



GENERAL CONDITIONS

Updated 01-2015

DEFINITIONS

Whenever used in any of the Contract Documents, the following meanings shall be given to the terms herein defined:

- A.** The term "Contract" means the Contract executed by the City of La Crosse and the Contractor, of which these GENERAL CONDITIONS form a part.
- B.** The term "Owner" means the City of La Crosse.
- C.** The term "Contractor" means the person, firm or corporation entering into the Contract with the City of La Crosse to construct and install the improvements embraced in this Contract.
- D.** The term "Project Area" means the site of the project, which is the specified Contract limits of the improvements, contemplated to be constructed in whole or in part under this Contract.
- E.** The term "City Engineer" means Engineering Department, serving the City of La Crosse with architectural or engineering services, his successor, or any other person or persons employed by said City of La Crosse for the purpose of directing or having in charge the work embraced in this Contract, the said Engineer acting directly or indirectly through any Assistant Engineer having general charge of the work or through any assistant having immediate charge of a portion thereof limited by the particular duties entrusted to him.
- F.** The term "Contract Documents" means and shall include the following: Notice to Contractors, Information to Bidders, Certificate of Organization and Authority, signed copy of Bid Bond, signed copy of Bid Proposal, Addenda (if any), List of Subcontractors, General Conditions, Special Specifications, Standard Specifications, Minimum Wage Scale, executed Performance Payment Bond, executed Contract, Drawings.
- G.** The term "Special and Standard Specifications" means that part of the Contract Documents which describes, outlines, and stipulates the quality of the materials to be furnished; the quality of workmanship required; and the methods to be used in carrying out the construction work to be performed under this Contract.
- H.** The term "Addendum" or "Addenda" means any changes, revisions or clarifications of the Contract Documents, which have been duly issued by the City of La Crosse to prospective Bidders prior to the time of receiving bids.



1. **MATERIAL AND LABOR**

The Contractor is to furnish at its own cost and expense all of the labor, materials, tools, expendable equipment and all utility and transportation services required to perform and complete the work in the best possible and most expeditious manner according to the drawings and specifications.

Contractor shall employ only competent forepersons and experienced laborers and shall discharge immediately, whenever required to do so by the City Engineer, any person considered by the Engineer as incompetent or disposed to be disorderly; and shall not again employ such person on the work.

Contractor shall acquire materials locally if practicable and shall employ local labor, including skills and supervision, if available.

Contractor agrees to pay all claims for labor performed and materials furnished in completing the Contract.

2. **SUPERINTENDENCE BY CONTRACTOR:**

Except where the Contractor is an individual and gives his or her personal superintendence to the work, the Contractor shall provide a competent superintendent, satisfactory to the Owner and the Engineer, on the work at all times during working hours with full authority to act for it. The Contractor shall also provide an adequate staff for the proper coordination and expediting of its work.

3. **REPLACEMENT OF SURVEY MARKERS**

Any survey markers, wood stakes, iron pipe, or concrete monuments designating street or property lines now in place, disturbed by the Contractor during construction operations, shall be the Contractor's responsibility and shall be replaced by a Registered Land Surveyor at the Contractor's expense.

The Inspector on the project shall make a record of all survey markers existing at start of project and again upon the completion and replacement of those missing shall be the responsibility of the Contractor. Final payment may be withheld until replacement is made.

4. **PERMITS AND CODES**

A. Contractor shall give all notices required by and comply with all applicable laws, ordinances, permits and codes of Federal, State and City of La Crosse. All construction work and/or utility installations shall comply with all applicable ordinances and codes, including all written waivers. Before installing any work, the Contractor shall examine the Drawings and Special and Standard Specifications for compliance with applicable ordinances and codes and shall immediately report any discrepancy to the Owner. Where the requirements of the Drawings and Special and Standard Specifications fail to comply with such applicable ordinances or codes, the Owner will adjust the Contract by Change Order to conform to such ordinances or codes (unless waivers in writing covering



the difference have been granted by the governing body or department) and make appropriate adjustment in the contract price or stipulated unit prices.

Should the Contractor fail to observe the foregoing provisions and proceed with the construction and/or install any improvement at variance with any applicable ordinance or code, including any written waivers (notwithstanding the fact that such installation is compliance with the Drawings and Special and Standard Specifications), the Contractor shall remove such work without cost to the Owner but a Change Order will be issued to cover only the excess cost the Contractor would have been entitled to receive if the change had been made before the Contractor commenced work on the items involved.

- B. The Contractor shall, at its own expense, secure and pay to the appropriate agency the fees or charges for all permits required, including for street pavement, sidewalks, sheds, removal of abandoned water taps, sealing of house connection drains, pavement cuts, buildings, electrical, plumbing, water, gas and sewer; also all hook-up fees for utilities listed above.
- C. The Contractor shall comply with applicable local laws and ordinances governing the disposal of surplus excavation, materials, debris and rubbish on or off the Project Area and commit no trespass on any public or private property in any operation due to or connected with the improvements embraced in this contract.

5. **PATENTS AND ROYALTIES**

Contractor shall protect and save harmless the Owner and its elected and appointed officials, employees or authorized representatives or volunteers, from liability or any nature or kind, including cost and expenses, for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the Owner or its elected and appointed officials, employees or authorized representatives or volunteers unless otherwise specifically stipulated in the Contract Documents. Contractor shall pay all royalties and license fees.

