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CITY OF MILWAUKEE

DEPARTMENT OF PUBLIC WORKS

GENERAL SPECIFICATIONS

January 31, 1992

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PART I
INSTRUCTIONS TO BIDDERS
GENERAL

CHAPTER 1.1.0

1.1.1 Contracting Officer

The contracting officer shall be the Commissioner of Public Works of the City of Milwaukee hereinafter referred to as Commissioner.

1.1.2 Qualifications of Bidders

Qualifications for the project shall be demonstrated by each bidder as requested by the Commissioner of Public Works. Such bidder shall submit within five days of such request written evidence and documentation as required by the Commissioner, including financial capability, previous experience, and evidence of authority to conduct business in the State of Wisconsin.

1.1.3 Examination of Contract Documents and Site

A. Before submitting a bid, each bidder shall:

1. Examine the contract documents thoroughly,

2. Visit the site to become familiar with local conditions that may in any manner affect performance of the work,

3. Become familiar with federal, state, and local laws, ordinances, rules and regulations affecting performance of work, and

4. Carefully correlate observations with the requirements of the contract documents.

B. Before submitting a bid, each bidder shall, at own expense, make such surveys and investigations as may be deemed necessary to determine a bid price for performance of the work within the terms of the contract documents. Bidder is responsible for obtaining all necessary licenses and permits at own expense.

C. The submission of a bid shall constitute a prima facie representation by the bidder that the bidder has complied with every requirement of this Section 1.1.3.

1.1.4 Interpretations

All questions about the meaning or intent of the contract document shall be submitted to the Commissioner in writing. Replies shall be issued by Addenda, mail, or delivery to all parties recorded by the Commissioner as having received the bidding documents. Questions received less than five days prior to the date for opening of bids will not be answered. Only questions answered by formal written Addenda shall be binding. Oral and other interpretations or clarifications shall be without legal effect.

1.1.5 Bid Security

Bid security required is 10% of the contractor's bid, unless otherwise stated in the Official Notice and Invitation to Bid. The required security must be in the form of a certified or bank cashier's check made payable to Commissioner, or when indicated in said Notice or Invitation to Bid, a bid bond issued by a Surety licensed to conduct business in the State of Wisconsin and named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department. The bid bond must be accompanied by a copy of the power of attorney for the agent or attorney-in-fact signing the bid bond. The bid security of the successful bidder shall be retained until the bidder has executed the Agreement and furnished the required contract security, whereupon it will be returned. Upon failure to execute and deliver the contract and furnish the required contract security within ten days of Notice of Award, the Commissioner may annul the Award and the bid security of that bidder shall be forfeited and the City reserves the right to pursue any available remedies against the bidder. The bid security of all except the two lowest bidders shall be returned after the opening of bids. The balance of the bid deposits, except that of the lowest responsible bidder, will be returned after the Commissioner has made an award to the lowest responsible bidder.

1.1.6 Bid Proposal

A. The Bid Proposal is included in the contract documents. Additional copies of the bid documents may be obtained through the Contract Administration Office, Room 506, Municipal Building.

B. Bid Proposal shall be completed in ink or typewritten. The bid price of each item on the form must be stated in words and numerals. In case of a conflict, words shall take precedence.

C. Bids submitted by an individual shall be signed by the bidder or by an authorized agent.

D. Bids by corporation shall be executed in the corporate name by the president or vice president (or other authorized corporate officer accompanied by evidence of authority to sign), and the corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

E. Bids by partnerships shall be executed in the partnership name and signed by a partner; the partner's title must appear under the signature, and the official address of the partnership must be shown below the signature.

F. Bids which are signed by an attorney-in-fact for individuals, firms, partnerships, or joint ventures shall have attached thereto a power of attorney evidencing authority to sign the bid.

G. All names shall be typed or printed below the signature.

H. The bid shall contain an acknowledgment of receipt of all Addenda, if any, the numbers of which shall be filled in on the bid form.

