaces" includes areas visible when permanent or built-in fixtures, convector covers, covers for finned tube radiation, grilles, and similar components are in place. Extend coatings in these areas as required to maintain the system integrity and provide desired protection.
 6. Sand lightly between each succeeding enamel or varnish coat.
 7. Omit primer on metal surfaces that have been shop-primed and touch up painted.
- C. Proper curing conditions for ferrous metals will be required between the applications of all coats. The minimum curing time between coats and the maximum time between coats shall be in accordance with the manufacturer's recommendation except that no more than sixty, (60), calendar days will be permitted between coats. If the maximum time between coats is exceeded, all newly coated surfaces shall be completely blast cleaned again to a near-white finish (SSPC-SP10) and recoated and shall be at the Contractor's expense. Whatever metal is cleaned during a working day shall be coated with the prime coat the same day. After the steel is primed, it shall be vacuumed again before subsequent coating. If for any reason this vacuuming does not remove all the accumulated dust and/or dirt, or if more than three (3) weeks has elapsed since the steel was primed, or if in the opinion of the Engineer the surface is unfit for top-coating, the surface shall be scrubbed with a mild detergent solution (any commercial laundry detergent) and thoroughly rinsed with water and allowed to dry for twenty-four (24) hours before the surface is coated.
- D. Minimum Coating Thickness: Apply materials at not less than the manufacturer's recommended spreading rate. Provide a total dry film thickness of the entire system as recommended by the manufacturer and as stated in paint schedules. If the application of coating at the required thickness in one (1) pass produces runs, bubbles, or sags, the coating shall be applied in multiple passes, the passes separated by several minutes. Where excessive coating thickness produces "mud-cracking", such coating shall be scraped back to soundly bonded coating and the area recoated to the required thickness. All dry spray shall be removed, by sanding if necessary. In areas of deficient primer thickness, the areas shall be thoroughly cleaned with power washing equipment, as necessary to remove all dirt; the areas shall then be wire brushed, vacuumed, and recoated. Each undercoat shall be tinted a lighter shade to facilitate identification of each coat where multiple coats are applied. The Engineer will require certification from the approved coating manufacturer that sufficient materials of each coating specified were purchased to complete the scope of work indicated in these specifications and on the drawings.
- E. Mechanical and Electrical Work: Painting mechanical and electrical work is limited to items exposed in mechanical equipment rooms and in occupied spaces.
- F. Stipple Enamel Finish: Roll and redistribute paint to an even and fine texture. Leave no evidence of rolling such as laps, irregularity in texture, skid marks, or other surface imperfections.
- G. Pigmented (Opaque) Finishes: Completely cover to provide an opaque, smooth surface of uniform finish, color, appearance, and coverage. Cloudiness, spotting, holidays, laps, brush marks, runs, sags, ropiness, or other surface imperfections will not be acceptable.
- H. Transparent (Clear-White) Finishes: Use multiple coats to produce a glass-smooth surface film of even luster. Provide a finish free of laps, cloudiness, color irregularity, runs, brush marks, orange peel, nail holes, or other surface imperfections.

- I. Completed Work: Match approved samples for color, texture, and coverage. Remove, refinish, or repaint work not in compliance with specified requirements.
- J. All metal coated with impure unsatisfactory or unauthorized coating material or coated in an unworkmanlike or objectionable manner shall be thoroughly cleaned and recoated or otherwise corrected as directed by the Engineer.

3.04 FIELD QUALITY AND CONTROL

- A. The Contractor shall provide access to the job site and areas of work at all times during normal working hours for the Owner. This requirement includes both shop and work in the field.
- B. The Engineer or an outside inspection service representing the Owner may make inspections of the work in progress and completed work. Contractor shall coordinate with Engineer or outside inspection agency to allow for inspections after surface preparation and after each coating is applied.

Should the Engineer be summoned to inspect a completed phase of the work and find the work incomplete and therefore, not ready for inspection, the Contractor shall bear the cost of the inspection. It is not the intent to charge the Contractor for an inspection if discrepancies are found in the completed phase of the construction as long as the discrepancies do not necessitate additional inspection trips. Field inspections may be performed by the Engineer according to the following outline:

- 1. Surface Preparation:
 - a. Surface appearance per SSPC checked with visual standards.
 - b. Anchor profile checked with replica tape.
- 2. Coating Conditions:
 - a. Temperature of steel using a surface thermometer.
 - b. Determination of relative humidity and dew point and air temperature using a sling psychrometer.
- 3. Verification of Coating Thickness:
 - a. Dry film thickness will be determined by use of a magnetic film thickness gauge.
 - b. Pin holes will be checked using a holiday detector.
- 4. The Contractor shall supply the following test equipment and standards. This equipment shall be on the job site and available to the on-site inspector at all times:
 - a. Wet Film Thickness Gauges
 - b. SSPC Vis-1 pictorial standards
 - c. Magnetic Dry Film Thickness Gauge 0 to 45 mils
 - d. Dry Film Thickness Calibration Standards
 - e. Tooke Gauge
 - f. Holiday detection device
 - g. Surface Temperature Gauges
 - h. Sling Psychrometer or equal
- C. Failure to comply with these specifications in any manner shall be sufficient cause for rejection of work.

3.05 CLEAN-UP AND PROTECTION

- A. Cleanup: At the end of each work day, remove empty cans, rags, rubbish, and other discarded paint materials from the site.

- B. Upon completion of painting, clean glass and paint-spattered surfaces. Remove spattered paint by washing and scraping, using care not to scratch or damage adjacent finished surfaces.
- C. Protect work of other trades, whether to be painted or not, against damage by painting. Correct the damage by cleaning, repairing or replacing, and repainting, as acceptable to the Engineer.
- D. Provide "wet paint" signs to protect newly painted finishes. Remove temporary protective wrappings provided by others for protection of their work after completion of painting operations.
 - 1. At completion of construction activities of other trades, touch up and restore damaged or defaced painted surfaces.

3.06 PAINT WASTE

- A. The Contractor shall be responsible for correctly disposing of all material generated by his performance of the work.
- B. Documentation shall be provided to the Engineer/Owner regarding proper testing and disposal of paint waste. All testing and disposal procedures shall meet or exceed those required by the State of Michigan Department of Environment, Great Lakes, and Energy and/or any other governmental bodies that have jurisdiction over waste in the State of Michigan.
- C. If paint waste is generated, as a minimum, three samples shall be taken and analyzed for lead content and any other hazardous material as required by local, State and federal governing bodies before a dumpster containing paint waste may be removed from the job site. These samples shall be taken and tested by an independent laboratory and paid for by the Contractor as a part of this contract. The results of these tests must be submitted to the Engineer/Owner and the Contractor shall receive written approval for the removal of any dumpster.
- D. The cost of disposing of any waste shall be part of the Contractor's original proposal and will not be considered as an extra to the Contract.
- E. Dust and blast products shall be completely removed prior to recoating by high pressure air or vacuum cleaning.

3.07 PAINT SCHEDULE

- A. General: Paint all surfaces as noted in this Paint Schedule and the Finish Schedules included in the Drawings. Also paint items and surfaces where noted on the Drawings and in the Sections of the Specifications. NOTIFY ENGINEER when ready to select colors and, again, when ready to commence the work, and prior to applying the final coat. Where only two coats are noted, the result must give total coverage or an added coat shall be applied.
 - 1. All non-wearing surfaces, supports, frames, etc., except galvanized parts, shall be painted in accord with the painting schedule.
 - 2. Paint hollow metal doors and frames and overhead doors.
 - 3. Paint the following items if exposed to view and not factory finished:
 - a. Metal, except stainless steel and aluminum unless noted.
 - b. Mechanical ductwork, piping (including copper and brass), and associated supports, cabinets, covers, grilles, register, diffusers and appurtenances.
 - 4. When exposed to the exterior elements and not factory finished, paint the following items:
 - a. Metal, except stainless steel or aluminum unless noted.
 - 5. Factory finishes shall be touched up with a matching material if scratched, stained or otherwise damaged. When noted, factory finished items shall be field painted. Prime coat, galvanizing or similar treatment do not constitute a factory finish exempted from field painting. The overhead door shall be painted at the job site.

SECTION 09 96 00
HIGH PERFORMANCE COATINGS

6. Do not paint over code required labels such as UL or FM, or any equipment identification, performance rating, name or nomenclature plates.
7. Do not paint moving parts of operating mechanical and electrical equipment such as valve and damper operators, linkages, sensing devices, or motor and fan shafts.
8. The following painting schedule is based on the products of the Tnemec Company, Inc. Schedule contains minimum number of coats required to achieve specified dry film thickness.
9. See Section 40 05 13 – “Process Piping” for coating of inside of pipes. Interior and exterior noted in schedule below refers to building environment.

C. DUCTILE IRON PIPE

Interior Ductile Iron Pipe and Fittings (Existing Construction)

Spot Surface Prep:	NAPF 500-03-04/NAPF 500-03-05	
Spot Prime:	Tnemec Series V69	2.0 to 3.0 mils DFT
Intermediate:	Tnemec Series V69	4.0 to 6.0 mils DFT
Finish:	Tnemec Series V69	4.0 to 6.0 mils DFT

Interior Ductile Iron Pipe and Fittings (New Construction)

Surface Prep:	NAPF 500-03-04/NAPF 500-03-05	
Shop Prime:	Tnemec Series 37H, N69, or V69	2.0 to 3.0 mils DFT
or Field Prime:	Tnemec Series V69	2.0 to 3.0 mils DFT
Intermediate:	Tnemec Series V69	4.0 to 6.0 mils DFT
Finish:	Tnemec Series V69	4.0 to 6.0 mils DFT

D. STEEL PIPE

Interior Steel Pipe (Existing Construction)

Spot Surface Prep:	SSPC-SP-11	
Spot Prime:	Tnemec Series 1	2.5 to 3.5 mils DFT
Finish:	Tnemec Series V69	4.0 to 6.0 mils DFT

Interior Steel Pipe (New Construction)

Surface Prep:	Near White Blast Cleaning (SSPC-SP-10)	
Shop prime:	Tnemec Series V69	4.0 to 6.0 mils DFT
Field Touch-up:	Tnemec Series V69, as required	
Intermediate:	Tnemec Series V69	4.0 to 6.0 mils DFT
Finish:	Tnemec Series V69	4.0 to 6.0 mils DFT

E. NON-FERROUS PIPE

Interior Copper Pipe

Surface Prep:	3.02.B.4	
Prime:	Tnemec Series V69	3.0 to 4.0 Mils DFT
Finish:	Tnemec Series V69	3.0 to 4.0 Mils DFT

F. STEEL PIPE SUPPORTS - IMMERSION (Interior of reservoir – Alternate Nos. 1 and 2 only)

Surface Prep:	SSPC-SP2	
Prime (Shop and/or Field):	Tnemec Series 94-H ₂ O Hydro-Zinc	2.5 to 3.5 mils DFT
Intermediate:	Tnemec 21-1255 Epoxoline	4.0 to 6.0 mils DFT
Finish:	Tnemec 21-WH16 Epoxoline	4.0 to 6.0 mils DFT

- A. Color Selection: Paint colors will be selected by Engineer. Before painting the Contractor shall submit Paint Specifications and color chips for review by Engineer.
1. Furnish colors exactly matching the selected colors.
 2. Obtain approval from Engineer of proposed color matches.
 3. Paint wood, metal, and mechanical and electrical appurtenances the same color as adjacent building surface unless noted.
 4. Refer to architectural drawings for special painting considerations for accent color walls.
 5. The “Ten State Standards” recommended piping color scheme shall be utilized for piping and is as follows:

a) Potable Water	Dark Blue (matching existing)
b) Pipe Supports	Black
 6. Verify pipe color scheme with Engineer prior to application to confirm whether a different shade from the above listed piping color scheme is required.

3.09 LABELS

- A. Piping shall be identified by labels and flow arrows every ten feet with at least two labels in each room.
- B. The contents and direction of flow shall be stenciled on the piping with paint in a contrasting color. Coordinate label text with Owner and Engineer.
- C. Minimum text size for 16" and larger pipe shall be 4".
- D. Minimum text size for pipe smaller than 16" shall be 2".

3.10 SURFACE PREPARATION - SSPC DESCRIPTIONS

- A. Reference is made to Steel Structures Painting Council (SSPC) surface preparation specifications for recommended surface cleaning.

SSPC-SP-2 Hand Tool Cleaning:

Removal of loose rust, loose mill scale and loose paint to degree specified, by hand chipping, scraping, sanding and wire brushing.

SSPC-SP-10 Near-White Metal Blast Cleaning:

The removal of all rust, oil, grease, dirt, dust, mill scale, oxides, corrosion products and other foreign matter by compressed air nozzle blasting. Discoloration caused by certain stains shall be limited to no more than five percent (5%) of each square inch of surface area. (For high humidity, chemical atmosphere, marine or other corrosive environments).

SSPC-SP-11 Power Tool Cleaning to Bare Metal:

The removal of all visible oil, grease, dirt, dust, mill scale, rust, paint oxide, corrosion products, and other foreign matter by the use of surface cleaning power tools.

- B. Mill scale, rust and paint are considered tightly adherent if they cannot be removed by lifting with a dull putty knife.

3.11 SURFACE PREPARATION - NAPF DESCRIPTIONS

- A. Reference is made to National Association of Pipe Fitters (NAPF) surface preparation specifications for recommended surface cleaning of ductile iron pipe and fittings.

NAPF 500-03-04 Abrasive Blast Cleaning for Ductile Iron Pipe:

Removal of all visible dirt, dust, loose annealing oxide, loose rust, loose mold coating and other foreign matter. All oils, small deposits of asphalt paint and grease shall have been removed prior to blasting by solvent cleaning per NAPF 500-03-01. After the entire surface to be coated is struck by the blast media, tightly adherent annealing oxide, mold coating and rust staining may remain on the surface provided they cannot be removed by lifting with a dull putty knife. No asphaltic coating shall be allowed to remain.

NAPF 500-03-05 Abrasive Blast Cleaning for Ductile Iron Fittings:

Removal of all visible dirt, dust, loose annealing oxide, loose rust, loose mold coating and other foreign matter. All oils, small deposits of asphalt paint and grease shall have been removed prior to blasting by solvent cleaning per NAPF 500-03-01. After the entire surface to be coated is struck by the blast media, tightly adherent annealing oxide, mold coating and rust staining may remain on the surface provided they cannot be removed by lifting with a dull putty knife. For fittings previously coated with asphaltic paint, no staining may remain on the surface after abrasive blast cleaning.

END OF SECTION

PROCESS INTEGRATION

DIVISION 40

TABLE OF CONTENTS

_SECTION	TITLE
40 05 13	Process Piping
40 05 51	Process Valves

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PART 1 - GENERAL

1.01 RELATED DOCUMENTS

Drawings and general provisions of the Contract, including the General and Supplementary Conditions and Division 1 Specification Sections apply to this document.

1.02 SUMMARY

- A. The Contractor shall furnish and install all piping as shown on the Drawings complete with all accessories and appurtenances required for the proper performance of the work.
- B. Related Sections
 - 1. SECTION 01 33 00 – “Submittals”
 - 2. SECTION 09 96 00 – “High Performance Coatings”
 - 3. SECTION 40 05 51 – “Process Valves”

1.03 REFERENCES

All piping materials, layout, and installation shall meet the requirements of the governing local, state, and national codes and relevant AWWA Standards. Referenced codes and standards shall be the current code or standard in effect at the time proposals are received.