6. **UTILITIES**

Contractor shall comply with Wis. Stats. 66.0831 which provides that any person intending to excavate, erect a building, or make changes thereon, or wreck a building, work upon, over, along or under any public street or highway shall, before commencing the work, give reasonable notice in writing to all public utilities whose facilities shall be affected thereby. The Contractor shall safeguard and protect all utilities and be held liable for any damage thereto during construction. Relocating utilities to expedite construction will be permitted provided it is done at no cost to the Owner in accordance with a written agreement between the utility and the Contractor. A signed copy of such agreement shall be filed with the Board of Public Works before work is started.



7. **OBSTRUCTION OF STREETS AND DAMAGES:**

If the Contractor shall in any manner obstruct a street, alley or sidewalk, it shall erect and maintain all traffic control devices conforming to the Manual on Uniform Traffic Control Devices and shall be liable for damages caused by failure to do so. Contractor is further liable for all damages caused by the negligent excavation of streets, alleys or sidewalks. Notice of proposed blocking of streets or alleys shall be given to the Fire and Police Departments so as to enable them to maintain and plan their operations.

8. **OTHER CONTRACTS**

The Owner may award, or may have awarded other contracts for additional work, and the Contractor shall cooperate fully with such other Contractors by scheduling its own work with that to be performed under other Contracts as may be directed by the Owner. The Contractor shall not commit or permit any act, which will interfere with the performance of work by any other Contractor as scheduled.

9. **FITTING AND COORDINATION OF THE WORK**

The Contractor shall be responsible for the proper fitting of all work and for the coordination of the operations of all trades, subcontractors, or material persons engaged upon this contract. Contractor shall be prepared to guarantee to each of its subcontractors the locations and measurements that they may require for the fitting of their work to all surrounding work.

10. **MUTUAL RESPONSIBILITY OF CONTRACTORS**

If, through acts of neglect on the part of the Contractor, any other Contractor or any subcontractor shall suffer loss or damage on the work, the Contractor shall settle with such other Contractor or subcontractor by agreement or arbitration, if such other Contractor or subcontractor will so settle. If such other Contractor or subcontractor shall assert any claim against the Owner on account of any damage alleged to have been so sustained, the Owner will notify this Contractor, who shall defend at its own expense any suit based upon such claim, and, if any judgment or claims against the Owner shall be allowed, the Contractor shall pay or satisfy such judgment or claim and pay all costs and expenses in connection therewith.

11. **PROGRESS SCHEDULE**

The Contractor shall submit for approval immediately after execution of the Contract, a carefully prepared Progress Schedule, showing the proposed dates of starting and completing each of the various sections of the work, the anticipated monthly payments to become due the Contractor, and the accumulated percent of progress each month. The Contractor shall submit to the Engineer a breakdown of the total Contract price of any lump sum items in the proposal for the purpose of preparing monthly estimates.



12. TIME AND ORDER OF COMPLETION

The work shall be commenced and carried on at such point and in such order of precedence and at such times and seasons as the Board of Public Works directs. Owner reserves the right to entirely discontinue said work should the condition of the weather make it desirable to do so and in order that the work may be properly executed. When the Contractor is delayed so that completion within the time specified is unlikely, contractor may apply for an extension of time in writing within ten (10) days after a delay occurs. The request shall state the cause of the delay and the extension requested. Owner will review the request and grant, deny or adjust the request on its merits. Should Contractor fail to complete the work within the time agreed upon in the contract or within such extra time as may have been allowed by extensions, there shall be deducted from any payments due the Contractor the sum set forth in the following schedule for each calendar day, except Sundays and holidays, that the work shall remain uncompleted. The liquidated damages per day shall be between \$100 and \$2,500 according to the following formula: When the contract price is between \$1,000 and \$100,000, the liquidated damages shall be \$100 per day. When the Contract price exceeds \$100,000.00 and is less than \$1 million, the liquidated damages shall be \$1,000 per day. When the contract price is at least \$1 million and over, the liquidated damages shall be \$2,500 per day. This sum shall not be a penalty, but shall be treated as agreed as liquidated damages to Owner from Contractor by reason of inconvenience to the public, added cost of engineering supervision, and other expenditures of public funds resulting from failure to complete on time. Permitting Contractor to continue and finish the work, or any part of it, after the time fixed for completion or after an extension, shall in no way operate as a waiver by Owner of any of its rights under the contract. In case the work under this contract shall not be completed within the time specified, the Board of Public Works is authorized to take charge thereof and finish the contract at the expense of Contractor and the surety on the Performance-Payment Bond. If the Board of Public Works shall be of the opinion that construction is unnecessarily delayed so as to make it unlikely that the contract will be completed on time, then, at the option of Owner, the contract may be declared null and void, the Performance-Payment Bond forfeited, and the materials delivered at the site shall be the property of Owner. The Owner may then proceed to complete the work, either by day's work or by contract, at the expense of Contractor and its surety, and any and all damages and increased cost of the work will be deducted from the funds retained or obtained by Owner. Contractor agrees that it will sustain all losses or damages arising from the action of the elements, the nature of the work, or from any unusual or unforeseen obstructions or difficulties encountered or from any casualty. Should the Owner be prevented or enjoined from authorizing its prosecution, either before or after commencement, by reason of any litigation or by reason of its ability to procure any lands or rights of way for the said work, Contractor shall not be entitled to make or assert claim for damage by reason of said delay or withdraw from the contract except by consent of the Owner; but time for completion of the work shall be extended for such time as Owner determines will compensate for the time lost by such delay, such determination to be set forth in writing.