I. Any bid received which does not respond to the items as requested on the bid proposal form shall be considered as a nonresponsive bid and may not be considered for award. This includes any alterations, modifications or conditions to the proposal or alternate bids which are not specifically requested on the bid proposal form.

J. The contractor shall include in the contract price all applicable federal, state and local taxes in the proposal submitted.

1.1.7 Minority/Woman/Small Business Enterprise (M/W/SBE) Program

Chapter 370 of the Milwaukee Code of Ordinances established a Minority/Woman/Small Business Enterprise Program (M/W/SBE) which is implemented through establishment of percentages of public works contracts to be allocated to City certified M/W/SBE businesses and enterprises. These percentages are established by the department and are stated in the Official Notice and the Invitation for Bid. Forms required by the established M/W/SBE provisions must be submitted by bidders as part of the bidding process. Failure to comply with these requirements may result in rejection of the bid. The M/W/SBE provisions will be made a part of all departmental bid solicitations and are included in this bid package.

1.1.8 Submission of Bids

Bids shall be submitted at the place and no later than the date and time indicated in the Official Notice and Invitation to Bid. The bid and the bid security shall be placed in an opaque, sealed envelope marked with the Official Notice Number, project number, branch number, date of opening bids, name and address of bidder, and the type and location of work. Such envelope shall be addressed and delivered to the Office of the Commissioner, Contract Administration Office, Room 506, Municipal Building, before time specified in the Official Notice and Invitation to Bid for opening bids. Bids received later than the date and time indicated will not be considered, and the unopened envelope will be returned.

1.1.9 Modification and Withdrawal of Bids

A bidder may withdraw a bid because of error, omission or mistake at any time before the opening of the bids. In such case, the bid shall be returned unopened, and the bidder shall not be entitled to bid on the contract unless it is re-advertised and re-let.

After bid opening, a bidder may only withdraw or correct a bid if the bidder meets the requirements of 66.29(5), State Statutes.

1.1.10 Opening of Bids

Bids shall be publicly opened at the time and place as indicated in the Invitation to Bid and Official Notice.

1.1.11 Adequacy of Bids

A bid which appears unreasonable or inadequate for any item in the schedule of quantities stated in the proposal form may be rejected.

1.1.12 Quantities

The estimated quantities of the work are the result of careful calculations but are not to be considered as final and shall be used as a basis for determining the lowest bidder. After the contract is awarded, the quantity of work listed under any item, or all items, may be increased or decreased a reasonable amount at the discretion of the Commissioner without in any way invalidating the bid price.

1.1.13 Bids to Remain Open

All bids shall remain open for **45** days after the day of the bid opening or until execution of contract, whichever occurs first.

1.1.14 Acceptance or Rejection of Bids

A. The contract shall be awarded to the lowest responsible bidder whose bid complies with the bid specifications. The Commissioner reserves the right to reject all bids if it appears that the lowest bid for the work to be let is unreasonably high. The Commissioner further reserves the right to reject the bid of any bidder who is, in the judgment of said Commissioner, incompetent or otherwise unreliable for the performance of the work bid or who shall previously have willfully or negligently failed to complete any work or contract entered into with the City or any officer or department thereof or who shall have willfully or negligently failed to enter into a contract with satisfactory Surety for any work that shall have been previously awarded by said Commissioner. The Commissioner further reserves the right to disregard and reject any and all bids.

B. If the contract is to be awarded, the Commissioner shall give the successful bidder a Notice of Award within forty-five days after the day of the bid opening.

C. The Contractor shall submit with the executed contract, the required performance and payment bonds and proof of required insurance coverage within ten (10) days after contract award notification.

1.1.15 Contract Time

The number of days or the completion date for the completion of the work (the contract time) is set forth in the Official Notice and the Invitation to Bid and shall be part of the contract. Any provisions for liquidated damages shall be set forth in the Official Notice.

1.1.16 Subcontractors

A. If the Conditions or Specifications required the identity of certain subcontractors and other persons and organizations to be submitted in advance of the Award, the apparent low bidder and any other bidder so requested shall within seven days after the day of the bid opening submit to the Commissioner a list of all subcontractors and other persons and organizations, including those who are to furnish the principal items of material and equipment, proposed for those portions of the work as to which such identification is so required.