1.04 DESIGN REQUIREMENTS

The Drawings show the general arrangement of the piping. Details of proposed departures due to actual field conditions or other causes shall be submitted to the Engineer for review. The Contractor shall carefully examine the Drawings and shall be responsible for the proper fitting of materials and equipment in each structure as indicated without substantial alteration.

1.05 SUBMITTALS

- A. Submit in accordance with the General and Supplementary Conditions and Section 01 33 00 – “Submittals.”
- B. Submit detailed shop and placement drawings to the Engineer for review for all piping four inches (4") in diameter or greater.
- C. Manufacturer’s Certificate: Certify that products meet or exceed specified requirements.

1.06 DELIVERY, STORAGE, AND HANDLING

Deliver, store, protect, and handle products as required by the manufacturer.

1.07 WARRANTY

The process piping shall be guaranteed for a period of one year from the date of substantial completion.

PART 2 - PRODUCTS

2.01 MATERIALS

Piping materials and accessories shall conform to the following specifications. Wherever pressure ratings, wall thickness, pipe class, or schedule are given herein, they shall be considered to be the minimum allowed. Piping with a higher rating, classification, or schedule shall be furnished if so called out on the Drawings.

2.02 PIPE, FITTINGS, JOINTS, COATINGS AND LININGS

The Contractor shall furnish and install all piping as shown on the Drawings. All exterior, buried piping shall be as defined in Division 33 of the Project Specifications.

All 4" diameter and larger interior or exposed piping shall be either ductile iron or carbon steel as shown on the Drawings. Fittings shall be as shown on the Drawings.

All nuts and bolts on stainless steel flanges shall be 316L stainless steel.

A. Ductile Iron Pipe

All 4-inch and larger water piping may be ductile iron pipe. Ductile iron pipe shall be AWWA C151 Class 53. Flanged ductile iron pipe shall be in accordance with AWWA C115. All pipe and fittings for water service shall have a cement mortar lining with seal coat conforming to the requirements of AWWA C104 (ANSI A21.4) and NSF 61.

For all interior ductile iron and steel flanged pipe, flange connection hardware shall be galvanized or zinc plated carbon steel. Hardware shall comply with the current ASTM A307, Grade B requirements, or approved equal. Bolts and nuts shall comply with the current American Standard for Screw Head ANSI B1.1, Coarse Thread Series, Class 2 fit.

Exteriors of all interior ductile iron pipe and fittings shall have a shop prime coat of paint in accordance with Section 09 96 00 requirements. Ductile iron pipe and fittings that are required to be coated shall be supplied without any exterior asphaltic coating. No asphaltic coating shall be permitted below coatings required by Section 09 96 00.

Flanges and fittings shall be ductile iron and meet AWWA C110/115. Casting and drilling shall be to ANSI B16.1, Class 125. Gaskets shall be Toruseal® gaskets as manufactured by American or equivalent. Gaskets for potable water piping applications shall be SBR rubber per ANSI/AWWA C111/A21.11, certified per NSF 61.

Certified reports of chemical and physical analysis of material must be supplied. Fabrication drawings shall be submitted to the Engineer for approval prior to starting fabrication of any of the material required.

B. Carbon Steel Pipe

Water piping 4 inch diameter and larger may be steel.

Fittings shall be as shown on the Drawings. Flanges shall be furnished for all connections to valves, existing flanges, wall/floor pipes, and as shown on the Drawings.

Steel pipe for 24-inch nominal diameter and smaller shall be in accordance with ASTM A53, Grade B.

Pipe 14" and larger shall have an outside diameter which corresponds to the nominal pipe size. Steel pipe greater than 10 inch diameter shall have minimum wall thickness of 3/8". Fittings shall comply with AWWA C208. Flanges shall be slip-on welding type meeting AWWA C207 Class D. Flanges shall have the same diameter and drilling as Class 125 cast iron flanges ANSI/ASME B16.1.

Gaskets shall be full face cloth inserted rubber type or Toruseal® gaskets as manufactured by American approved for use with potable water.

Exteriors of all steel pipe shall be coated per the requirements of Section 09 96 00. Contractor shall supply minimum of 48 hours notice of completion of surface preparation and allow for observation of the surface preparation by the Engineer prior to coating.

Interior coating system shall be shop applied on the interior of all steel pipe and fittings as follows:

Steel Pipe 18" in diameter or greater

Surface Prep: SSPC-SP10 with a minimum angular profile of 1.5 mils

Prime Coat: Tnemec Series 21 Epoxoline (WH16 Off White) at 6.0-8.0 mils DFT

Finish Coat: Tnemec Series 21 Epoxoline (39BL Delft Blue) at 6.0-8.0 mils DFT

Steel Pipe 10" to 18" in diameter

Surface Prep: SSPC-SP10 with a minimum angular profile of 1.5 mils

Prime Coat: Tnemec Series 22 Epoxoline (1255 Beige) at 12.0-18.0 mils DFT

Finish Coat: Tnemec Series 22 Epoxoline (1218 Light Blue) at 12.0-18.0 mils DFT

Contractor shall supply minimum of 48 hours' notice of completion of any pipe surface preparation and allow for observation of the surface preparation by the Engineer prior to coating.

Certified reports of chemical and physical analysis of material must be supplied. Fabrication drawings shall be submitted to the Engineer for approval prior to starting fabrication of any of the material required.

C. SMALL DIAMETER PIPING (3-inch diameter and less) :

1. Pipe and Tube:
 - a. Copper water tube shall be ASTM B-88, Type L above ground. Tube shall be hard drawn seamless copper tubing. Provide manufacturer's colors to the Owner for selection.
 - b. Brass pipe shall be ANSI/ASTM B-43, IPS 85 red brass.
 - c. Stainless steel pipe shall be used for all instrumentation connections. Stainless steel pipe shall be Schedule 10, Type 316 conforming to ASTM A-312, TP-316.
2. Joints and Fittings
 - a. Steel pipe fittings - FS WW-P-521 Class 50 for pipe smaller than 4".
 - b. Copper and brass fittings shall meet ANSI/ASTM B-16.22 pressure fittings.
3. Unions and Couplings
 - a. Pipe Size 2" and Under - 150 psi malleable iron for threaded ferrous piping; bronze for copper or brass pipe soldered joints.

- b. Pipe Size Over 2" - 150 psi forged steel slip-on flanges for ferrous piping; bronze flanges for copper or brass piping.

2.03 PIPE HANGERS AND SUPPORTS

Whether or not specifically shown on the Drawings, Contractor shall support all horizontal runs of pipe to prevent vibration, to maintain proper grading by adjustment, to provide for expansion and contraction and to be neat in appearance. Hangers and supports shall be of standard design whenever possible and best suited to service required. Pipe support for the base 90 bend at the WWP discharge shall be reused. Contractor shall install non-shrink grout pad as required under base support.

Alternates No. 1 and No. 2: Structural steel used for fabricated flange supports in the finished water reservoir shall conform to ASTM A36, or A572 Gr 50. Anchor bolts shall be Type 316 stainless steel Simpson Titen HD Heavy-Duty Screw Anchors (or equal) and shall be installed into the reservoir slab following the manufacturer recommendations. Surface preparation and shop prime painting of all structural steel shall be in accordance with Section 09 96 00 – “High Performance Coatings.” Primer shall be considered as first coat. Immediately after erection, clean and paint all surfaces not shop painted, welds, and all damage to the paint system in accordance with Section 09 96 00 – “High Performance Coatings.”

2.04 JOINTS AND ACCESSORIES

A. Pipe taps

Pipe taps shall be as shown in the locations and the sizes indicated on the Drawings. All taps will be temporarily plugged at the point of fabrication. Tapping method and thread shall meet the requirements of the pipe manufacturer and shall be rated for the pressure of the pipe.

B. Sample Ports

Sample ports shall be provided as indicated on the Drawings. Sample ports shall consist of a 3/8" diameter tap, 3/8" diameter ball valve, and 3/8" diameter copper tubing gooseneck. Sample port shall be smooth nosed with no threaded fittings.

C. Pressure Gauges for Water

Pressure gauges shall be provided as shown on the Drawings. Gauges shall be liquid filled and provided with 3½" dial. A snubber assembly shall be provided with each gauge to dampen pressure pulsations. Provide diaphragm with stainless steel housing and diaphragm material suitable for potable water. Range shall be as shown on the Drawings. Gauges shall be Type 1009SW Duralife pressure gages for severe service as manufactured by Ashcroft or Engineer approved equal. Wetted materials shall be compatible with potable water as recommended by manufacturer.

D. Small-diameter check valve shall be provided on each copper water tube from the impeller housing to the bearing housing. Check valve shall match the size of the copper tubing, and be installed with downstream end towards the bearing housing. Check valve shall be bronze or stainless steel.

E. Restrained Flange Adapters (Alternate No. 1 and No. 2)

Restrained flange adapters shall be Series 2100 MEGAFLANGE® Restrained Flange Adapter as produced by EBAA Iron, Inc. or approved equal. Flange adapters shall be made of ductile iron conforming to ASTM A536 and have flange bolt circles that are compatible with ANSI/AWWA C110/A21.10 (125#/Class 150 Bolt Pattern). The flange adapters shall be capable of deflection during assembly or permit lengths of pipe to be field cut to allow a minimum 0.6 inch gap between the end of the pipe and the mating flange without affecting the integrity of the seal.

All internal surfaces of the gasket ring (wetted parts) shall be lined with a minimum of 15 mils of fusion bonded epoxy conforming to the applicable requirements of ANSI/AWWA C213. The

coating shall meet ANSI/NSF-61. Exterior surfaces of the gasket ring shall be coated with a minimum of 6 mils of fusion bonded epoxy conforming to the applicable requirements of ANSI/AWWA C116/A21.16.

All hardware used in conjunction with the flange adapter shall be stainless steel.

PART 3 - EXECUTION

3.01 GENERAL

All pipe and fittings delivered to the Project shall be accompanied by certification papers showing that the pipe and fittings meet the applicable specifications.

All exposed piping shall be run straight and square with the structure in a neat and workmanlike manner and shall be coordinated with other work. Run piping true to line and grade.

Piping shall be hung from the building structure or laid in the ground in a manner that will allow expansion and maintain alignment.

Pipe taps for ductile iron pipe shall conform to ANSI A21.51. Steel pipe taps shall be welded half-couplings or saddle type and shall be attached in the shop.

The Contractor shall provide the necessary material and labor to make connections to existing piping when called for on the Drawings. All necessary gaskets, bolts and fittings shall be provided for this purpose.

Pipe shall be kept clean. During construction, openings in pipe shall be fitted with temporary plugs except where the pipe is actually being worked on. Piping must be clean at time of final acceptance of the work.

When piping is to connect to a piece of equipment it shall be run symmetrically, and it shall terminate so as to properly fit the fixture or piece of equipment in accordance with the fixture or Equipment Manufacturer's rough-in sheets or shop drawings.

3.02 CLEANING & DISINFECTING

- A. After initial removal of the existing discharge gate valve, the discharge flange of the washwater pump shall be blind flanged to prevent contaminants from entering the pump body and suction piping.

Prior to placing WWP 2 into service, Contractor shall apply a 50 ppm chlorine solution in the length of pipe between the check valve and the 20-inch butterfly valve. Piping shall be filled with the chlorinated solution via the pressure gauge tap, exhausting air from the ¾" tap located near the header until 50 ppm of chlorine is detected at the upper tap. The Contractor shall supply their own temporary pumping equipment to fill the piping with chlorinated solution. Contractor shall supply temporary piping to direct vented discharge from ¾" tap to floor drains selected by the Owner.

Once all air has been expelled from the new piping and detectable chlorine residual is evident at the ¾" tap, all taps shall be closed leaving the stretch of piping between the check valve and butterfly valve full of chlorinated solution.

After a 24-hour period, the installed valves and associated piping shall be flushed by opening the upper ¾" tap and applying plant finished water at the pressure gauge tap, venting out the upper tap until the chlorine residual at the upper tap matches that of the clearwell. Then, the Contractor shall apply water at the upper tap and flush plant finished water out the pressure gauge tap until the chlorine residual at that tap matches that of the clearwell. Contractor shall coordinate with the Owner to select a hose bibb for use in flushing the piping with plant water. Contractor shall supply all hoses used to direct plant water to the piping.

A sample shall then be taken from the line in the presence of the Engineer and Owner. Samples shall be taken from the ¾" tap or pressure gauge connection. The Owner will perform the bacteriological analysis on the samples collected by the Contractor. In the event that the water samples do not pass this bacteriological test, the chlorination procedure outlined above shall be repeated until the quality of water is substantially the same as that being delivered from the existing clearwell. The test procedure shall be repeated until two consecutive negative results are obtained as required by the Michigan Department of Environment, Great Lakes, and Energy. The two samples shall be taken 24 hours apart. The piping shall be re-chlorinated after two (2) failed consecutive tests, whether the test fails at a different sample point or not.

The proposed 16-inch pipe spool between the pump discharge flange and the check valve shall be cleaned and swabbed with chlorine solution before the final connection is made and the pump is activated for testing.

Testing shall be coordinated with the Owner's laboratory schedule for holidays and weekends. All bacteriological sampling will be conducted by the Owner's onsite laboratory.

3.03 HYDROSTATIC TEST

A. Procedure

After successfully completing disinfection, Contractor shall coordinate with the Owner to operate WWP 2 in a normal backwash cycle to allow for flow through the pump and discharge piping and to complete a visual inspection of all joints in the station for leakage. Contractor shall allow for up to an hour for this visual review and shall notify Engineer and Owner to allow for a visual inspection. Contractor shall keep the work area dry as necessary throughout the visual inspection and shall make repairs or replacements as necessary if any joint is found to be leaking.

END OF SECTION

PART 1 - GENERAL

1.01 RELATED DOCUMENTS

Drawings and general provisions of the Contract, including the General and Supplementary Conditions and Division 1 Specification Sections apply to this document.

1.02 SUMMARY

- A. Work included in this section includes furnishing and installing process valves as shown on the Drawings complete with all accessories and appurtenances required for the proper performance of the work.
- B. The Drawings indicate the general location of the valves and the intended service, type, and valve size. The Contractor shall be responsible for furnishing all valves to provide a complete, ready-to-operate facility.
- C. Related Sections:
 - 1. SECTION 01 33 00 – “Submittals”
 - 2. SECTION 40 05 13 – “Process Piping”

1.03 REFERENCES

All valve materials and installation shall meet the requirements of the governing local, state, and national codes. Referenced codes and standards shall be the current code or standard in effect at the time proposals are received.

1.04 DELIVERY, STORAGE, AND HANDLING

- A. Prepare valves for shipping to protect internal parts against rust and corrosion, and to protect threads, flange faces, grooves, and weld ends. Set globe valves closed to prevent rattling. Set ball and plug valves open to minimize exposure of functional surfaces. Set butterfly valves closed or slightly open, and block check valves in either open or closed position.
- B. Maintain valve end protection during storage. Store indoors and maintain valve temperature higher than ambient dew-point temperatures. If outdoor storage is necessary, store valves off the ground in watertight enclosures.
- C. Use a sling to handle large valves. Rig to avoid damaged parts. Do not use handwheels and stems as lifting or rigging point.

1.05 SUBMITTALS

- A. Submit in accordance with Section 01 33 00 – “Submittals.”
- B. Submit detailed shop and placement drawings to the Engineer for review for all valves including detailed drawings, material lists, and installation, operation, and maintenance instructions on all equipment furnished under this section.
- C. Manufacturer’s Certificate: Certify that products meet or exceed specified requirements.