13. CHANGES IN THE WORK

- A. The Owner may make changes in the scope of the work required to be performed by the Contractor under the Contract making additions thereto, or by omitting work therefore, without invalidating the Contract, and without relieving or releasing the Contractor from any of its obligations under the Contract or any guarantee given by Contractor pursuant to the Contract provisions, and without affecting the validity of the guaranty bonds, and without relieving or releasing the surety or sureties of said bonds. All such work shall be executed under the terms of the original Contract unless it is expressly provided otherwise.
- B. Except for the purpose of affording protection against any emergency endangering health, life, limb or property, the Contractor shall make no change in the materials used or in the specified manner of constructing and/or installing the improvements or supply additional labor, services or materials beyond that actually required for the execution of the Contract, unless in pursuance of a written order from the Owner authorizing the Contractor to proceed with the change. No claim for an adjustment of the Contract Price will be valid unless so ordered.
- C. If applicable unit prices are contained in the Agreement (established as a result of either a unit price bid or a Supplemental Schedule of Unit Prices) the Owner may order the Contractor to proceed with desired changes in the work, the value of such changes to be determined by the measured quantities involved and the applicable unit prices specified in the Contract; provided that in case of a unit price contract the net value of all changes does not increase or decrease the original total amount shown in the Agreement by more than fifteen percent (15%) of the contract price.
- D. If applicable unit prices are not contained in the Agreement, the Owner shall, before ordering the Contractor to proceed with desired changes, request an itemized proposal from contractor covering the work involved in the change after which the procedure shall be as follows:
 - 1. If the proposal is acceptable, the Owner will prepare the change order in accordance therewith for acceptance by the Contractor and,
 - 2. If the proposal is not acceptable and prompt agreement between the two parties cannot be reached, the Owner may order the Contractor to proceed with the work on a cost-plus-limited basis. A cost-plus-limited basis is defined as the net cost of the Contractors' labor, materials and insurance plus fifteen percent (15%) of said net cost to cover overhead and profit, the total cost not to exceed a specified limit. The net value of all changes cannot increase or decrease the original total amount in the Agreement by more than fifteen percent (15%) of the contract price.



E. Each change order shall include in its final form:

1. A detailed description of the change in the work.
2. Contractor's proposal (if any) or a conformed copy thereof.
3. A definite statement as to the resulting changes in the contract price and/or time.
4. The statement that all work involved in the change shall be performed in accordance with Contract requirements except as modified by the change order.

14. CLAIMS FOR EXTRA COST

- A.** If the Contractor claims that any instruction by Drawings or otherwise involve extra cost or extension of time, contractor shall within ten days after the receipt of such instructions, and in any event before proceeding to execute the work, submit its protest thereto in writing to the Owner, stating clearly and in detail the basis of its objections. No such claim will be considered unless so made.
- B.** Claims for additional compensation for extra work, due to alleged errors in ground elevations, contour lines, or bench marks, will not be recognized unless accompanied by certified survey data, made prior to the time the original ground was disturbed, clearly showing that errors exist which resulted, or would result, in handling more material, or performing more work, than would be reasonably estimated from the drawings and maps issued.
- C.** Any discrepancies which may be discovered between actual conditions and those represented by the Drawings and maps shall at once be reported to the Owner and work shall not proceed except at the Contractor's risk, until contractor has received written instructions from the Owner.
- D.** If, on the basis of the available evidence, the Owner determines that an adjustment of the Contract price and/or time is justifiable, the procedure shall be provided in Section 13 hereof.

15. INSPECTION

All material furnished and work done will be inspected by the City Engineer, and if not in accordance with these specifications, they will be rejected, and shall be immediately removed and other material furnished and work done in accordance therewith. If the Contractor refuses to remove the work and materials as above, when ordered, then the Board of Public Works shall have the right and authority to stop the Contractor and its work at once, and to supply persons and materials to remove and correct the faulty work



and materials at the cost and expense of the Contractor; such expense to be deducted from any money then due or to become due the Contractor from the Owner.

If, however, the Board of Public Works shall fail or neglect to correct any faulty or defective material or work, as outlined above, the Contractor shall not be relieved of correcting said material or work, and the right of final acceptance or condemnation of the work shall not be waived in any manner by reason of any said failure or neglect on the part of the Board of Public Works.

16. **ASSIGNMENT OR NOVATION**

The Contractor shall not assign or transfer, whether by an assignment or novation, any of its rights, duties, benefits, obligations, liabilities, or responsibilities under this Contract without the written consent of the Owner; provided, however, that assignments to banks, trust companies, or other financial institutions may be made without the consent of the Owner. No assignment or novation of this contract shall be valid unless the assignment or novation expressly provides that the assignment of any of the contractor's rights or benefits under the Contract is subject to a prior lien for labor performed, services rendered, and materials, tools, and equipment supplied for the performance of the work under this Contract in favor of all persons, firms, or corporations rendering such labor or services or supplying such materials, tools or equipment.