Such list shall be accompanied by an experience statement with pertinent information as to similar projects and other evidence of qualification for each such subcontractor, person, or organization if requested by Commissioner. If the Commissioner, after due investigation, has reasonable objection to any proposed subcontractor, other person, or organization, the Commissioner may, before giving the Notice of Award, request the apparent low bidder to submit an acceptable substitute without any increase in bid price. If the bidder declines to make any such substitution, such bidder will not thereby sacrifice the bid security. Any subcontractor, other person or organization so listed and to whom City by its Commissioner does not make written objection prior to the giving of the Notice of Award shall be deemed acceptable.

B. In contracts where the contract price is on the basis of Cost of the Work Plus a Fee, the Contractor, prior to the Notice of Award, must identify in writing to the Commissioner those portions of the work that the Contractor proposed to subcontract and after the Notice of Award may subcontract other portions of the work only with the Commissioner's consent.

C. Contractor shall not be required to employ any subcontractor, other person, or organization against whom the Contractor has reasonable objection.

1.1.17 Starting Work Before Notification

No work shall be started under the contract, and no materials or equipment shall be brought upon the site of the work, prior to the date named in the written notice to proceed with the work.

1.1.18 Protest and Appeal Procedure

Prior to Bid Opening - Protests regarding form and content of bid documents must be received by the Commissioner of Public Works not less than five days prior to the scheduled bid opening time. A protest shall be in writing and state the reason for it. The protest will be reviewed and if modification is necessary, the bid opening day will be extended and addenda sent to each bidder. The decision of the Commissioner is final.

PART II
GENERAL CONDITIONS
DEFINITIONS AND TERMS

CHAPTER 2.1.0

2.1.1 General

Whenever in the specifications or in any document or instruments in construction operations where the specifications govern, the following abbreviations, terms, or pronouns in place of them are used, the intent and meaning shall be interpreted as follows:

2.1.2 Abbreviations

A. **A.A.S.H.T.O.** American Association of State Highway and Transportation Officials.

B. **ADMINISTRATIVE CODE.** Rules of Wisconsin Code.

C. **A.N.S.I.** American National Standards Institute.

D. **A.R.E.A.** American Railway Engineering Association.

E. **A.S.M.E.** American Society of Mechanical Engineers.

F. **A.S.T.M.** American Society for Testing and Materials.

G. **A.W.W.A.** American Water Works Association.

H. **D.N.R.** Wisconsin Department of Natural Resources.

I. **FEDERAL SPECIFICATIONS.** Specification of the United States Federal Specifications Board.

J. **O.S.H.A.** Federal Occupational Safety and Health Administration.

K. **S.S.P.C.** Steel Structures Painting Council.

L. **STATE SPECIFICATIONS.** Current Standard Specifications for Road and Bridge Construction of the Wisconsin Department of Transportation.

M. **A.C.I.** American Concrete Institute.

N. **A.G.M.A.** American Gear Manufacturers' Association.

O. **A.I.A.** American Insurance Association.

P. **A.I.S.C.** American Institute of Steel Construction.

Q. **A.S.C.E.** American Society of Civil Engineers.

R. **A.W.S.** American Welding Society.

S. **I.E.E.E.** Institute of Electrical and Electronic Engineers.

T. **J.I.C.** Joint Industry Conference.

U. **N.E.C.** National Electrical Code.

V. **N.E.M.A.** National Electrical Manufacturers' Association.

W. **P.C.A.** Portland Cement Association.

X. **P.C.I.** Pre-stressed Concrete Institute.

2.1.3 Contract Documents

All the integral documents of the contract comprised of (a) written agreement (contract) covering the performance of the work and furnishing of materials for the construction of the work, (b) official notice, (c) invitation to bid and bid, (d) instructions to bidders, (e) specifications, (f) special provisions, (g) special conditions when applicable, (h) plans, (I) schedule of fixed prices, (j) supplemental agreements, and (k) all addenda, as fully as though they had been set forth therein full in the body of the contract.