1.06 WARRANTY

The process valves shall be guaranteed for a minimum period of one year from the date of substantial completion.

PART 2 - PRODUCTS

2.01 MATERIALS

Materials used in the production of valves shall be of the best quality used in normal industrial practice for the service intended. Material shall be free of all defects and imperfections that could affect the serviceability of the product. The materials and types of valve construction specified below are for potable water service.

Valves shall be the standard product of a manufacturer regularly engaged in the production of equipment of this nature.

2.02 EQUIPMENT

A. AWWA Butterfly Valves

Butterfly valves 3 - 20" shall meet or exceed the latest revision of AWWA Standard C504 for Class 150B butterfly valves and shall meet or exceed the requirements of this specification. All valves shall be tested at and shall be capable of withstanding bi-directional line hydrostatic test pressures up to 225 psi without leaking. Operators shall be considered an integral part of the valve and shall be supplied by the valve manufacturer. Valves shall be furnished with all AWWA C-504/C-516 and NSF61 interior coatings as required by each standard.

Valve bodies shall be of cast iron per ASTM A126 Class B. Flange end valves shall be of the short body design with 125 lb. flanged ends faced and drilled per ANSI B16.1 standard for cast iron flanges.

Discs shall be offset to provide an uninterrupted 360 degree seating edge and shall be ductile iron per ASTM A536. The disc seating edge shall be solid 316 stainless steel. Sprayed mating seating surfaces are not acceptable. The disc shall be securely attached to the valve shaft utilizing a field removable/replaceable 316 stainless steel tangential pin locked in place with a set screw on sizes 14 - 20".

Valve shaft shall be type 316 stainless steel. Valve shaft seals shall be self-compensating V-type packing with a minimum of four sealing rings. One-piece molded shaft seals and O-ring shaft seals are not acceptable.

The seat shall be acrylonitrile-butadiene (NBR), and shall be molded in and vulcanized to the valve body. The seat shall contain an integral shaft seal protecting the valve bearings and packing from any line debris. Seats vulcanized to cartridge inserts in the valve body and seats on the disc are not acceptable.

Valve shaft bearings shall be non-metallic and permanently lubricated.

Each valve shall be factory tested per AWWA C-504, with the actuator assembled to the valve.

A two-year warranty shall be provided for all valves.

Acceptable Manufacturers: DeZurik, or Engineer approved equal.

1. Manual Operators

Valves not requiring electric or pneumatic operators shall be provided with manual operators. Manual operators shall be considered an integral part of the valve and shall be supplied by the valve manufacturer. Each valve and valve actuator shall be assembled, adjusted, and tested as a unit per the latest revision of AWWA C504, by the valve manufacturer.

Valves shall be equipped with a handwheel operator unless otherwise noted. The geared manual operators shall be designed, manufactured and tested in accordance with the applicable AWWA standards. Operators shall have a maximum rim pull of 40 pounds.

Operators shall be capable of holding the disc in any position between full open and full closed without any movement or fluttering of the disc. Operators shall be furnished with fully adjustable mechanical stop-limiting devices. Operators that utilize the sides of the housing to limit disc travel are unacceptable.

Valve operators shall be capable of withstanding the input torque for each system application in either the open or closed position without damage.

Valves shall have traveling nut manual actuators designed and tested per the requirements of AWWA C504.

All units shall have adjustable open and closed position stops. The operator shall be housed in a watertight enclosure and shall be packed with grease or oil filled. The operator shall hold the disc in any position without creeping or fluttering.

The valve operator shall be capable of meeting torque requirements under normal operating conditions, open the valve under maximum head condition and close the valve during maximum flow conditions. All actuators shall have an indicator of valve position readily visible from the operator.

Valves shall open left or counterclockwise.

B. Potable Water Dual Disc Check Valve

The check valve shall be of the dual disc type, wafer style with torsion spring induced closure. Check valve shall be dual disc/double door check valve as manufactured by Val-Matic or Engineer approved equal.

1. Standards & Approvals

The valve shall be certified to NSF/ANSI 61, Drinking Water System Components – Health Effects, and certified to be Lead-Free in accordance with NSF/ANSI 372. Manufacturer shall have a quality management system that is certified to ISO 9001 by an accredited, certifying body.

2. Connections

Wafer style valve shall be provided for installation between ANSI B16.1 Class 125 flanges.

3. Design

The body shall be of one piece construction incorporating a vulcanized synthetic seal. Seal design shall include a raised sealing bead for positive seating at both high and low pressures. The disc shall fully overlap the synthetic seal, preventing pressure indentations.

Opening and closing of the valve shall utilize a lift and pivot action to prevent seal wear and ensure long seal life. The stop and pivot pins shall be stabilized by the use of synthetic spheres to prevent wear due to vibration during operating conditions.

Closure shall be assisted with a torsion spring to provide a cracking pressure of 0.25 psig.

4. Materials

The valve body shall be constructed of ASTM A126 Class B cast iron for Class 125 valves. The disc shall be constructed of ASTM B148, Alloy C95200 cast aluminum bronze. The disc pins and stop pins shall be Type 316 stainless steel.

The torsion spring shall be ASTM A313 Type 316 stainless steel. The seal shall be Buna-N per ASTM D2000-BG.

Valve interiors and exteriors shall be coated with an NSF/ANSI 61 certified fusion bonded epoxy in accordance with AWWA C550.

5. Manufacture & Testing

The valves shall be hydrostatically tested at 1.5 times their rated cold working pressure. A seat closure test at the valve rating shall be conducted to demonstrate zero leakage. Manufacturer shall provide test certificates, dimensional drawings, parts list drawings, and operation and maintenance manuals.

C. **Suction Piping Alternate No. 2 – Foot Valves**

As part of Suction Piping Alternate No. 2, foot valves shall be installed on the suction piping to WWP2 and WWP3 within Finished Water Reservoir No. 2. Foot valves shall be of the full flow globe style designed to provide silent operation, positive seating, and full flow area. Valve shall be Series 1900 as manufactured by Val-Matic, or engineer approved equal.

1. Standards, Approvals, and Verifications

The valves shall be certified to be Lead-Free in accordance with NSF/ANSI 61, Annex G. Manufacturer shall have a quality management system that is certified to ISO 9001 by an accredited, certifying body.

The valves shall be hydrostatically tested at 1.5 times their rated cold working pressure. Additional tests shall be conducted per AWWA, ANSI, MSS or API standards when specified. The manufacturer shall provide test certificates, dimensional drawings, parts list drawings, and operation and maintenance manuals.

2. Connections

Foot valve shall be provided with flanges in accordance with ANSI B16.1 for Class 125 iron flanges.

3. Design

The valve design shall incorporate a center guided disc, guided at opposite ends and having a short linear stroke that generates a flow area equal to the pipe size. All component parts shall be field replaceable without the need of special tools. A replaceable guide bushing shall be provided and held in position by threaded bushing retainer. The valve disc shall be concave to the flow direction providing for disc stabilization, maximum strength, and a minimum flow velocity to open the valve. A Buna-N seal shall be provided on the seat to provide for zero leakage at both high and low pressures without overloading or damaging the seal. The seal design shall provide both a metal to metal and a metal to Buna-N seal. A basket screen shall **not** be supplied with the valve.

4. Materials

The valve body shall be constructed of ASTM A536, Grade 65-45-12 ductile iron. The seat and plug shall be ASTM A351 Grade CF8M stainless steel or 316 stainless steel. Valve interiors and exteriors shall be coated with an NSF/ANSI 61 certified fusion bonded epoxy in accordance with AWWA C550.

2.03 ACCESSORIES

- A. Valves shall be equipped with accessories as noted or as required for a workable, complete installation. Operating wrenches, levers, extension stems, guides, floor boxes, or valve boxes shall be furnished and installed. Operators shall be installed, adjusted, and tested for operation by the valve manufacturer.
- B. Valve Tags. All process valves (except for the foot valves) shall be provided with a valve tag. The tag shall indicate the valve number as provided by the Owner or Engineer. The tag shall be fabricated of stainless steel with the letters etched clearly on it. The tag shall be attached to the valve with a metal cable/chain.

PART 3 - EXECUTION

3.01 EXAMINATION

Examine piping system for compliance with requirements for installation tolerances and other conditions affecting performance of valves. Do not proceed with installation until unsatisfactory conditions have been corrected.

- A. Examine valve interior for cleanliness, freedom from foreign material, and corrosion. Remove special packing materials.
- B. Operate valve from fully open to fully closed positions. Examine guides and seats made accessible by valve operation.
- C. Examine mating flange faces for conditions that might cause leakage. Check bolting for proper size, length, and material. Check gasket material for proper size, material composition, and freedom from defects or damage.
- D. Do not attempt to repair defective valves. Replace with new valves.

3.02 INSTALLATION & RESTRAINT

Install valves as indicated, according to manufacturer's written instructions. Install valves with unions or flanges at each piece of equipment arranged to allow servicing, maintenance, and equipment removal without system shutdown.

Provide separate support for valves where necessary.

For valves installed in the finished water reservoir, valve shall be cleaned and swabbed with chlorine solution before connection to the washwater pump suction piping.

3.03 INSPECTION AND TESTS

All valves shall be tested along with the process pipe in accordance with Section 40 05 13 – "Process Piping." All valves with surface and visible defects shall be removed and replaced with new valves prior to final acceptance. All valves shall be operated by the Contractor in the presence of the Engineer.

END OF SECTION

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 9, 2024	Title: Request to amend the planned unit development (PUD) at 3400, 3460, 3474 Wilcox Avenue, 1875 Waterworks Road, and 1490 Edgewater Street (the Docks). SECOND READING							
Submitted by: Mike Franzak, Planning Director	Department: Planning							
Brief Summary: The plans have been amended to develop around areas that have been declared as established wetlands. There will be a total of 240 residential units and a community building with retail/restaurant space.								
Detailed Summary & Background: The Planning Commission unanimously recommended approval of the amended PUD with the following conditions: 1. The applicant receives a stormwater permit from the Engineering Department. 2. All utility plans are reviewed and approved by the Engineering Department 3. Lane widths of streets are reduced to 9 or 10 feet subject to the Engineering Department. 4. Bulb outs are eliminated on road A. 5. Road C will be connected back to road B. 6. The parking lot to the southern marina parking lot will be revised as discussed. 7. Landscaping areas inside of parking areas and streets will be privately maintained. 8. A public/private street map will be provided and describe the ownership as discussed with all privately-owned roadways being publicly accessible. 9. A landscaping plan is approved by the Planning Department. Conditions 4, 5, and 6 have been addressed and reflected on the revised plans in the packet.								
Goal/Focus Area/Action Item Addressed: <u>Key Focus Areas:</u> <u>Goal/Action Item:</u> 2027 Goal 2: Economic Development Housing and Business								
Amount Requested: N/A	Budgeted Item: <table border="1"><tr><td>Yes</td><td></td><td>No</td><td></td><td>N/A</td><td>X</td><td></td></tr></table>	Yes		No		N/A	X	
Yes		No		N/A	X			
Fund(s) or Account(s): N/A	Budget Amendment Needed:							

Yes		No		N/A	X	
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Recommended Motion:

To approve the request to amend the PUD with the following conditions:

1. The applicant receives a stormwater permit from the Engineering Department.
2. All utility plans are reviewed and approved by the Engineering Department.
3. Lane widths of streets are reduced to 9 or 10 feet subject to the Engineering Department.
4. Landscaping areas inside of parking areas and streets will be privately maintained.
5. A public/private street map will be provided and describe the ownership as discussed with all privately-owned roadways being publicly accessible.
6. A landscaping plan is approved by the Planning Department.
7. That on-street parking, inclusive of handicap parking, be placed to the north of the structural retaining wall at public road E's final northerly bend.

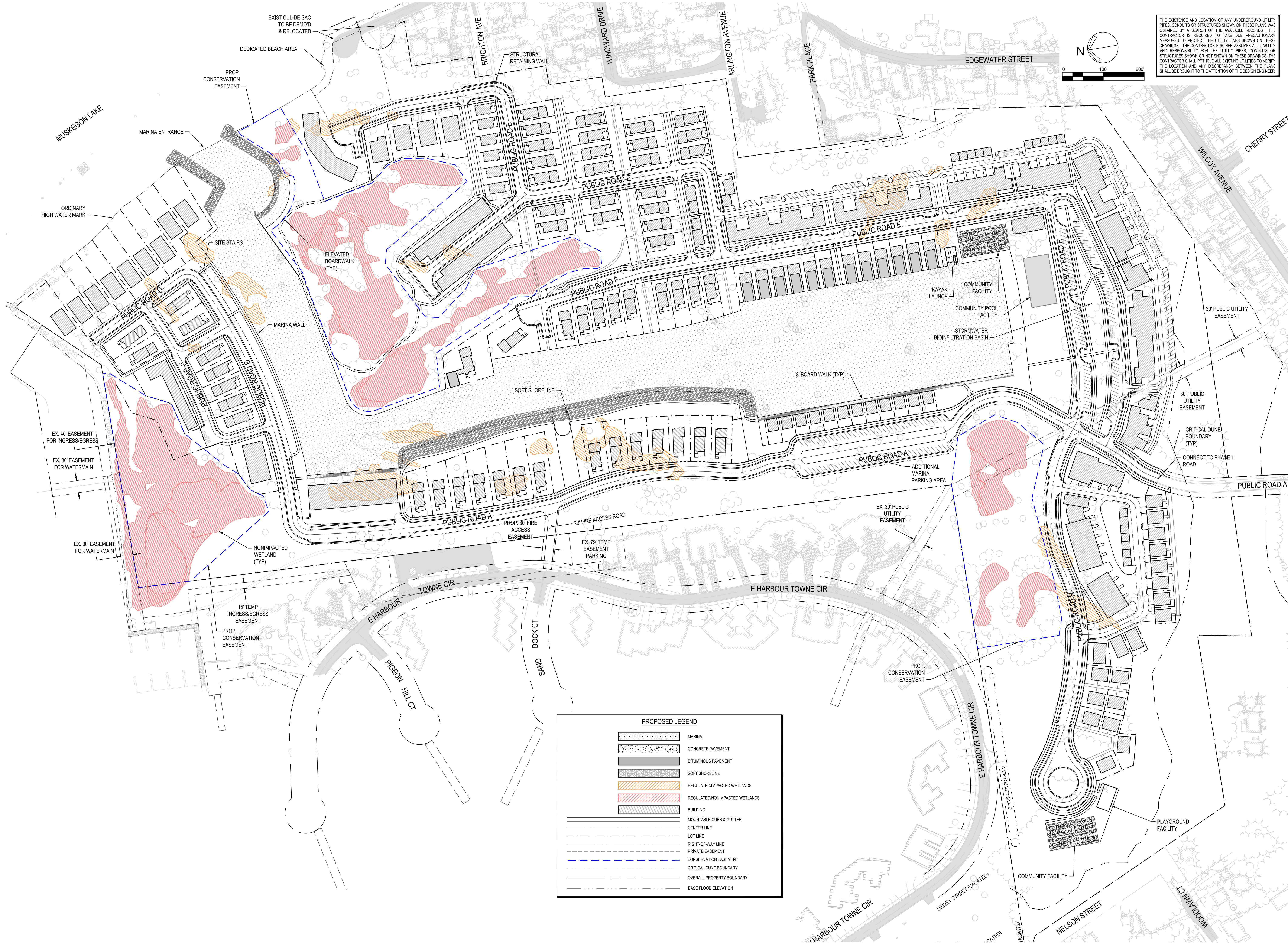
Approvals:

Immediate Division Head	X	
Information Technology		
Other Division Heads	X	
Communication		
Legal Review		

Guest(s) Invited / Presenting:

Yes

Tuesday, July 16, 2024 at 3:41 pm 0:2306100GR The Docks, Muskegon Drawings - 2306100GR (MID-Production Sheet), PUD Drawings (100-2-SLP-0) .indd 200



THE EXISTENCE AND LOCATION OF ANY UNDERGROUND UTILITY PIPES, CONDUITS OR STRUCTURES SHOWN ON THESE PLANS WAS OBTAINED BY A SEARCH OF THE AVAILABLE RECORDS. THE CONTRACTOR IS REQUIRED TO TAKE DUE PRECAUTIONARY MEASURES TO PROTECT THE UTILITY LINES SHOWN ON THESE DRAWINGS. THE CONTRACTOR FURTHER ASSUMES ALL LIABILITY AND RESPONSIBILITY FOR THE UTILITY PIPES, CONDUITS OR STRUCTURES SHOWN OR NOT SHOWN ON THESE DRAWINGS. THE CONTRACTOR SHALL POthOLE ALL EXISTING UTILITIES TO VERIFY THE LOCATION AND ANY DISCREPANCY BETWEEN THE PLANS SHALL BE BROUGHT TO THE ATTENTION OF THE DESIGN ENGINEER.