17. **DISPUTES**

- A. All disputes arising under this Contract or its interpretation, whether involving law or fact or both, or extra work, and all claims for alleged breach of contract shall within ten (10) days of commencement of the dispute be presented by the Contractor to the Owner for decision. All papers pertaining to claims shall be filed in quadruplicate. Such notice need not detail the amount of the claim, but shall state the facts surrounding the claim in sufficient detail to identify the claim, together with its character and scope. In the meantime the Contractor shall proceed with the work as directed. Any claim not presented within the time limit specified in this paragraph shall be deemed to have been waived, except that if the claim is of a continuing character and notice of the claim is not given within ten (10) days of its commencement, the claim will be considered only for a period commencing ten (10) days prior to the receipt by the Owner of notice thereof.
- B. The Contractor shall submit in detail its claim and its proof thereof. Each decision by the governing body of the Owner will be in writing and will be mailed to the Contractor by registered or certified mail, return receipt requested, directed to contractor's last known address.
- C. If the Contractor does not agree with any decision of the Owner, contractor shall in no case allow the dispute to delay the work but shall notify the Owner promptly that it is proceeding with the work under protest and contractor may then except the matter in question from the final release.



18. **SPECIAL & STANDARD SPECIFICATIONS AND DRAWINGS**

Anything mentioned in the Special & Standard Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Special & Standard Specifications, shall be of like effect as if shown on or mentioned in both. In case of any discrepancy in Drawings, or Special & Standard Specifications, the matter shall be immediately submitted to the Owner, without whose decision, said discrepancy shall not be adjusted by the Contractor, save only at its own risk and expense.

19. **SHOP DRAWINGS**

- A.** All required shop drawings, machinery details, layout drawings, etc. shall be submitted to the City Engineer in four (4) copies for approval sufficiently in advance of requirements to afford ample time for checking, including time for correcting, resubmitting and rechecking if necessary. The Contractor may proceed, only at its own risk with manufacture or installation of any equipment or work covered by said shop drawings, etc. until they are approved and no claim, by the Contractor, for extension of the contract time will be granted by reason of its failure in this respect.
- B.** Any drawings submitted without the Contractor's stamp of approval will not be considered and will be returned to contractor for proper resubmission. If any drawings show variations from the requirements of the Contract because of standard shop practice or other reason, the Contractor shall make specific mention of such variation in its transmittal letter in order that, if acceptable, suitable action may be taken for proper adjustment of contract price and/or time, otherwise the Contractor will not be relieved of the responsibility for executing the work in accordance with the Contract even though the drawings have been approved.
- C.** If a shop drawing is in accord with the contract or involves only a minor adjustment in the interest of the Owner, not involving a change in contract price or time, the City Engineer may approve the drawing. The approval shall be general, shall not relieve the Contractor from its responsibility for adherence to the Contract or for any error in the drawing and such approval shall contain in substance the following:

“The modification shown in the attached drawing is approved in the interest of the Owner to effect an improvement for the Project and is ordered with the understanding that it does not involve any change in the Contract Price or time; that it is subject generally to all Contract stipulation and covenants; and that it is without prejudice to any and all rights of the Owner under the Contract and surety bond or bonds.”



20. MATERIALS AND WORKMANSHIP

- A. Unless otherwise specifically provided for in the Special & Standard Specifications, all workmanship, equipment, material and articles incorporated in the work shall be new and the best grade of the respective kind for the purpose.

Where equipment, materials, articles or workmanship are referred to in the Special & Standard Specifications as “equal to” any particular standard, the City Engineer shall decide the question of equality.
- B. The Contractor shall furnish to the Owner for approval the manufacturer’s detailed specifications for all machinery, mechanical and other special equipment which contractor contemplates installing, together with full information as to type, performance characteristics, and all other pertinent information as required, and shall likewise submit for approval, as required, full information concerning all other materials or articles which contractor proposes to incorporate in the work.
- C. Machinery, mechanical and other equipment, materials or articles installed or used without such prior approval shall be at the risk of subsequent rejection.
- D. Materials specified by reference to the number or symbol of a specific standard, such as an A.S.T.M. Standard, a Federal Specification or other similar standard, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the Invitation for Bids, except as limited to type, class or grade, or modified in such reference, the standards referred to, except as modified in the Special & Standard Specifications and/or Drawings shall have full force and effect as though printed therein.

21. SAMPLES, CERTIFICATES AND TESTS

- A. The Contractor shall submit all material or equipment samples, certificates, affidavits, etc., as called for in the contract documents or required by the City Engineer, promptly after award of the contract and acceptance of the Contractor’s bond. No such material or equipment shall be manufactured or delivered to the site, except at the Contractor’s own risk, until the required samples or certificates have been approved in writing by the City Engineer. Any delay in the work caused by late or improper submission of samples or certificates for approval shall not be considered just cause for an extension of the contract time.

Each sample submitted by the Contractor shall carry a label giving the name of the Contractor, the project for which it is intended, and the name of the producer. The accompanying certificate or letter from the Contractor shall state that the sample complies with contract requirements, shall give the name and brand of the product, its place or origin, the name and address of the producer and all specifications or other detailed information which will assist the City Engineer in passing upon the acceptability of the sample promptly. It shall also include the statement that all materials or equipment furnished for use in the project will comply with the samples and/or certified statements.



- B. Approval of any materials shall be general only and shall not constitute a waiver of the Owner's right to demand full compliance with Contract requirements. After actual deliveries, the City Engineer will have such check tests made as he or she deems necessary in each instance and may reject materials and equipment and accessories for cause, even though such materials and articles have been given general approval. If materials, equipment or accessories which fail to meet check tests have been incorporated in the work, the City Engineer will have the right to cause their removal and replacement by proper materials or to demand and secure such reparation by the Contractor as is equitable.