2.1.3.1 Governing Order of Contract Documents

In the case of a discrepancy or conflict in the contract documents, the order of governing shall be as follows:

First - Special Provisions
Second - Plans
Third - Specifications

2.1.4 City

The City of Milwaukee, a municipal corporation of the State of Wisconsin, located in the County of Milwaukee.

2.1.5 Commissioner, Commissioner of Public Works, or CPW

The Commissioner of Public Works of the City of Milwaukee.

2.1.6 Bidder

Any individual, firm, partnership, corporation, or a combination of any or all jointly submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.

2.1.7 Contractor

Any individual, firm, partnership, corporation, or a combination of any or all jointly submitting a proposal to whom the contract is awarded by the City or its heirs, executors, administrators, successors, or assigns.

2.1.8 Subcontractor

The individual, firm, partnership, or corporation to whom the Contractor, with the written consent of the Commissioner, sublets, assigns, or otherwise disposes of any part of the work covered by the contract documents.

2.1.9 Surety

The approved Surety corporation licensed to do business in the State of Wisconsin bound with and for the Contractor to insure acceptable performance of the contract and for payment of all obligations under the contract.

2.1.10 Plans

All contract drawings, reproductions of drawings, sketches, and revisions thereof, pertaining to the work covered by the contract.

2.1.11 Addenda

All revisions of and supplements to the plans and specifications incorporated in or attached to and becoming an integral part of the contract documents.

2.1.12 Special Provisions

The special body of directions, provisions, or requirements peculiar to a project and otherwise not thoroughly or satisfactorily detailed or prescribed in the specifications. The requirements of these Special Provisions shall govern the work and shall take precedence over the specifications or plans whenever they conflict.

2.1.13 City Datum

The plane of zero elevation used for City work, being 54.815 feet below the permanent bench mark on a stone monument located near the northwest corner of North Jackson and East Wells Streets.

2.1.14 Pavement

All types of pavements except such surfacings as crushed stone, screenings, cinders, or untreated water-bound macadam.

2.1.15 Work

Work shall be understood to mean the furnishing of all labor, materials, equipment, and other incidentals necessary for all the successful completion of the project or particular part of the project in accordance with the requirements of the contract.

2.1.16 Engineers

The Engineers of the Department of Public Works assigned to the work.

2.1.17 Milwaukee Code

The Milwaukee Code of Ordinances, being the revision and codification of the general ordinances of the City of Milwaukee, adopted by the Common Council on December 19, 1941, and supplements and amendments thereto.

2.1.18 Emergency or Emergencies

Unforeseen occurrences, and combinations of circumstances involving the public welfare or the protection of work already done under the contract documents or

which endanger life or property and call for immediate action or remedy.

2.1.19 Trade Terms

Terms having a well-known technical or trade meaning and generally recognized by architects, engineers, and the trade.

2.1.20 Date of Completion of Work

The work shall be considered as completed on the date certified to the Commissioner by the Engineer in charge or other authorized representative.

2.1.21 Time Allowed for Completion

The time allowed the Contractor to complete all work under the contract including cleaning of the work site will be specified in the official notice. This time will be specified either as number of working days allowed, number of calendar days allowed, a specified calendar date, or a combination of these when a specific portion of the work is to be completed by a specific date. If any of these requirements are exceeded, Section 2.5.11 of the Specifications shall be invoked.

2.1.22 Advertisement

The official notice inviting bids for all proposed work included in any one letting.

2.1.23 Award

Notice to Contractor of Contract Award.

2.1.24 Calendar Days

Every day shown on the calendar; Saturdays, Sundays and holidays included.

2.1.25 Contract Bond

The approved form of security furnished by the Contractor and Surety as a guarantee of good faith on the part of the Contractor to execute the work in accordance with and complying with all the terms and conditions of the Contract Documents.