PARADIGM DESIGN

ARCHITECTS | ENGINEERS

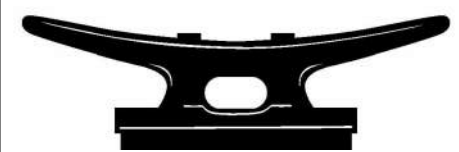
415 Leonard Street NW, Suite 200
Grand Rapids, MI 49504
(616) 785-5656

Grand Rapids | Phoenix | Traverse City
www.paradigmnae.com

NOTE: THIS DOCUMENT IS PRELIMINARY IN NATURE AND IS NOT A FINAL, SIGNED AND SEALED DOCUMENT.

PROJECT

THE
DOCKS



APPROX. 3400 WILCOX AVE.
MUSKEGON, MI 49440
ADDRESS 3

CLIENT

MICOAST
PROPERTIES, LLC

(231) 722-6691
560 MART ST.
MUSKEGON, MI 49440

RELEASE DATE

DATE	DESCRIPTION
05-23-19	FINAL PUD SUBMITTAL
05-21-20	AMENDED PUD SUBMITTAL
06-13-24	AMENDED PUD SUBMITTAL
07-16-24	REV PER CITY COMMENTS

NOT FOR
CONSTRUCTION

PROJECT

2306100GR

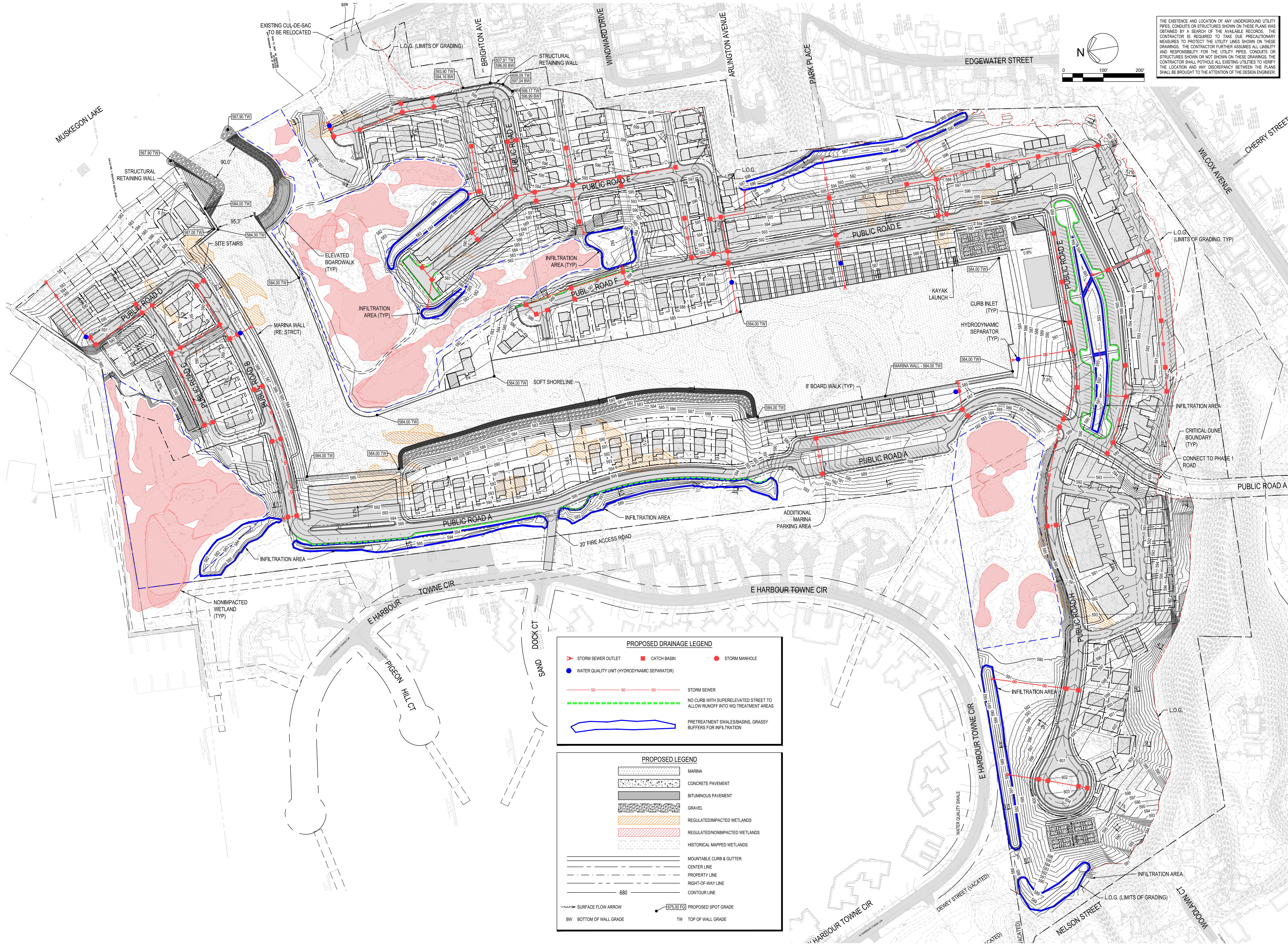
SHEET

SITE LAYOUT PLAN

C-200

PROPOSED LEGEND	
	MARINA
	CONCRETE PAVEMENT
	BITUMINOUS PAVEMENT
	SOFT SHORELINE
	REGULATED/IMPACTED WETLANDS
	REGULATED/NONIMPACTED WETLANDS
	BUILDING
	MOUNTABLE CURB & GUTTER
	CENTER LINE
	LOT LINE
	RIGHT-OF-WAY LINE
	PRIVATE EASEMENT
	CONSERVATION EASEMENT
	CRITICAL DUNE BOUNDARY
	OVERALL PROPERTY BOUNDARY
	BASE FLOOD ELEVATION

Tuesday, July 16, 2024 at 3:41 pm C:\2306100GR The Docks Muskegon Drawings - 2306100GR\CMIS-Production Sheet\ PUD Drawings\100C-3 GRD-30.dwg User: aboz



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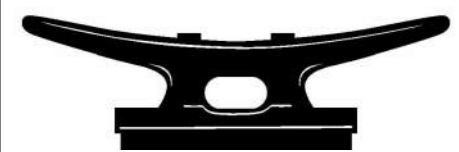
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MUSKEGON, MI 49440
ADDRESS 3

CLIENT
MICOAST PROPERTIES, LLC

(231) 722-6691
560 MART ST.
MUSKEGON, MI 49440

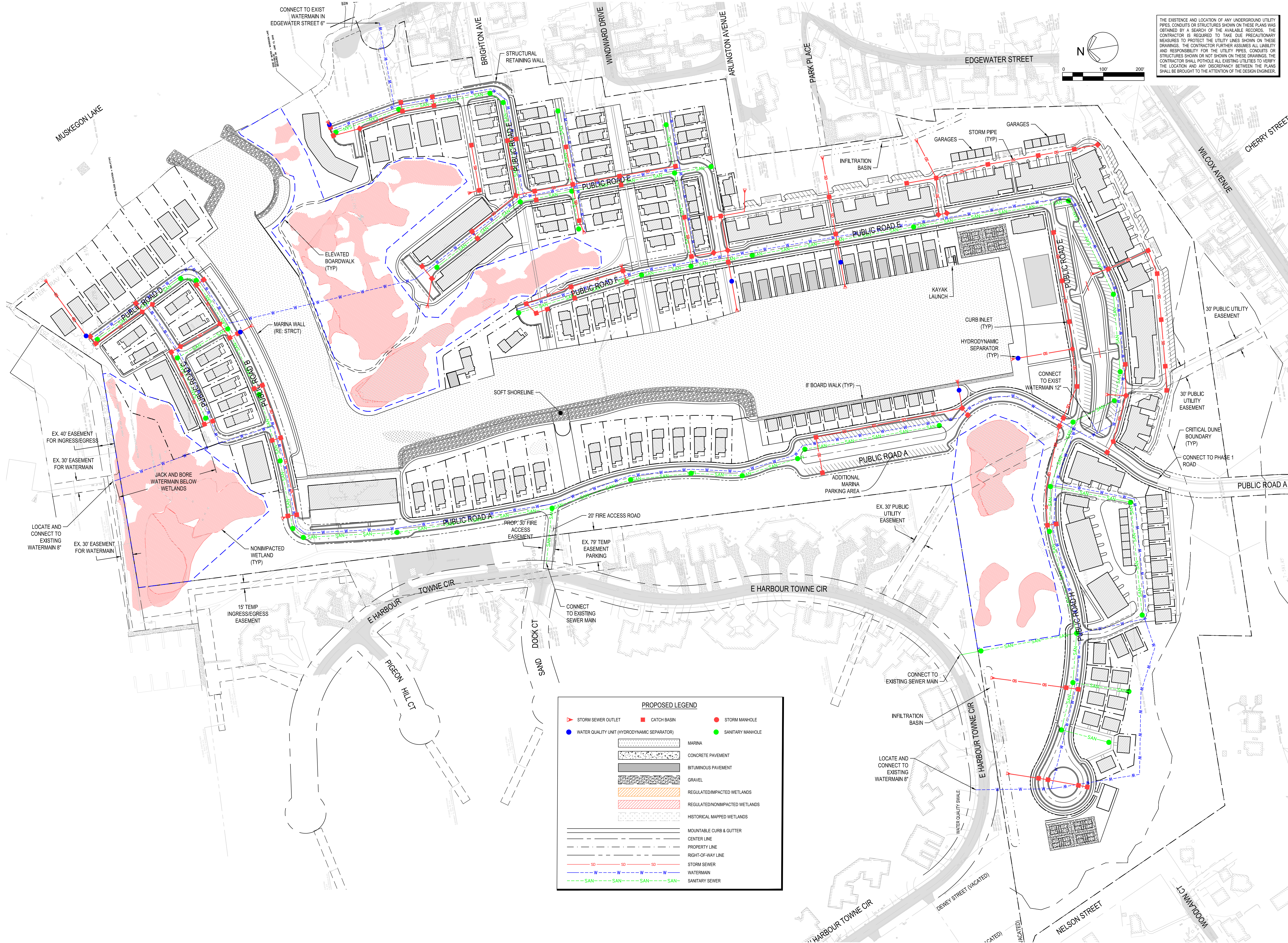
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05-21-20	AMENDED PUD SUBMITTAL
06-13-24	AMENDED PUD SUBMITTAL
07-26-24	GRADING REVISION COMMENTS

NOT FOR CONSTRUCTION

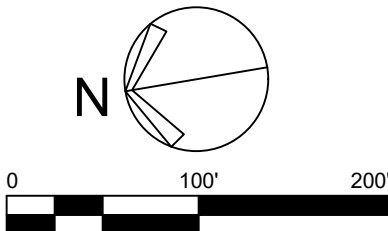
PROJECT
2306100GR

SHEET
GRADING & DRAINAGE PLAN
C-300

Tuesday, July 16, 2024 at 3:41 pm C:\2306100GR\Drawings - 2306100GR\CD\03-Production Sheet\2306100GR-4-UTP-04.dwg 2024



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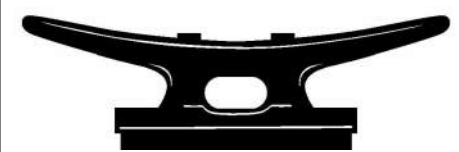
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THE DOCKS



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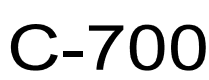
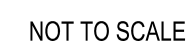
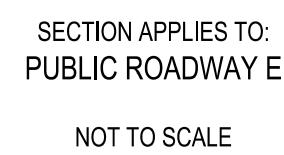
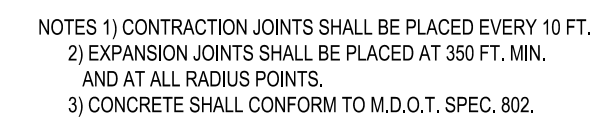
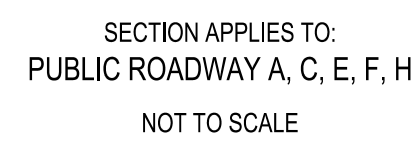
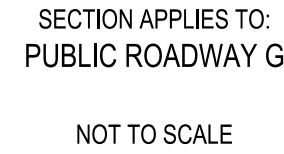
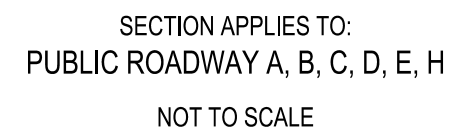
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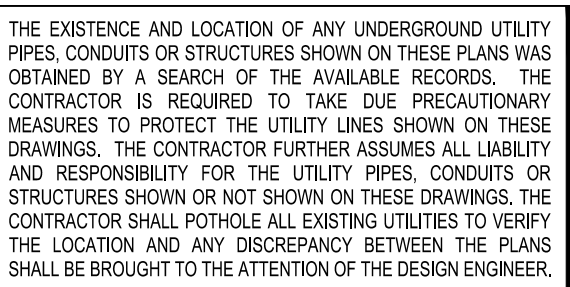
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07-16-24	REV PER CITY COMMENTS

NOT FOR CONSTRUCTION

PROJECT
2306100GR

SHEET
**UTILITY LAYOUT PLAN
C-400**



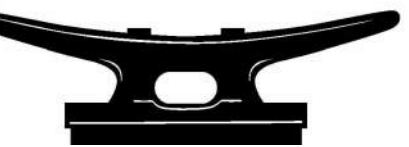


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(616) 785-5656

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PROJECT

THE DOCKS



PROX. 3400 WILCOX AVE
SKEGON, MI 49440
DRESS 3

CLIENT

ICOAST
PROPERTIES, LLC

60 MART ST.
HUSKEGON, MI 49440

RELEASE DATE

DATE	DESCRIPTION
05-23-19	FINAL PUD SUBMITTAL
05-21-20	AMENDED PUD SUBMITTAL
06-13-24	AMENDED PUD SUBMITTAL
07-16-24	REV PER CITY COMMENTS