- C. Except as otherwise specifically stated in the Contract, the costs of sampling and testing will be as follows:
 - 1. The Contractor shall furnish without extra cost, including packing and delivery charges, all samples required for testing purposes.
 - 2. The Contractor shall assume all costs of re-testing materials, which fail to meet contract requirements.
 - 3. The Contractor shall assume all costs of testing materials offered in substitution for those found deficient.

22. **RESPONSIBILITY**

The Contractor will have charge of the work embraced in its contract until completed and accepted by the Board of Public Works and until the Contractor is formally released from its obligations. Contractor shall not assign or sublet its contract without written permission from the Owner, and upon the written recommendation of the Board of Public Works, and must keep it under its control until completed and accepted and in case of Contractor's absence from the works, must have a duly qualified person to take charge of them.

This section is not to be construed to prevent the Owner from the use of the whole or any part of the work which may be in condition to use at any time previous to its final acceptance, and such use is not to be taken as an acceptance by the Owner of the whole or any part of the work performed under this Contract.

23. **CARE OF WORK**

- A. The Contractor shall be responsible for all damages to person or property that occur as a result of his fault or negligence in connection with the prosecution of the work and shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance, whether or not the same has been covered in whole or in part by payments made by the Owner.

- B. The Contractor shall provide, when required by the Owner, sufficient, competent watchpersons, both day and night, including Saturdays, Sundays and holidays, from the time the work is commenced until final completion and acceptance.



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- C. In an emergency affecting the safety of life, limb or property, including adjoining property, the Contractor, without special instructions or authorization from the Owner, is authorized to act at its discretion to prevent such threatened loss or injury, and Contractor shall so act. Contractor shall likewise act if instructed to do so by the Owner. Any compensation claimed by the Contractor on account of such emergency work will be determined by the Owner.
- D. The Contractor shall avoid damage as a result of its operations to existing sidewalks, streets, curbs, pavements, utilities (except those which are to be removed and/or replaced), adjoining property, etc., and it shall, at its own expense completely repair any damage thereto caused by his operations.
- E. The Contractor shall shore up, brace, underpin, secure, and protect as may be necessary, all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be in any way affected by the excavations or other operations connected with the construction of the Improvements embraced in this Contract. The Contractor shall be responsible for the giving of any and all required notices to any adjoining or adjacent property owner or other party before the commencement of any work. The contractor shall indemnify and save harmless the Owner from any damages on account of settlements or the loss of lateral support of adjoining property and from all loss or expense and all damages for which the Owner may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.
- F. Non-resident contractors of the City of La Crosse shall submit to the Engineer before any work has started, a list of names, addresses and telephone numbers of competent foreman and/or workmen who can be contacted in an emergency situation during non-working hours of the day and night, including Saturdays, Sundays and Holidays, from the time the work is commenced until final completion and acceptance.

24. DAMAGES

A. To the fullest extent allowable by law, Contractor hereby indemnifies and shall defend and hold harmless the City of La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers and each of them from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs and expenses of whatsoever kind or nature whether arising before, during or after completion of the work hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part or claimed to be caused, occasioned or contributed to in whole or in part, by reason of any act, omission, fault or negligence, whether active or passive, of Contractor or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement. Contractor's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the sole fault, sole



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negligence or willful misconduct of the City of La Crosse, or its elected and appointed officials, officers, employees or authorized representatives or volunteers. This indemnity provision shall survive the termination or expiration of this Agreement.

In any and all claims against the City of La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers by an employee of Contractor, any subcontractor or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under Worker's Compensation Acts, Disability Benefit Acts or other employee benefit acts.

No provision of this Indemnification clause shall give rise to any duties not otherwise provided for by this Agreement or by operation of law. No provision of this Indemnity clause shall be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to the City of La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers under this or any other contract. This clause is to be read in conjunction with all other indemnity provisions contained in this Agreement. Any conflict or ambiguity arising between any indemnity provisions in this Agreement shall be construed in favor of indemnified parties except when such interpretation would violate the laws of the State of Wisconsin.

Contractor shall reimburse the City of La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City of La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

B. Laws, Regulations and Permits - The Contractor shall give all notices required by law and comply with all laws, ordinances, rules and regulations pertaining to the project. The Contractor shall also be liable for all violations of the law in connection with work furnished by the Contractor. If the Contractor observes that the drawings or specifications are at variance with any law or ordinance, rule or regulation, he/she shall promptly notify the City of La Crosse's Engineer in writing and any necessary changes shall be made by written instruction or change order. If the Contractor performs any work that it knew or should have known to be contrary to such laws, ordinances, rules or regulations and without giving notice to the City of La Crosse's engineer, the Contractor shall bear all costs arising therefrom.

C. Safety & Security - The Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. The Contractor shall comply with the requirements of the specifications relating to the safety measures applicable in particular operations or kinds of work.

In carrying out its work, the Contractor shall at all times exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the



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conditions under which the work is to be performed, and be in compliance with all applicable federal, state and local statutory and regulatory requirements including Wisconsin Labor Code, the U.S. Department of Transportation Omnibus Transportation Employee Testing Act, and applicable OSHA standards. Safety precautions, as applicable, shall include but not be limited to: adequate life protection and life saving equipment; adequate illumination; instructions in accident prevention for all employees, such as the use of machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection and other safety devices; equipment and wearing apparel as are necessary or lawfully required to prevent accidents, injuries or illnesses; and adequate facilities for the proper inspection and maintenance of safety measures.