2.1.26 Contract Change Order

A written order by the Commissioner or the Commissioner's authorized representative covering work not otherwise provided for, revision in or amendments to the contract, or conditions specifically prescribed in the specifications as requiring contract change orders. Such document becomes a part of the contract.

2.1.27 Contract Period

The period from the date of commencing work to the date of completing work, both dates inclusive, as specified in the contract.

2.1.28 Inspector

The authorized representative of the City assigned to make a detailed inspection of any and all portions of work or materials thereof.

2.1.29 Official Notice

The advertisement for proposals for all work or materials on which bids are required. Such advertisement will indicate with reasonable accuracy the location and character of the work to be done or materials to be furnished and the time and place of submitting the proposals

2.1.30 Notice to Proceed

A written notice to the Contractor by the Commissioner or the Commissioner's authorized representative of the time within which the Contractor shall begin the prosecution of the work.

2.1.31 Proposal

The offer of the bidder, submitted on the prescribed proposal form, to perform the work including the furnishing of labor and materials at the prices quoted by the bidder.

2.1.32 Proposal Form

The approved form on which the City requires bids to be prepared and submitted

for the work.

2.1.33 Bid Security

The security furnished with a bid to guarantee that the bidder will enter into the contract if the bid is accepted.

2.1.34 Schedule of Fixed Prices

The fixed prices as listed in the Contract Documents.

2.1.35 Working Day

A working day shall be any calendar day where, in the opinion of the Commissioner or his duly authorized representative, it is possible for the Contractor to start and continue work, except that unless the Contractor actually starts and continues work on days of inclement weather, Saturdays, Sundays, and nationally-recognized legal holidays; such days shall not be considered as working days.

CHAPTER 2.2.0 EMPLOYMENT OF LABOR

2.2.1 Residence Preference Program

Chapter 309 of the Milwaukee Code of Ordinances established a Residence Preference Program which is implemented through establishment of the percentages of worker hours to be performed by unemployed residents of a special impact area. These percentages are established by the Department and are stated in the Official Notice and the Invitation to Bid. Forms required by the established resident preference provisions must be submitted by bidders as part of the bidding process. Failure to comply with these requirements may result in payments being withheld, contracts canceled, debarment from bidding for up to two (2) years, or any other remedy available to the City at law or in equity. The resident preference provisions will be made a part of all departmental bid solicitations and are included in this bid package.

2.2.2 Hours of Labor and Overtime Pay

A. In accordance with Section 309-21, Milwaukee Code Ordinances, the service of all laborers and mechanics who are now or may hereafter be employed by any contractor or subcontractor of the City of Milwaukee upon any of the public works of this City is hereby limited to days other than Saturdays, Sundays, and legal holidays recognized by the City and restricted to 40 hours per week, of which no more than 10 hours shall occur in any one calendar day, and except as the Commissioner may approve to conform with occupational practices or as specifications may require, it shall be unlawful for any officer of the City government or any such contractor or subcontractor, whose duty it shall be to employ, direct, or control the services of such laborers or mechanics, to require or permit any such laborer or mechanic to work on Saturdays, Sundays, and legal holidays or more than 40 hours per week and 10 hours in any one calendar day, except in cases where, in the opinion of the Commissioner, an emergency exists.

B. In such instances where overtime work has been permitted and laborers or mechanics are required to work more than 10 hours per day or 40 hours per week or at times other than the normal work day or work week, they shall be paid by the contractor in accordance with the prevailing overtime wage rates. When, and only when, an emergency has been declared to exist and the Commissioner, after the signing of a contract, has ordered in writing that work on a project be carried on in excess of 10 hours per day or 40 hours per week, it shall be the duty of the City to reimburse the contractor over and above the price agreed upon for the performance of such work in the amount of the premium paid for overtime work or work performed at times other than the normal work day or work week in accordance with the prevailing overtime wage rates plus any premium paid for necessary materials because of delivery during times other than the normal work day or work week.