**NOT FOR
CONSTRUCTION**

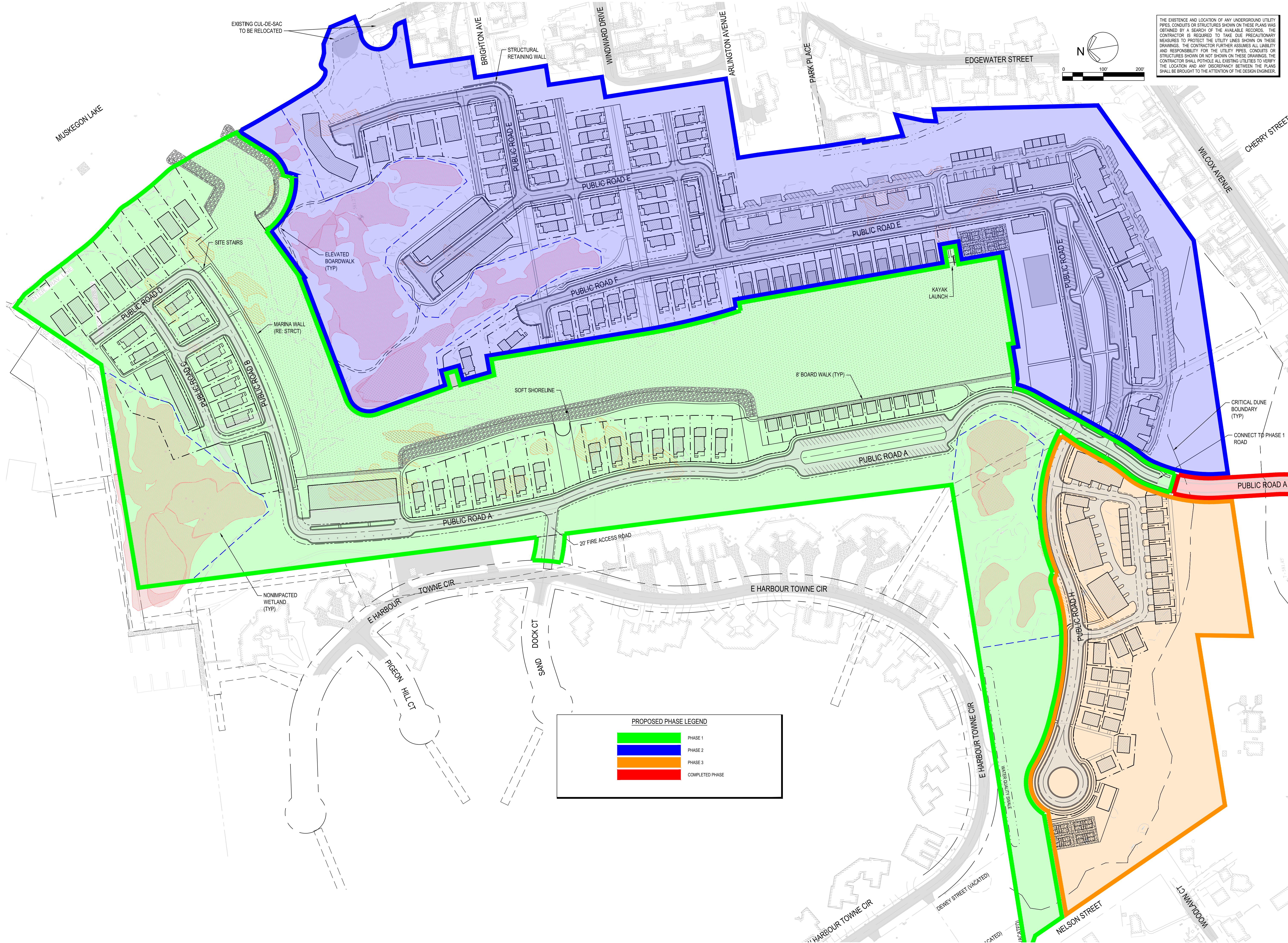
PROJECT

2306100GR

SHEET

VEHICLE
TRACKING EXHIBIT
FIG-1

Tuesday, July 16, 2024 at 3:25 pm 0:0236100GR The Docks, Muskegon Drawings - 2306100GR (MID-Production Sheet), PUD Drawings 100C-FIG-PHS.dwg Issue



THE EXISTENCE AND LOCATION OF ANY UNDERGROUND UTILITY PIPES, CONDUITS OR STRUCTURES SHOWN ON THESE PLANS WAS OBTAINED BY A SEARCH OF THE AVAILABLE RECORDS. THE CONTRACTOR IS REQUIRED TO TAKE DUE PRECAUTIONARY MEASURES TO PROTECT THE UTILITY LINES SHOWN ON THESE DRAWINGS. THE CONTRACTOR FURTHER ASSUMES ALL LIABILITY AND RESPONSIBILITY FOR THE UTILITY PIPES, CONDUITS OR STRUCTURES SHOWN OR NOT SHOWN ON THESE DRAWINGS. THE CONTRACTOR SHALL POthOLE ALL EXISTING UTILITIES TO VERIFY THE LOCATION AND ANY DISCREPANCY BETWEEN THE PLANS SHALL BE BROUGHT TO THE ATTENTION OF THE DESIGN ENGINEER.



PARADIGM DESIGN

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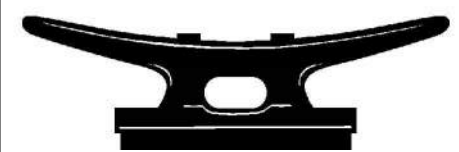
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THE
DOCKS



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CLIENT

MICOAST
PROPERTIES, LLC

(231) 722-6691
560 MART ST.
MUSKEGON, MI 49440

RELEASE DATE

DATE	DESCRIPTION
05-23-19	FINAL PUD SUBMITTAL
05-21-20	AMENDED PUD SUBMITTAL
06-13-24	AMENDED PUD SUBMITTAL
07-16-24	REV PER CITY COMMENTS

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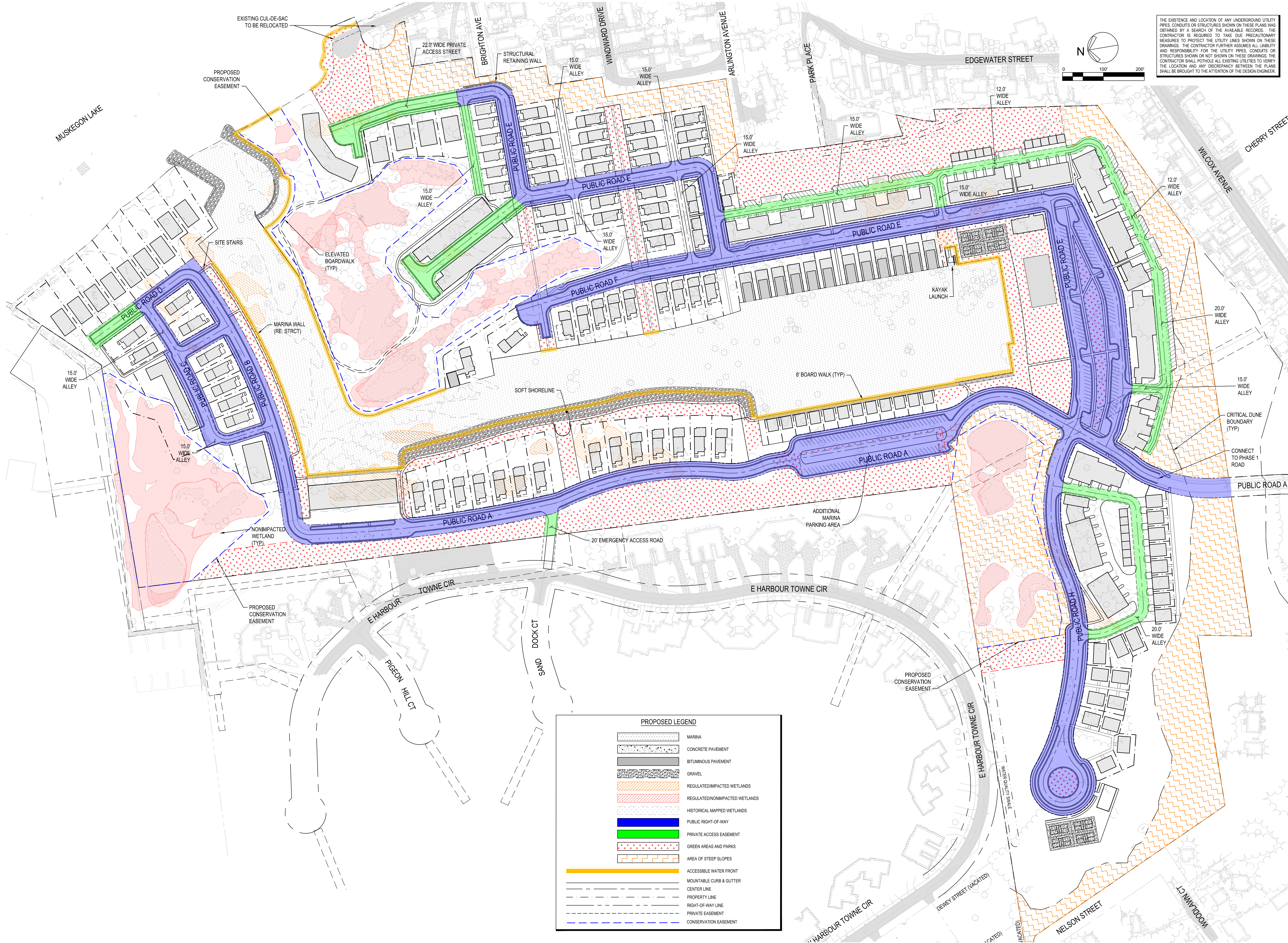
2306100GR

SHEET

PHASING PLAN

FIG-2

Tuesday, July 16, 2024 at 3:24pm 0:2306100GR The Docks, Muskegon Drawings - 2306100GR (MID-Production Sheet), PUD Drawings 100C-FIG-PVP.dwg, Btlmaw



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MUSKEGON, MI 49440

RELEASE DATE

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05-23-19	FINAL PUD SUBMITTAL
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06-13-24	AMENDED PUD SUBMITTAL
07-16-24	REV PER CITY COMMENTS

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SHEET

PUBLIC VS. PRIVATE ACCESS
FIGURE FIG-3



THE EXISTENCE AND LOCATION OF ANY UNDERGROUND UTILITY PIPES, CONDUITS OR STRUCTURES SHOWN ON THESE PLANS WAS OBTAINED BY A SEARCH OF THE AVAILABLE RECORDS. THE CONTRACTOR IS REQUIRED TO TAKE DUE PRECAUTIONARY MEASURES TO PROTECT THE UTILITY LINES SHOWN ON THESE DRAWINGS. THE CONTRACTOR FURTHER ASSUMES ALL LIABILITY AND RESPONSIBILITY FOR THE UTILITY PIPES, CONDUITS OR STRUCTURES SHOWN OR NOT SHOWN ON THESE DRAWINGS. THE CONTRACTOR SHALL POTHOLE ALL EXISTING UTILITIES TO VERIFY THE LOCATION AND ANY DISCREPANCY BETWEEN THE PLANS SHALL BE BROUGHT TO THE ATTENTION OF THE DESIGN ENGINEER.



PARADIGM DESIGN

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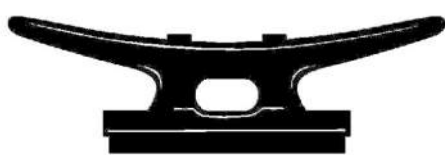
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ADDRESS 3

CLIENT

MICOAST
PROPERTIES, LLC

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560 MART ST.
MUSKEGON, MI 49440

RELEASE DATE

	DATE	DESCRIPTION
	05-23-19	FINAL PUD SUBMITTAL
	05-21-20	AMENDED PUD SUBMITTAL
	06-13-24	AMENDED PUD SUBMITTAL

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PROJECT

2306100GR

SHEET

LANDSCAPE PLAN
& SITE AMENITIES
FIGURE
L-102

Lot/Unit #	Building#	Description	Waterfront	Private Dock	Garage	Lot Size			Set Back				Phase
						Width	Depth	Total	Road - Alley	Side	Back	Side	
1		Cottages - Pocket Neighborhood	NO	NO	NO	60	55	3,300	10	10	10	10	3
2		Cottages - Pocket Neighborhood	NO	NO	NO	60	55	3,300	N/A	5	10	5	3
3		Cottages - Pocket Neighborhood	NO	NO	NO	55	50	2,750	N/A	5	10	5	3
4		Cottages - Pocket Neighborhood	NO	NO	NO	55	50	2,750	10	5	10	5	3
5		Cottages - Pocket Neighborhood	NO	NO	NO	55	50	2,750	N/A	5	10	5	3
6		Cottages - Pocket Neighborhood	NO	NO	NO	55	50	2,750	10	5	10	5	3
7		Cottages - Pocket Neighborhood	NO	NO	NO	55	50	2,750	N/A	5	10	5	3
8		Cottages - Pocket Neighborhood	NO	NO	NO	55	50	2,750	10	5	10	5	3
9		Cottages - Pocket Neighborhood	NO	NO	NO	55	50	2,750	10	5	10	5	3
10		Cottages - Pocket Neighborhood	NO	NO	NO	40	60	2,400	10	5	10	8	3
11		Cottages - Pocket Neighborhood	NO	NO	NO	40	60	2,400	10	5	10	8	3
12		3 story, narrow houses	NO	NO	Alley	40	50	2,000	0	5	10	5	3
13		3 story, narrow houses	NO	NO	Alley	40	50	2,000	0	5	10	5	3
14		3 story, narrow houses	NO	NO	Alley	40	50	2,000	0	5	10	5	3
15		3 story, narrow houses	NO	NO	Alley	40	50	2,000	0	5	10	5	3
16		3 story, narrow houses	NO	NO	Alley	40	50	2,000	0	5	10	5	3
17		3 story, narrow houses	NO	NO	Alley	40	50	2,000	0	5	10	5	3
18		3 story, narrow houses	NO	NO	Alley	40	50	2,000	0	5	10	5	3
19		3 story, narrow houses	NO	NO	Alley	40	50	2,000	0	5	10	5	3
20		Nantucket style boardwalk cottage	YES	NO	NO	35	38	1,330	8	5	0	5	1
21		Nantucket style boardwalk cottage	YES	NO	NO	35	38	1,330	8	5	0	5	1
22		Nantucket style boardwalk cottage	YES	NO	NO	35	38	1,330	8	5	0	5	1
23		Nantucket style boardwalk cottage	YES	NO	NO	35	38	1,330	8	5	0	5	1
24		Nantucket style boardwalk cottage	YES	NO	NO	35	38	1,330	8	5	0	5	1
25		Nantucket style boardwalk cottage	YES	NO	NO	35	38	1,330	8	5	0	5	1
26		Nantucket style boardwalk cottage	YES	NO	NO	35	38	1,330	8	5	0	5	1
27		Nantucket style boardwalk cottage	YES	NO	NO	35	38	1,330	8	5	0	5	1
28		Nantucket style boardwalk cottage	YES	NO	NO	35	38	1,330	8	5	0	5	1
29		Nantucket style boardwalk cottage	YES	NO	NO	35	38	1,330	8	5	0	5	1
30		Nantucket style boardwalk cottage	YES	NO	NO	35	38	1,330	8	5	0	5	1
31		Nantucket style boardwalk cottage	YES	NO	NO	35	38	1,330	8	5	0	5	1
32		Homes with walk out and or partial split on gr	YES	NO	Front - recessed	53	115	6,095	10	10	30	0	1
33		Homes with walk out and or partial split on gr	YES	NO	Front - recessed	53	115	6,095	10	10	30	0	1
34		Homes with walk out and or partial split on gr	YES	NO	Front - recessed	53	115	6,095	10	10	30	0	1
35		Homes with walk out and or partial split on gr	YES	NO	Front - recessed	53	115	6,095	10	10	30	0	1
36		Homes with walk out and or partial split on gr	YES	NO	Front - recessed	53	115	6,095	10	10	30	0	1
37		Homes with walk out and or partial split on gr	YES	NO	Front - recessed	53	115	6,095	10	10	30	0	1
38		Homes with walk out and or partial split on gr	YES	NO	Front - recessed	53	115	6,095	10	10	30	0	1