The Contractor shall be responsible for the safeguarding of all utilities. At least three working days before beginning work, the Contractor shall call "Diggers Hotline" Service in order to determine the location of substructures. The Contractor shall immediately notify the City of La Crosse and the utility owner if he/she disturbs, disconnects or damages any utility.

In accordance with Wisconsin Labor regulations, the Contractor shall submit to the City of La Crosse specific plans to show details of provisions for worker protection from caving ground during excavations of trenches of five feet or more in depth. The excavation/trench safety plan shall be submitted to the City of La Crosse prior to starting excavation. The trench safety plan shall have details showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground.

If such a plan varies from the shoring system standards established by the State of Wisconsin, a Wisconsin registered civil or structural engineer shall prepare the plan. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with the applicable construction codes in Wisconsin or that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the existing law or regulations. In no event shall the Contractor use a shoring, sloping, or protective system less effective than that required by the State. Submission of this plan in no way relieves the Contractor of the requirement to maintain safety in all areas. If excavation or trench work requiring a permit be undertaken, the Contractor shall submit his/her permit with the excavation/trench work safety plan to the City of La Crosse before work begins. The names and telephone numbers of at least two medical doctors practicing in the vicinity and the telephone number of the local ambulance service shall be prominently displayed adjacent to telephones.

The City may halt construction on any project where appropriate safety measures and equipment are not being used or any safety regulations are not being followed. Work will not be allowed to commence until required safety provisions have been made and delays as a result of the Contractor not having required safety equipment or procedures in place will not provide a basis for an increase in contract payment or an extension of the completion deadline.



25. WARRANTY OF TITLE

No material, supplies, or equipment to be installed or furnished under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale, lease-purchase or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. The Contractor shall warrant good title to all materials, supplies and equipment installed or incorporated in the work and upon completion of all work, shall deliver the same together with all improvements and appurtenances constructed or placed thereon by it to the Owner free from any claims, liens, or charges. Neither the Contractor nor any person, firm or corporation furnishing any material or labor for any work covered by this Contract shall have any right to a lien upon any improvement or appurtenance thereon. Nothing contained in this paragraph, however, shall defeat or impair the right of persons furnishing materials or labor to recover under any bond given by the Contractor for their protection or any rights under any law permitting such persons to look to funds due the Contractor in the hands of the Owner. The provisions of this paragraph shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing materials for the work when no formal contract is entered into for such materials.

26. CLAIMS

Before the final settlement will be made, the Contractor must furnish to the Owner satisfactory evidence that all persons who have been employed upon the work, or who have furnished material for the work under its contract and according to these specifications, and may have been entitled to a lien, have been fully settled with and are no longer entitled to a lien. In case such evidence is not furnished, then the Owner may retain from all moneys due to the Contractor and in possession of the Owner such an amount, as they may deem necessary to meet all lawful claims due to the above-mentioned parties until such claims are fully discharged, and the evidence thereof furnished to the Owner.

27. CLEAN UP

Before the work will be considered complete, all rubbish and unused material due to or connected with the construction must be removed and the premises left in a condition satisfactory to the Engineer. Excess dirt and debris shall be periodically hauled and deposited as directed by the Board of Public Works, in a legal manner. All private or public property disturbed or damaged must be restored to its former condition without cost to the Owner, and final payment will be withheld until such work is finished.

28. PAYMENT

The City Engineer shall make monthly estimates of all work completed as of the second Friday prior to the second Thursday of each month. The Common Council shall approve monthly payments on the basis of the estimates. To insure the proper performance of the Contract, Owner shall retain amount of the estimate, less retainage, from the proper fund. 5% of the estimate until 50% of the work has been completed. At 50%



completion, further partial payment shall be made in full to the Contractor and no additional amounts may be retained unless the architect or engineer certifies that the job is not proceeding satisfactorily, but amounts previously retained shall not be paid to the contractor. At 50% completion or any time after 50% completion when the progress of the work is not satisfactory, additional amounts may be retained up to 10% of the value of the work completed. Upon final completion and acceptance of the work, final payment will be made by the Common Council. When equipment is purchased by contract, payment may be made upon delivery but shall not exceed 90% of the contract price. The balance shall be paid after the equipment is placed in operation and accepted.

29. ACCEPTANCE AND GUARANTEE

A formal inspection of the work will be made by the Board of Public Works or its representative within thirty (30) days after the completion of the same. At that time should any defects or imperfections appear in the whole or any part of the work, which are caused by or due to any fault or negligence of the Contractor, the same must be corrected before the work will be accepted, otherwise the work will be accepted at that time.

The Contractor shall agree and guarantee that the equipment, material and workmanship supplied by it shall be free from all defects, and strictly in accordance with the plans and specifications, at the time of its completion and acceptance by the Owner and for a time of one (1) year thereafter or as specified elsewhere; and in case any cracks, leaks, settlement for any other defects as to equipment, material or workmanship shall exist or appear in any part of the work constructed by it within one (1) year thereafter or as specified elsewhere, the Contractor agrees to forthwith repair the same upon notification by Owner using the same material required by these specifications. In the event the Contractor shall fail to make such repairs or cause the same to be made, the Contractor shall agree to pay on demand the cost thereof to said Owner upon the completion of such repairs. The Contractor further agrees and guarantees to pay for all labor and material used in or about the construction of said work in its contract, which may become a lien or claim against the Owner. Such agreement and guarantee shall be made a part of the Contract, and the fulfillment thereof shall be secured by the bond of the Contractor.