Lot/Unit #	Building#	Description	Waterfront	Private Dock	Garage	Lot Size		Set Back				Phase	
						Width	Depth	Total	Road - Alley	Side	Back		Side
39		Homes with walk out and or partial split on gr	YES	NO	Front - recessed	53	115	6,095	10	10	30	0	1
40		Homes with walk out and or partial split on gr	YES	NO	Front - recessed	53	115	6,095	10	10	30	0	1
41		Homes with walk out and or partial split on gr	YES	NO	Front - recessed	53	115	6,095	10	10	30	0	1
42		Homes with walk out and or partial split on gr	YES	NO	Front - recessed	53	115	6,095	10	10	30	0	1
43		Homes with walk out and or partial split on gr	YES	NO	Front - recessed	53	115	6,095	10	10	30	0	1
44		Homes with walk out and or partial split on gr	YES	NO	Front - recessed	53	115	6,095	10	10	30	0	1
45		Homes with walk out and or partial split on gr	YES	NO	Front - recessed	53	115	6,095	10	10	30	0	1
46		Front porches overlooking marina	YES	NO	Side	44	100	4,400	10	8	20	8	1
47		Front porches overlooking marina	YES	NO	Rear Alley	44	100	4,400	10	8	20	8	1
48		Front porches overlooking marina	YES	NO	Rear Alley	44	100	4,400	10	8	20	8	1
49		Front porches overlooking marina	YES	NO	Rear Alley	44	100	4,400	10	8	20	8	1
50		Front porches overlooking marina	YES	NO	Rear Alley	44	100	4,400	10	8	20	8	1
51		Front porches overlooking marina	YES	NO	Rear Alley	44	100	4,400	10	8	20	8	1
52		Front porches overlooking marina	YES	NO	Rear Alley	44	100	4,400	10	8	20	8	1
53		Front porches overlooking marina	YES	NO	Rear Alley	44	100	4,400	10	8	20	8	1
54		Front porches overlooking marina	YES	NO	Rear Alley	44	100	4,400	10	8	20	8	1
55		Front porches overlooking marina	YES	NO	Rear Alley	44	100	4,400	10	8	20	8	1
56		Marina Views	YES	NO	Rear Alley	45	100	4,500	20	8	20	8	1
57		Marina Views	YES	NO	Rear Alley	45	100	4,500	20	8	20	8	1
58		Muskegon Lake Lots	YES	NO	Front	50	130	6,500	20	8	30	8	1
59		Muskegon Lake Lots	YES	NO	Front	50	130	6,500	20	8	30	8	1
60		Muskegon Lake Lots	YES	NO	Front	50	130	6,500	20	8	30	8	1
61		Muskegon Lake Lots	YES	NO	Front	50	130	6,500	20	8	30	8	1
62		Muskegon Lake Lots	YES	NO	Front	50	130	6,500	20	8	30	8	1
63		Muskegon Lake Lots	YES	NO	Front	50	130	6,500	20	8	30	8	1
64		Muskegon Lake Lots	YES	NO	Front	50	130	6,500	20	8	30	8	1
65		Muskegon Lake Lots	YES	NO	Front	50	130	6,500	20	8	30	8	1
66		Muskegon Lake Lots	YES	NO	Front	50	130	6,500	20	8	30	8	1
67		Muskegon Lake Views	NO	NO	Front	60	110	6,600	20	10	20	10	2
68		Muskegon Lake Views	NO	NO	Front	60	100	6,000	20	10	20	10	2
69		Muskegon Lake Views	NO	NO	Front	60	105	6,300	20	10	20	10	2
70		Muskegon Lake Views	NO	NO	Front	60	110	6,600	20	10	20	10	2
71		Elevated lot overlooking wetland/marina	NO	NO	Rear Alley	40	65	2,600	1	12	10	0	2
72		Elevated lot overlooking wetland/marina	NO	NO	Rear Alley	40	65	2,600	1	12	10	0	2
73		Elevated lot overlooking wetland/marina	NO	NO	Rear Alley	40	65	2,600	1	12	10	0	2
74		Elevated lot overlooking wetland/marina	NO	NO	Rear Alley	40	65	2,600	1	12	10	0	2
75		Elevated lot overlooking wetland/marina	NO	NO	Rear Alley	40	65	2,600	1	12	10	0	2
76		Elevated lot overlooking wetland/marina	NO	NO	Rear Alley	40	65	2,600	1	12	10	0	2

Lot/Unit #	Building#	Description	Waterfront	Private Dock	Garage	Lot Size		Set Back				Phase	
						Width	Depth	Total	Road - Alley	Side	Back		Side
77		Front porches on boardwalk to marina	NO	NO	Rear Alley	40	90	3,600	1	12	15	0	2
78		Front porches on boardwalk to marina	NO	NO	Rear Alley	40	90	3,600	1	12	15	0	2
79		Front porches on boardwalk to marina	NO	NO	Rear Alley	40	90	3,600	1	12	15	0	2
80		Front porches on boardwalk to marina	NO	NO	Rear Alley	40	90	3,600	1	12	15	0	2
81		Front porches on boardwalk to marina	NO	NO	Rear Alley	40	90	3,600	1	12	15	0	2
82		Front porches on boardwalk to marina	NO	NO	Rear Alley	40	90	3,600	1	12	15	0	2
83		Front porches on boardwalk to marina	NO	NO	Rear Alley	40	90	3,600	1	12	15	0	2
84		Front porches on boardwalk to marina	NO	NO	Rear Alley	40	90	3,600	1	12	15	0	2
85		Front porches on boardwalk to marina	NO	NO	Rear Alley	40	90	3,600	1	12	15	0	2
86		Front porches on boardwalk to marina	NO	NO	Rear Alley	40	90	3,600	1	12	15	0	2
87		Front porches on boardwalk to marina	NO	NO	Rear Alley	40	90	3,600	1	12	15	0	2
88		Front porches on boardwalk to marina	NO	NO	Rear Alley	40	90	3,600	1	12	15	0	2
89		Front porches on boardwalk to marina	NO	NO	Rear Alley	40	90	3,600	1	12	15	0	2
90		Front porches on boardwalk to marina	NO	NO	Rear Alley	40	90	3,600	1	12	15	0	2
91		Front porches on boardwalk to marina	NO	NO	Rear Alley	40	90	3,600	1	12	15	0	2
92		Front porches on boardwalk to marina	NO	NO	Rear Alley	40	90	3,600	1	12	15	0	2
93		Front porches on boardwalk to marina	NO	NO	Rear Alley	40	90	3,600	1	12	15	0	2
94		Front porches on boardwalk to marina	NO	NO	Rear Alley	40	90	3,600	1	12	15	0	2
95		Front porches on boardwalk to marina	NO	NO	Rear Alley	40	90	3,600	1	12	15	0	2
96		Front porches on boardwalk to marina	NO	NO	Rear Alley	53	90	4,770	1	12	15	0	2
97		Front porches on boardwalk to marina	NO	NO	Rear Alley	40	78	3,120	1	12	15	0	2
98		Front porches on boardwalk to marina	NO	NO	Rear Alley	40	78	3,120	1	12	15	0	2
99		Front porches on boardwalk to marina	NO	NO	Rear Alley	40	78	3,120	1	12	15	0	2
100		Boat House Lot	YES	YES	Side	120	110	13,200	10	15	0	15	2
101		Marina front lots	YES	YES	Front	120	73	8,760	10	15	30	15	2
102		Marina front lots	YES	YES	Front	40	105	4,200	10	5	30	5	2
103		Marina front lots	YES	YES	Front	40	110	4,400	10	5	30	5	2
104		Marina front lots	YES	YES	Front	40	115	4,600	10	5	30	5	2
105		Marina front lots	YES	YES	Front	40	120	4,800	10	5	30	5	2
106		Marina front lots	YES	YES	Front	40	125	5,000	10	5	30	5	2
107		Marina front lots	YES	YES	Front	40	125	5,000	10	5	30	5	2
108		Marina front lots	YES	YES	Front	40	120	4,800	10	5	30	5	2
109		Marina front lots	YES	YES	Front	40	115	4,600	10	5	30	5	2
110		Marina front lots	YES	YES	Front	40	115	4,600	10	5	30	5	2
111		Overlooking open space	NO	NO	Side	40	90	3,600	10	5	0	5	2
112		Boat House Lot	YES	YES	YES	40	90	3,600	10	0	0	5	2
113		Boat House Lot	YES	YES	YES	40	90	3,600	10	0	0	5	2
114		Boat House Lot	YES	YES	YES	40	90	3,600	10	0	0	5	2

Lot/Unit #	Building#	Description	Waterfront	Private Dock	Garage	Lot Size		Set Back				Phase	
						Width	Depth	Total	Road - Alley	Side	Back		Side
115		Boat House Lot	YES	YES	YES	40	90	3,600	10	0	0	5	2
116		Boat House Lot	YES	YES	YES	40	90	3,600	10	0	0	5	2
117		Boat House Lot	YES	YES	YES	40	90	3,600	10	0	0	5	2
118		Boat House Lot	YES	YES	YES	40	90	3,600	10	0	0	5	2
119		Boat House Lot	YES	YES	YES	40	90	3,600	10	0	0	5	2
120		Boat House Lot	YES	YES	YES	40	90	3,600	10	0	0	5	2
121		Boat House Lot	YES	YES	YES	40	90	3,600	10	0	0	5	2
122		Boat House Lot	YES	YES	YES	40	90	3,600	10	0	0	5	2
123		Boat House Lot	YES	YES	YES	40	90	3,600	10	0	0	5	2
124		Corner Lots	NO	NO	Rear Alley	85	35	2,975	1	5	10	5	2
125		Corner Lots	NO	NO	Rear Alley	85	35	2,975	1	5	10	5	2
126	A	Townhomes	NO	NO	Rear Alley								3
127	A	Townhomes	NO	NO	Rear Alley								3
128	A	Townhomes	NO	NO	Rear Alley								3
129	A	Townhomes	NO	NO	Rear Alley								3
130	B	Townhomes	NO	NO	Rear Alley								3
131	B	Townhomes	NO	NO	Rear Alley								3
132	B	Townhomes	NO	NO	Rear Alley								3
133	B	Townhomes	NO	NO	Rear Alley								3
134	B	Townhomes	NO	NO	Rear Alley								3
135	B	Townhomes	NO	NO	Rear Alley								3
136	B	Townhomes	NO	NO	Rear Alley								3
137	C	Townhomes	NO	NO	Rear Alley								3
138	C	Townhomes	NO	NO	Rear Alley								3
139	C	Townhomes	NO	NO	Rear Alley								3
140	C	Townhomes	NO	NO	Rear Alley								3
141	C	Townhomes	NO	NO	Rear Alley								3
142	D	Townhomes	NO	NO	Rear Alley								2
143	D	Townhomes	NO	NO	Rear Alley								2
144	D	Townhomes	NO	NO	Rear Alley								2
145	D	Townhomes	NO	NO	Rear Alley								2
146	E	Townhomes	NO	NO	Rear Alley								2
147	E	Townhomes	NO	NO	Rear Alley								2
148	F	Townhomes	NO	NO	Rear Alley								2
149	F	Townhomes	NO	NO	Rear Alley								2
150	F	Townhomes	NO	NO	Rear Alley								2
151	F	Townhomes	NO	NO	Rear Alley								2
152	G	Townhomes	NO	NO	Rear Alley								2

Lot/Unit #	Building#	Description	Waterfront	Private Dock	Garage	Lot Size			Set Back				Phase
						Width	Depth	Total	Road - Alley	Side	Back	Side	
153	G	Townhomes	NO	NO	Rear Alley								2
154	G	Townhomes	NO	NO	Rear Alley								2
155	G	Townhomes	NO	NO	Rear Alley								2
156	G	Townhomes	NO	NO	Rear Alley								2
157	H	Townhomes	NO	NO	Rear Alley								2
158	H	Townhomes	NO	NO	Rear Alley								2
159	H	Townhomes	NO	NO	Rear Alley								2
160	H	Townhomes	NO	NO	Rear Alley								2
161	H	Townhomes	NO	NO	Rear Alley								2
162	I	Townhomes	NO	NO	Rear Alley								2
163	I	Townhomes	NO	NO	Rear Alley								2
164	I	Townhomes	NO	NO	Rear Alley								2
165	I	Townhomes	NO	NO	Rear Alley								2
166	I	Townhomes	NO	NO	Rear Alley								2
167	J	Row House Lofts	NO	NO	Rear Alley								2
168	J	Row House Lofts	NO	NO	Rear Alley								2
169	J	Row House Lofts	NO	NO	Rear Alley								2
170	J	Row House Lofts	NO	NO	Rear Alley								2
171	J	Row House Lofts	NO	NO	Rear Alley								2
172	J	Row House Lofts	NO	NO	Rear Alley								2
173	K	Row House Lofts	NO	NO	Rear Alley								2
174	K	Row House Lofts	NO	NO	Rear Alley								2
175	K	Row House Lofts	NO	NO	Rear Alley								2
176	K	Row House Lofts	NO	NO	Rear Alley								2
177	K	Row House Lofts	NO	NO	Rear Alley								2
178	K	Row House Lofts	NO	NO	Rear Alley								2
179	L	Townhomes	NO	NO	Road								2
180	L	Townhomes	NO	NO	Road								2
181	L	Townhomes	NO	NO	Road								2
182	L	Townhomes	NO	NO	Road								2
183	L	Townhomes	NO	NO	Road								2
184	L	Townhomes	NO	NO	Road								2
185	L	Townhomes	NO	NO	Road								2
186	L	Townhomes	NO	NO	Road								2
187	M	Townhomes	NO	NO	Road								2
188	M	Townhomes	NO	NO	Road								2
189	M	Townhomes	NO	NO	Road								2
190	M	Townhomes	NO	NO	Road								2