30. NON-RESIDENT CONTRACTORS

Non-resident contractors, whether incorporated or not, shall comply with the provisions of Wis. Stats. regarding the filing of bonds for tax purposes with the Wisconsin Department of Taxation.

31. INSURANCE REQUIREMENTS

Unless otherwise specified in this Agreement, the Contractor shall, at its sole expense, maintain in effect at all times during the performance of the Work, insurance coverage with limits not less than those set forth below with insurers and under forms of policies set forth below.



A. Worker's Compensation and Employers Liability Insurance - The Contractor shall cover or insure, under the applicable labor laws relating to worker's compensation insurance, all of their employees in accordance with the law in the State of Wisconsin. The Contractor shall provide statutory coverage for work related injuries and employer's liability insurance with limits of \$1,000,000 each accident, \$1,000,000 disease policy limit, and \$1,000,000 disease each employee.

B. Commercial General Liability and Automobile Liability Insurance - The Contractor shall provide and maintain the following commercial general liability and automobile liability insurance:

Coverage - Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:

1. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001)
2. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle)

Limits - The Contractor shall maintain limits no less than the following:

1. General Liability - One Million Dollars (\$1,000,000.00) per occurrence (\$2,000,000.00 general aggregate if applicable) for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504), or insurer's equivalent endorsement provided to the City of La Crosse or the general aggregate including product-completed operations aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability - One million dollars (\$1,000,000) for bodily injury and property damage per occurrence limit covering all vehicles to be used in relationship to the Agreement.
3. Umbrella Liability - Five million dollars (\$5,000,000) following form excess of the Primary General Liability, Automobile Liability and

Employers Liability Coverages. Coverage is to duplicate the requirements as set forth herein.

C. Required Provisions - The general liability, umbrella liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of the Contractors;



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products and completed operations of the Contractor; premises occupied or used by the Contractor; and vehicles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

2. For any claims related to this project, the Contractor's insurance shall be primary insurance as respects the City of La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self-insurance, or other coverage maintained by the City of La Crosse, its elected and appointed officials, officers, employees, or authorized representatives or volunteers shall not contribute to it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the
4. City of La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers.
5. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
6. Each insurance policy required by this agreement shall state, or be endorsed to state, that coverage shall not be canceled by the insurance carrier or the Contractor, except after sixty (60) days (10 days for non-payment of premium) prior written notice by U.S. mail has been given to the City of La Crosse.
7. Such liability insurance shall indemnify the City of La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers against loss from liability imposed by law upon, or assumed under contract by, the Contractor for damages on account of such bodily injury (including death), property damage, personal injury, completed operations, and products liability.
8. The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations liability **with a minimum of a 24-month policy extension**, explosion, collapse, underground excavation, and removal of lateral support, and shall not contain an exclusion for what is commonly referred to by the insurers as the "XCU" hazards. The



automobile liability policy shall cover all owned, non-owned, and hired vehicles.

9. All of the insurance shall be provided on policy forms and through companies satisfactory to the City of La Crosse, and shall have a minimum A.M. Best's rating of A- VII.

D. Deductibles and Self-Insured Retentions - Any deductible or self-insured retention must be declared to and approved by the City of La Crosse. At the option of the City of La Crosse, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.

E. Evidences of Insurance - Prior to execution of the agreement, the Contractor shall file with the City of La Crosse a certificate of insurance (Acord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this agreement. Such evidence **shall include** an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions as detailed herein.

F. Responsibility for Work - Until the completion and final acceptance by the City of La Crosse of all the work under and implied by this agreement, the work shall be under the Contractor's responsibility, care and control. The Contractor shall rebuild, repair, restore and make good all injuries, damages, re-erections, and repairs occasioned or rendered necessary by causes of any nature whatsoever.

G. Sub-Contractors - In the event that the Contractor employs other contractors (sub-contractors) as part of the work covered by this agreement, it shall be the Contractor's responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above.

H. Property Insurance- If the contract includes work to buildings, structures, parking ramps, passenger shelters, lift stations, stadiums, bleachers, swimming pools, or bridges, then the contractor will provide and maintain Builders Risk Insurance coverage upon the work at the site to the full insurable value thereof. As a minimum this coverage shall insure against the perils of: fire; lightning; wind; hail; smoke; explosion; riot; riot attending a strike; civil commotion; aircraft and vehicle damage; falling objects damage; vandalism and malicious mischief; glass breakage; building collapse; damage due to weight or pressure of snow, ice or water on the roof; and debris removal.

32. **TOILET FACILITIES**

On all City construction projects where on-site restrooms are not readily available to the workers and City Inspectors, the general Contractor shall furnish portable toilets. The toilets shall be placed on-site at locations approved by the Engineer. Toilets are to be maintained and cleaned regularly by the Contractor and locked when no workers are on-site.



33. **ARTIFACTS OR HISTORICAL ITEMS**

The following provision shall be included in the General Terms and Conditions:

The Contractor shall immediately notify the City Engineering Department upon excavation or discovery of any artifacts consisting of goods, papers and/or objects. Artifact shall mean objects, which are a product of human modification. The City Engineer may also confer with the Board of Public Works and/or Common Council relative to any items or artifacts, which may be of archeological or historic significance.

Chapter 20, Article III of the City of La Crosse Municipal Codes (copy follows) shall apply to all contractors performing work for the City IF the work they do will result in disturbing more than 20 square feet of soil to a depth of 2 feet or greater, and IF the Contractor's work is within the boundary of an Archaeological District as defined and shown on the Archaeologically Sensitive Area maps.