Lot/Unit #	Building#	Description	Waterfront	Private Dock	Garage	Lot Size			Set Back				Phase
						Width	Depth	Total	Road - Alley	Side	Back	Side	
191	M	Townhomes	NO	NO	Road								2
192	M	Townhomes	NO	NO	Road								2
193	M	Townhomes	NO	NO	Road								2
194	M	Townhomes	NO	NO	Road								2
195	N	Townhomes	NO	NO	Rear Alley								2
196	N	Townhomes	NO	NO	Rear Alley								2
197	N	Townhomes	NO	NO	Rear Alley								2
198	N	Townhomes	NO	NO	Rear Alley								2
199	N	Townhomes	NO	NO	Rear Alley								2
200	N	Townhomes	NO	NO	Rear Alley								2
201	AA	2-3 Story Condo	NO	NO	NO								2
202	AA	2-3 Story Condo	NO	NO	NO								2
203	AA	2-3 Story Condo	NO	NO	NO								2
204	AA	2-3 Story Condo	NO	NO	NO								2
205	AA	2-3 Story Condo	NO	NO	NO								2
206	AA	2-3 Story Condo	NO	NO	NO								2
207	AA	2-3 Story Condo	NO	NO	NO								2
208	AA	2-3 Story Condo	NO	NO	NO								2
209	AA	2-3 Story Condo	NO	NO	NO								2
210	AA	2-3 Story Condo	NO	NO	YES								2
211	AA	2-3 Story Condo	NO	NO	YES								2
212	AA	2-3 Story Condo	NO	NO	YES								2
213	AA	2-3 Story Condo	NO	NO	YES								2
214	AA	2-3 Story Condo	NO	NO	YES								2
215	AA	2-3 Story Condo	NO	NO	YES								2
216	AA	2-3 Story Condo	NO	NO	YES								2
217	AA	2-3 Story Condo	NO	NO	YES								2
218	AA	2-3 Story Condo	NO	NO	YES								2
219	BB	2-3 Story Condo	NO	NO	NO								1
220	BB	2-3 Story Condo	NO	NO	NO								1
221	BB	2-3 Story Condo	NO	NO	NO								1
222	BB	2-3 Story Condo	NO	NO	NO								1
223	BB	2-3 Story Condo	NO	NO	NO								1
224	BB	2-3 Story Condo	NO	NO	NO								1
225	BB	2-3 Story Condo	NO	NO	NO								1
226	BB	2-3 Story Condo	NO	NO	NO								1
227	BB	2-3 Story Condo	NO	NO	YES								1
228	BB	2-3 Story Condo	NO	NO	YES								1

Lot/Unit #	Building#	Description	Waterfront	Private Dock	Garage	Lot Size			Set Back				Phase
						Width	Depth	Total	Road - Alley	Side	Back	Side	
229	BB	2-3 Story Condo	NO	NO	YES								1
230	BB	2-3 Story Condo	NO	NO	YES								1
231	BB	2-3 Story Condo	NO	NO	YES								1
232	BB	2-3 Story Condo	NO	NO	YES								1
233	BB	2-3 Story Condo	NO	NO	YES								1
234	CC	2-3 Story Condo	YES	NO	NO								2
235	CC	2-3 Story Condo	YES	NO	NO								2
236	CC	2-3 Story Condo	YES	NO	NO								2
237	CC	2-3 Story Condo	YES	NO	NO								2
238	CC	2-3 Story Condo	YES	NO	NO								2
239	CC	2-3 Story Condo	YES	NO	NO								2
240	CC	2-3 Story Condo	YES	NO	NO								2
241	CC	2-3 Story Condo	YES	NO	NO								2
242	CC	2-3 Story Condo	YES	NO	NO								2

NOTE: Setbacks are measured from the main body of the house. Eaves and chimneys are not included in the stated setbacks.
Any Zero Set Back side yards include eaves and will have maintenance easement from neighboring lot

ZONING ORDINANCE EXCERPT

Staff Report

July 11, 2024

Hearing, Case 2024-15: Request to amend the planned unit development (PUD) at 3400,3460, 3474 Wilcox Avenue, 1875 Waterworks Road, and 1490 Edgewater Street (the Docks).

SUMMARY

1. The original PUD was approved in June of 2019 and was amended in June of 2020. The amendment was to relocate the boat basin, the addition of six housing units and an additional street connection to Edgewater St via Manhattan Ave.
2. The applicant has spent the past few years working with the Michigan Department of Environment, Great Lakes, and Energy (EGLE) to determine where the established wetlands are located on site. EGLE has determined that more of the property is considered an established wetland than previously thought. The applicant is proposing this revised PUD to avoid developing on these wetlands.
3. Please see the attached site plan packet that includes all of the relevant development information and changes from the previously approved PUD.
4. Please see the attached “Lot Descriptions and Setbacks” document, which describes the buildings shown on the site plan. The site plan depicts units 124 and 125, but does not label them. They are located just east of units 93-96.
5. The underlying zoning of the property is R-1, Low-Density Single-Family Residential. According to the zoning ordinance, “Where a cluster development abuts a body of water, at least 50% of the shoreline, as well as reasonable access to it, shall be a part of the common open space land.” This proposed PUD increases the waterfront public access from 51% in the last PUD to 85% in this amendment.
6. There are 85 public parking spaces located in front of the multi-family buildings, near the common area. Residential parking for the multi-family housing will be located behind the buildings.
7. The fire access road to Harbour Towne has remained on the plan.
8. Please see the “Marina vs Private Docks” attachment. Dock locations on the site plan are just for reference.
9. Notice was sent to all properties within 300 feet of the subject property. At the time of this writing, staff had not received any comments from the public.

STAFF RECOMMENDATION

Staff recommends approval of PUD amendment with the condition that the stormwater permit be obtained from the Engineering Department. Staff may have more recommendations at the meeting.

DELIBERATION

The following proposed motion is offered for consideration:

I move that the request to amend the planned unit development (PUD) at 3400,3460, 3474 Wilcox Avenue, 1875 Waterworks Road, and 1490 Edgewater Street be recommended to the City Commission for approval with the following conditions:

1. The applicant receives a stormwater permit from the Engineering Department.

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN
ORDINANCE NO. _____

**An ordinance to adopt the final planned unit development at 3400,3460, 3474 Wilcox Avenue, 1875
Waterworks Road, and 1490 Edgewater Street**

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

The planned unit development is hereby adopted.

This ordinance adopted:

Ayes: _____

Nays: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____

Ann Meisch, MMC

City Clerk

CERTIFICATE

(Planned Unit Development at 3400,3460, 3474 Wilcox Avenue, 1875 Waterworks Road, and 1490 Edgewater Street)

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 23rd day of July, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with the Michigan Zoning Enabling Act, Public Acts of Michigan No. 33 of 2006, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2024 _____

Ann Meisch, MMC

Clerk, City of Muskegon

Publish Notice of Adoption to be published once within ten (10) days of final adoption.

CITY OF MUSKEGON
NOTICE OF ADOPTION

Please take notice that on July 23, 2024, the City Commission of the City of Muskegon adopted an ordinance adopting the planned unit development at 3400,3460, 3474 Wilcox Avenue, 1875 Waterworks Road, and 1490 Edgewater Street.

Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

This ordinance amendment is effective ten days from the date of this publication.

Published _____, 2024

By _____

Ann Meisch, MMC

City Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE.

Account No. 101-80400-5354

From: [Karen Spencer](#)
To: [Planning](#)
Subject: Letter to Mike Franzak, Planning Director, City of Muskegon
Date: Wednesday, July 10, 2024 8:55:27 AM

Letter to Mike Franzak, Planning Director, City of Muskegon

July 10, 2024

Re: Case #2024-15

Dear Mr. Franzak:

Please consider this response to your letter of June 26, 2024 regarding the Planning Commission meeting scheduled for July 11, 2024 regarding The Sand Docks PUD.

I have lived at 1456 E Harbour Towne Circle for the past 30 years. At this point in my life, I'm heading into my retirement years. I have been looking forward to spending more time in my home which is not only my sanctuary, but also my most significant asset.

I strongly object to the latest proposal for development of the Sand Docks PUD. As a point of reference, my home is located directly across from what is labeled on the plan as "multi family homes and condos BB". According to the proposal, a new road would be built close to my home, in addition to a parking lot and a large "multi family home".

I believe such a large building would be inconsistent with adjacent land use. While Harbour Towne is a residential condominium development, it was built in a manner that incorporated abundant green spaces, particularly preserving privacy between units and allowing for beautiful views. Not only would the proposed building "BB" block my existing view, it would be replaced with a busy street, parking lot and the back side of a densely inhabited residence. It would not provide for sufficient open space due to its close proximity to my home.

The proposed parking lot and building would result in noise and light pollution. My deck and most of my windows, as well as those of my neighbors, face in that direction. Our privacy would be completely compromised. The quiet enjoyment of our homes would be destroyed. Our property values would tank. Who would want to live that close to a large parking lot servicing a high density housing unit?

The Docks PUD is a huge project covering many acres. The owners and developers stand to make a huge profit. I don't object to their ability to make a profit, I simply request that this board consider and prioritize the rights of existing, long time residents to continue to enjoy their homes in a quiet, peaceful and beautiful location. Certainly the developers don't need to build a parking lot and large high density building so close to people who have made Harbour Towne their home for decades.

Please consider if you would want such a street/parking lot/high density unit this close to your own home. Please consider whether it is fair to compromise existing home values in favor of hypothetical new residents.

Thank you for taking my concerns seriously. I would appreciate it if you would share this letter with all members of the Planning Commission.

Sincerely,

Karen M. Spencer
1456 E. Harbour Towne Circle
Muskegon, MI 49441

Sent from my iPad

WARNING: This email originated outside of the City of Muskegon email system!
DO NOT CLICK links if the sender is unknown.
NEVER provide your User ID or Password.

July 11, 2024

Planning Commission
City of Muskegon
933 Terrace St., Ste 204
Muskegon, Michigan 49443

**RE: The Sand Docks Application for Second Amendment to PUD
Dated 7/11/2024**

I would like to start by commending the developer and their architect for the current version of their plans. It shows that the additional time and thought has produced an improved plan with more green space and protected wetlands. However, I do feel that the drawings are incomplete.

-The drawings should include the landscape plan and plant schedule including species, quantities, and sizes that was approved in 2019.

-The drawings should show the location of the proposed emergency connection to Edgewater St. with details on how that connection is to be constructed and how it is to be controlled for emergency vehicles only.

-The drawings should show dimensions from any proposed buildings or parking lots to neighboring property lines.

Approving drawings that are incomplete invites interpretation of the design and the city would have no recourse should the actual construction not match the expectations of the planning commission and residents.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Weatherbee", with a stylized, flowing script.

Thomas Weatherbee
1747 Edgewater Street
(616) 666-1103

From: jmakowske@aol.com
To: [Planning](#)
Subject: The Docks
Date: Tuesday, July 9, 2024 2:16:28 PM

To whom it may concern:

We are writing regarding the proposed development at "The Docks". The scheduled housing development would be located next to our home.

Muskegon is experiencing a boom in new housing developments along Lake Michigan. "The Docks" project is just one of several major housing projects slated for production: Adelaide Point, the old paper mill site and the Lakeside Dunes to name a few. Muskegon needs to grow and change for its economic survival, and it's wonderful to see a renaissance in the city. Is the infrastructure in place for the city to support these new developments? Is there enough interest in the Muskegon real estate market to fill all of this expensive new housing, or will we have half completed projects along the waterfront sitting partially vacant?

"The Docks" is a beautiful, natural area - one of the last natural areas in Muskegon along the lake. With its ponds and wetland areas it provides critical habitat for many species considered important to our quickly disappearing dune habitat in Michigan. Much of Muskegon's appeal to potential residents has been the balance between natural environment and development. We will lose that with continued unchecked development in the city's few remaining open natural spaces on the waterfront.

There are already concerns about the amount of activity and numbers of people using the beaches and houses along the shore. Pere Marquette beach has become increasingly busy with heavy auto traffic and large numbers of people using the Beachside/Bluffton area. Streets are small and houses densely sited. A development at "The Docks" will only increase traffic, causing more congestion, noise and pollution to the area. Muskegon's waterfront is its most important resource. Let's not lose it to development.

John and Gabrielle Makowske
3211 Brighton Avenue
Muskegon

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DO NOT CLICK links if the sender is unknown.
NEVER provide your User ID or Password.

From: [JOHN MAKOWSKE](#)
To: [Planning](#)
Subject: The Docks
Date: Wednesday, July 10, 2024 9:19:42 AM

An Addition To Our Letter Yesterday

We wish to add an additional comment to our letter of yesterday.

Consideration should also be given to the issue of rising/fluctuating lake levels. The Dock land and the wetlands it contains provide a value of ecosystem service that help manage and absorb these changes. It would seem adding over 100 homes to this area would have a huge negative impact, resulting in additional flooding (with its resultant pollution/runoff issues as well) when lake levels are high. This impact must be considered.

Thank you.
Gabrielle and John Makowske
3211 Brighton Ave.
Muskegon, MI
Sent from my iPhone

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NEVER provide your User ID or Password.

From: [Susan Abbey](#)
To: [Planning](#)
Subject: Fwd: Sand Docks PUD
Date: Thursday, July 11, 2024 10:43:59 AM

----- Forwarded message -----

From: **Susan Abbey** <susanabbey5550@gmail.com>
Date: Thu, Jul 11, 2024 at 10:30 AM
Subject: Sand Docks PUD
To: <planning@sshorelinecity.com>, Susan Abbey <susanabbey5550@gmail.com>

Mike Franzak
Planning Director
City of Muskegon

Dear Mr. Franzak and Committee

This letter is in response to your letter of June 26 regarding the Planning Commission meeting of the Sand Docks PUD scheduled for July 11.

I live at 1458 East Harbour Towne Circle which is in Building #8. From looking at the diagram of the proposed development it seems that we are the closest Harbour Towne building to the Sand Dock property. According to the proposal, a road would be built very close to our building and a "multi-family home" would be right in front of us. I strongly object to this plan.

Sand Docks has such a large piece of property it seems that putting roads and housing so close to Harbour Towne would not be desirable to either development. Privacy would be an issue as well as home values. Could the "multi-family Homes" go in front of the marina parking lot which is adjacent to our building instead of directly in front? We know that the "Docks" are coming but this does not seem to be the best plan.

Harbour Towne is a community of mostly retired persons and most of us plan to be here for a long time. Please consider the concerns of long time senior residents of Harbour Towne. Green space would seem a better option for this end of the Sand Docks property.

Respectfully,
Susan Abbey-Ludwig
1458 East Harbour Towne Circle

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CITY OF MUSKEGON
PLANNING DEPT
JUL 11 2024
RECEIVED

Re: The Sand Docks Application for Second Amendment to PUD, July 11, 2024
Att: Mike Franzak:

As a co-owner in the Harbour Towne Condo Association, I am pleased to see forward progress for the Sand Docks Development. The July 11 application for the second amendment to PUD before the Planning Commission looks very promising.

I have one major concern about the application, but it may be due to an oversight.

Almost all of the exhibits in Section D, L-102, C-200 through C-700 plus Fig 1-3, are stamped with a broad disclaimer **"Note: This document is preliminary in nature and is not a final, signed and sealed document."** These exhibits provide important information about the site layout plan, building locations, road locations, and the landscaping buffer between The Sand Docks and the Harbour Towne condos.

I'm concerned about the Planning Commission approving a document that contains such broad disclaimers. Is this just an oversight, or is this normal procedure in the approval process?

If this is an oversight, can it be stipulated that the current application is a final plan regarding the exhibits that contain the broad disclaimer language, in effect striking out the disclaimer notes?

- If not, what recourse does the city (or residents of Harbour Towne Condominium Association) have if the plan changes substantially? What are the boundaries for unanticipated minor changes vs substantial alterations, such as site layout changes?
- What are the city's written guidelines and past practices regarding approval of PUD amendments containing such broad disclaimers?
- I noticed that exhibit L-101 Landscape Plan and Site Amenities in this new PUD amendment appears to have been copied from the prior approved 5/1/2020 PUD amendment. It is correctly labeled "Previously Amended PUD Landscape Plan," still showing the prior site layout plan). It appears that this approved PUD amendment from prior years did not contain the broad disclaimer language present in the application now before the Planning Commission.