CHAPTER 20-ARTICLE III: ARCHAEOLOGICAL SITES:

(Sec. 20-115) PURPOSE AND DEFINITION OF ARCHAEOLOGICAL SIGNIFICANT RESOURCES

- a) The purpose of this ordinance is to preserve the archaeological resources within the City of La Crosse and to insure that such resources will be properly considered during development and construction activities occurring within districts or areas considered to be archaeologically significant.
- b) Archaeological significant resources are defined as follows:
 - Association with events that have made a significant contribution to the broad patterns of history.
 - 1) Association with the lives of persons significant in the past.
 - 2) Embodiment of the distinctive characteristics of a type, period, or method of construction or that represent the work of a master or that possess high artistic values.
 - 3) Representation of a significant and distinguishable entity whose components may lack individual distinction.
 - 4) Yielding or likely to yield, information important in history or pre-history.

(Sec. 20-117) ARCHAEOLOGICAL DISTRICT BOUNDARIES

The boundaries of an Archaeological District are as defined by the Common Council or as how they are described in the latest Determination of Eligibility Form for nomination to the National Register of Historic Places. Copies of a map of the boundaries of Archaeological Districts are on file with the Wisconsin State Historical Society, the City Planning Department, and the City Inspection Department.

(Sec. 20-118) REGIONAL QUALIFIED ARCHAEOLOGIST

- a) The Regional Qualified Archaeologist shall mean any individual who meets all of the following requirements:



- 1) Has a graduate degree in archaeology, anthropology, or a close related field.
 - 2) at least one year of full-time professional experience or equivalent specialized training in archaeological or physical anthropological research, administration or management.
 - 3) Has at least four months of supervised field and analytic experience in the region.
- b) The Mississippi Valley Archaeological Center may provide a regional qualified Archaeologist, at no cost, subject to discretion of the landowner.

(Sec. 20-119) DEMOLITION, EXCAVATING, BUILDING & DEVELOPMENT

Any person performing demolition, excavating, building, or development requiring a permit from the City of La Crosse within an Archaeological District shall notify the City of La Crosse Building and Inspections Department or its designee not less than two full working days prior to commencing activities disturbing more than 20 square feet of soil to a depth of two feet or greater except in the case of emergency excavations as approved by the Director of Public Works or the Director of Building and Inspections. Such notice shall be in writing and shall include a description and location of the proposed work, the depth and area of the proposed soil disruption, and the proposed date and time of commencement of such work.

(Sec. 20-120) REGULATIONS

Any person, persons or entity receiving a permit for demolition, excavating, building or development to be done in an Archaeological District that includes soil disturbance of more than 20 square feet to a depth of two feet or greater shall as a condition of such permit:

- (1) Provide an Archaeological Survey by a regional qualified archaeologist of the site affected by the permit or provide unlimited and uninhibited access by the Regional Qualified Archaeologist to the site of any such demolition, excavating, building or development that includes disturbing more than twenty square feet of soil to a depth of two feet or greater during any period when excavation or soil disruption is taking place, and after archaeological artifacts are found, subject to reasonable safety requirements and
- (2) The Permittee and any agents of permittee shall stop work immediately and notify the City Building and Inspections Department or the Regional Qualified Archaeologist if any artifacts, human remains, or other clear evidence of historic or prehistoric activity are discovered during excavation or earthwork activities. The Regional Qualified Archaeologist shall evaluate the site by the end of the next weekday excluding holidays following such notification. If significant archaeological resources are found, the Regional Qualified Archaeologist shall have up to three additional consecutive week days excluding holidays after the initial notification as described above to continue investigation of the site. No additional work may be done by the permittee or



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permittee's agents during this period that would interfere with the archaeological investigation. If no significant archaeological resources are found by the Regional Archaeologist, work on demolition, excavating, building or development that includes disturbing more than twenty square feet of soil to a depth of two feet or greater may resume immediately and the parcel may be removed from the boundaries of the Archaeological District, if such removal is approved by the Historic Preservation Commission. If the Region Archaeologist does not investigate the site by the end of the next week day excluding holidays following notification of the City Building and Inspections Department of the presence of archaeological artifacts, human remains, or other clear evidence of historic or prehistoric activity, work may be resumed on the second day following such notification. If an Archaeological Survey performed by a Regional Qualified Archaeologist finds no archaeological significant remains the parcel may be removed from the boundaries of the Archaeological District upon approval of the Historic Preservation Commission.

- (3) The Permittee and any agents of permittee shall agree that any archaeological artifacts discovered will remain the property of the land owner upon whose land the artifacts were found. No artifacts may be removed from the property of the landowner without the landowner's written permission unless an itemized inventory report of all artifacts removed is provided to the landowner signed by the Regional Qualified Archaeologist. Such artifacts may be held by the Regional Archaeologist for a reasonable period, not to exceed 12 months, for study and identification, but shall be returned to the landowner at the end of such period. Any human remains discovered shall be dealt with in accordance with applicable State and Federal law and
- (4) The requirements listed for permittees in an Archaeological District in paragraphs 1, 2, and 3 shall also apply to all City of La Crosse Departments, Utilities, Contractors, and agents regardless of whether a permit is required for any proposed work in an Archaeological District, if the work will result in disrupting more than 20 square feet of soil to a depth of two feet or greater.)



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La Crosse Archaeologically Sensitive Sites ORDINANCE #7.07