Sincerely,

Paul Schreur
Co-owner resident of Harbour Towne Condominium Association
1642 East Harbour Towne Circle, Muskeon

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 9, 2024	Title: Rezoning of 349 W Webster Ave from Form Based Code, Urban Residential (FBC, UR) to Form Based Code, Neighborhood Core (FBC, NC). SECOND READING									
Submitted by: Mike Franzak, Planning Director	Department: Planning									
Brief Summary: The Planning Commission unanimously recommended in favor of the request at their August meeting.										
Detailed Summary & Background: This property is the former location of the Muskegon Public Schools Administration building. It has been privately owned since 2021. The applicant is requesting a rezoning to allow the building to be converted into a hotel, with retail and other mixed-uses. There were no public comments given at the public hearing.										
Goal/Focus Area/Action Item Addressed: <u>Key Focus Areas:</u> <u>Goal/Action Item:</u> 2027 Goal 2: Economic Development Housing and Business										
Amount Requested: N/A	Budgeted Item: <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <tr> <td style="width: 15%;">Yes</td> <td style="width: 15%;">☐</td> <td style="width: 15%;">No</td> <td style="width: 15%;">☐</td> <td style="width: 15%;">N/A</td> <td style="width: 15%;">X</td> <td style="width: 15%;">☐</td> </tr> </table>	Yes	☐	No	☐	N/A	X	☐		
Yes	☐	No	☐	N/A	X	☐				
Fund(s) or Account(s): N/A	Budget Amendment Needed: <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <tr> <td style="width: 15%;">Yes</td> <td style="width: 15%;">☐</td> <td style="width: 15%;">No</td> <td style="width: 15%;">☐</td> <td style="width: 15%;">N/A</td> <td style="width: 15%;">X</td> <td style="width: 15%;">☐</td> </tr> </table>	Yes	☐	No	☐	N/A	X	☐		
Yes	☐	No	☐	N/A	X	☐				
Recommended Motion: I move to approve the request to rezone the property at 349 W. Webster Ave. from Form Based Code, Urban Residential to Form Based Code, Neighborhood Core.										
Approvals: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Immediate Division Head</td> <td style="width: 10%; text-align: center;">X</td> <td style="width: 30%;"></td> </tr> <tr> <td>Information Technology</td> <td></td> <td></td> </tr> <tr> <td>Other Division Heads</td> <td></td> <td></td> </tr> </table>	Immediate Division Head	X		Information Technology			Other Division Heads			Guest(s) Invited / Presenting: No
Immediate Division Head	X									
Information Technology										
Other Division Heads										

Communication			
Legal Review			

PLANNING COMMISSION PACKET EXCERPT

August 15, 2024

Hearing, Case 2024-18: Request to rezone 349 W. Webster Avenue from Form-Based Code – Urban Residential (FBC-UR) to Form-Based Code – Neighborhood Core (FBC-NC), by Reset Ventures.

SUMMARY

1. The property is currently zoned Form Based Code, Urban Residential.
2. This property is the former location of the Muskegon Public Schools Administration building. It has been privately owned since 2021.
3. The applicant is requesting a rezoning to allow the building to be converted into a hotel, with retail and other mixed-uses.
4. Please see the enclosed zoning ordinance excerpt for Form Based Core, Neighborhood Core.
5. Notice was sent to all properties within 300 feet, at the time of this writing staff has not received any comments.

349 W Webster Ave



The map displays a grid of streets in downtown San Francisco. Key streets include Market Street, Main Street, and various numbered streets. Building footprints are shown as black outlines, and some are labeled with their names or addresses. The map is color-coded to show different types of buildings: red for residential, blue for commercial, green for industrial, and yellow for public use. The map is oriented with North at the top.

An aerial photograph of a city street intersection. Webster Avenue runs diagonally from the top-left to the bottom-right. Muskegon Avenue runs horizontally across the bottom. A red-outlined rectangular parcel is located on the east side of Webster Avenue, between Muskegon Avenue and another street above it. The parcel contains a large, dark-roofed building and a parking lot with several cars. To the west of the parcel is a large green park area with a circular path and a small structure in the center. Other buildings and parking lots are visible on both sides of the streets.

An ordinance to amend the zoning map of the City to provide for a zone change for 349 W Webster Avenue from Form Based Code, Urban Residential (FBC, UR) to Form Based Code, Neighborhood Commercial (FBC, NC).

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

The zoning map of the City of Muskegon is hereby amended to change the zoning from FBC, UR to FBC, NC.

This ordinance adopted:

Ayes:_____

Nayes:_____

Adoption Date:_____

Effective Date:_____

First Reading:_____

Second Reading:_____

CITY OF MUSKEGON

By: _____

Ann Meisch, MMC

City Clerk

CERTIFICATE

(Rezoning 349 W Webster Ave from FBC, UR to FBC, NC)

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 27th day of August, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with the Michigan Zoning Enabling Act, Public Acts of Michigan No. 33 of 2006, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2024 _____

Ann Meisch, MMC

Clerk, City of Muskegon

Publish Notice of Adoption to be published once within ten (10) days of final adoption.

CITY OF MUSKEGON
NOTICE OF ADOPTION

Please take notice that on August 27, 2024, the City Commission of the City of Muskegon adopted an ordinance amending the zoning map to provide for the change of zoning for 349 W Webster Ave from FBC, UR to FBC, NC.

Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

This ordinance amendment is effective ten days from the date of this publication.

Published _____, 2024

By _____

Ann Meisch, MMC

City Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE.

Account No. 101-80400-5354

WATCH MUSKEGON

Agenda Item Review Form Muskegon City Commission

Commission Meeting Date: September 9, 2024	Title: Rezoning of 1700 Oak Ave from Medical Care (MC) to Low-Density Multiple Family Residential (RM-1). SECOND READING							
Submitted by: Mike Franzak, Planning Director	Department: Planning							
Brief Summary: The Planning Commission unanimously recommended approval of the request at their August meeting.								
Detailed Summary & Background: The property is the site of the former Muskegon General Hospital and is still zoned MC, Medical Care. The site measures just under 26 acres. The applicant is seeking a rezoning to RM-1, Low-Density Multi-Family Residential to allow for a 144-unit "work force" apartment development. The plans include the demolition of the existing hospital buildings. The applicant would utilize about 14 acres of the 26 acre site. The Planning Commission recommended in favor of the rezoning and also approved the site plan, contingent upon the City Commission approving the rezoning.								
Goal/Focus Area/Action Item Addressed: <u>Key Focus Areas:</u> <u>Goal/Action Item:</u> 2027 Goal 2: Economic Development Housing and Business								
Amount Requested: N/A	Budgeted Item: <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <tr> <td style="width: 15%;">Yes</td> <td style="width: 15%;">☐</td> <td style="width: 15%;">No</td> <td style="width: 15%;">☐</td> <td style="width: 15%;">N/A</td> <td style="width: 15%;">☒</td> <td style="width: 15%;">☐</td> </tr> </table>	Yes	☐	No	☐	N/A	☒	☐
Yes	☐	No	☐	N/A	☒	☐		
Fund(s) or Account(s): N/A	Budget Amendment Needed: <table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <tr> <td style="width: 15%;">Yes</td> <td style="width: 15%;">☐</td> <td style="width: 15%;">No</td> <td style="width: 15%;">☐</td> <td style="width: 15%;">N/A</td> <td style="width: 15%;">☒</td> <td style="width: 15%;">☐</td> </tr> </table>	Yes	☐	No	☐	N/A	☒	☐
Yes	☐	No	☐	N/A	☒	☐		
Recommended Motion: I move to approve the rezoning of 1700 Oak Ave from Medical Care (MC) to Low-Density Multiple Family Residential (RM-1).								
Approvals: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Immediate Division Head</td> <td style="width: 10%; text-align: center;">X</td> <td style="width: 30%;"></td> </tr> <tr> <td>Information Technology</td> <td></td> <td></td> </tr> </table>	Immediate Division Head	X		Information Technology			Guest(s) Invited / Presenting: No	
Immediate Division Head	X							
Information Technology								

Other Division Heads			
Communication			
Legal Review			

PLANNING COMMISSION PACKET EXCERPT

August 15, 2024

Hearing, Case 2024-20: Request to rezone 1700 Oak Avenue from Medical Care (MC), to Low-Density Multiple Family Residential (RM-1), by Krimson Development, LLC.

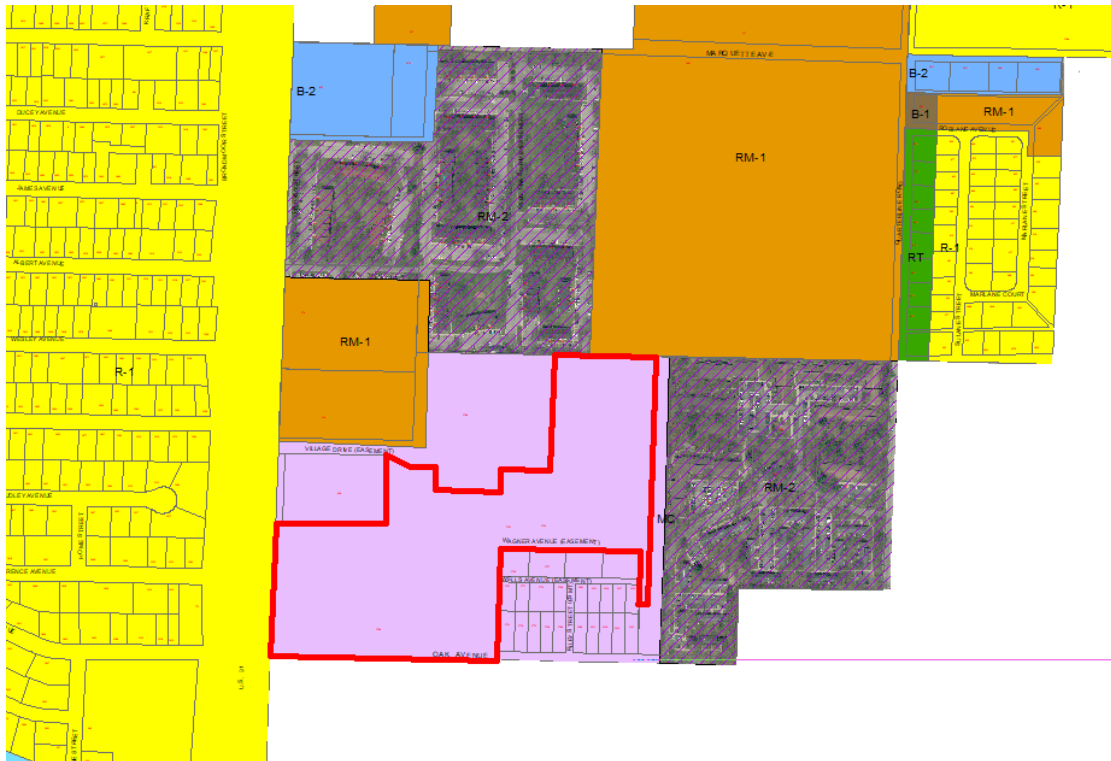
SUMMARY

1. The property is the site of the former Muskegon General Hospital and is still zoned MC, Medical Care. The site measures just under 26 acres.
2. The applicant is seeking a rezoning to RM-1, Low-Density Multi-Family Residential to allow for a 144-unit “work force” apartment development. The plans include the demolition of the existing hospital buildings. The applicant would utilize about 14 acres of the 26 acre site.
3. Notice was sent to all properties within 300 feet of the subject property. At the time of this writing, staff had not received any comments from the public.

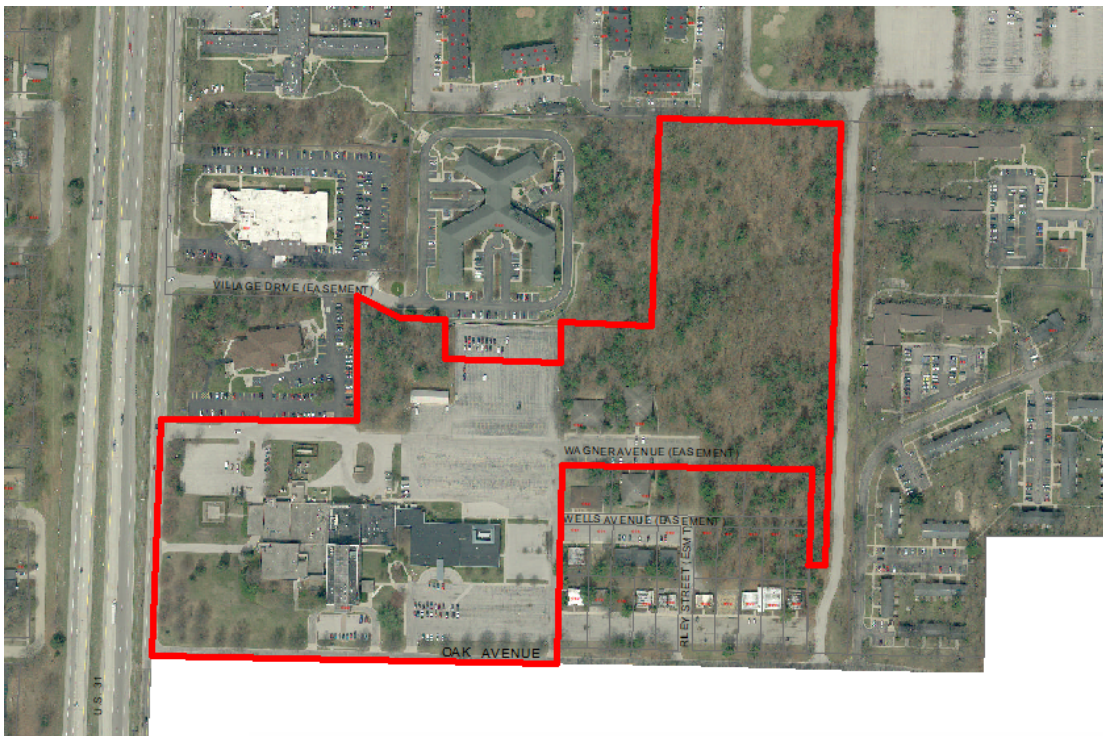
Former General Hospital Building on Site



Zoning Map



Aerial Map



An ordinance to amend the zoning map of the City to provide for a zone change for 1700 Oak Ave from Medical Care (MC) to Low Density Multifamily Residential (RM-1).

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

The zoning map of the City of Muskegon is hereby amended to change the zoning from MC to RM-1.

This ordinance adopted:

Ayes:_____

Nayes:_____

Adoption Date:_____

Effective Date:_____

First Reading:_____

Second Reading:_____

CITY OF MUSKEGON

By: _____

Ann Meisch, MMC

City Clerk

CERTIFICATE

(Rezoning 1700 Oak Ave from MC to RM-1)

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 27th day of August, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with the Michigan Zoning Enabling Act, Public Acts of Michigan No. 33 of 2006, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2024 _____

Ann Meisch, MMC

Clerk, City of Muskegon

Publish Notice of Adoption to be published once within ten (10) days of final adoption.

CITY OF MUSKEGON
NOTICE OF ADOPTION

Please take notice that on August 27, 2024, the City Commission of the City of Muskegon adopted an ordinance amending the zoning map to provide for the change of zoning for 1700 Oak Ave from MC to RM-1.

Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

This ordinance amendment is effective ten days from the date of this publication.

Published _____, 2024

By _____

Ann Meisch, MMC

City Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE.

Account No. 101-80400-5354