2.2.3 Minimum Wage Rate

A. In accord with Section 309-25, Milwaukee Code, and Res. No. 68-1317, building and construction industry trade workers employed upon public works contracts by any contractor or subcontractor shall be paid no less than the wage rates and fringe benefits approved for their respective trades or occupations. Such wage rates shall be incorporated into the contract. In addition, a schedule of wage rates and hours of labor shall be kept posted in at least one conspicuous and easily accessible place on the site of the project or, if there is no common site, at the place normally used by the city to post public notices.

B. Fringe benefits must be paid as follows: Welfare - within six weeks of the date work was performed; Vacation and Pension within 31 days of the date work was performed.

2.2.4 Unclassified Employees

A. In case it becomes necessary for the Contractor or any subcontractor to employ on the work covered by the contract documents any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non-manual workers) for whom no minimum wage rate is herein specified, the Contractor shall immediately notify the Commissioner who shall promptly thereafter furnish the Contractor with the minimum wage rate for such person.

B. Apprentices are considered unclassified employees and their rates are not furnished in the minimum wage scale. Contractors/subcontractors employing apprentices are required to furnish a copy of the signature page of their indenture papers and a copy of their rate sheet with the paid rate highlighted. The Commissioner shall determine whether or not a person so employed was properly paid or if an underpayment exists.

2.2.5 Minimum Wage - Time Reports

The Contractor hereby agrees to make a sworn report or affidavit within ten days following the Contractor's completion of a contract, or every three months, whichever occurs first, and shall procure and submit a like sworn report or affidavit from every subcontractor employed in the work to the Commissioner, listing every employee employed on or under this contract or subcontract, and shall include for the specified period but not be limited to the employee's name, address, type of work performed, total hours worked, hourly rate, gross earnings, and employer's contribution to vacation, welfare, and pension trust funds. Said reports or affidavits from the Contractor or subcontractor shall include a statement that each and every employee has been paid in full the amount prescribed by the Common Council and that there has not been, nor is to be, any rebate or refund of any part of said wages by employee to employer.

The Commissioner or other officers are hereby ordered not to pass any estimate for payment on any contract in which the Contractor or subcontractor has failed to comply with all the provisions of the foregoing sections, and no estimate shall be processed for payment until the Commissioner is satisfied that the provisions of the foregoing specifications have been fully complied with.

2.2.6 Provision of Wisconsin Statutes and Administrative Code Pertaining to Municipal Wage Rates

Pursuant to Section 66.293 Wisconsin Statues and Section IND 90.13 and 90.14 of the Wisconsin Administrative Code, each contractor and subcontractor is subject to the following requirements.

Each contractor, subcontractor, or agent thereof participating in a project shall keep full and accurate records clearly indicating the name and trade or occupation of every laborer, worker, or mechanic employed in connection with the project and an accurate record of the number of hours worked by each employee and the actual wages paid therefore.

Upon completion of the project and prior to final payment therefore, each contractor shall file with the municipality an affidavit stating compliance with the provisions and requirements of the Wisconsin Statutes and Administrative Code and that said contractor has received evidence of compliance from each subcontractor. No municipality may authorize final payment until such an affidavit is filed in proper form and order.

Upon completion of the subcontractor's portion of the work and prior to final payment, each subcontractor shall file with the contractor an affidavit stating that said subcontractor has fully complied with the provisions and requirements of Section 66.293 (3) Wisconsin Statutes and the Wisconsin Administrative Code Chapter IND 90.

In accordance with Section 66.293 (3) (h), each contractor shall file with the City copies of the subcontractor's affidavit prescribed under IND 90.13 Wisconsin Administrative Code.

2.2.7 Enforcement of "Hours and Wages" Provisions

Every person, firm, or corporation who shall violate the provisions of §309-21, 309-25, 309-27, and 309-31 Milwaukee Code, shall upon conviction thereof, be punished by a fine not to exceed $25 and in default of payment thereof by imprisonment in the House of Correction of Milwaukee County for a period not to exceed 90 days. The employment of each person contrary to the provisions of said sections shall be deemed a separate and distinct violation of the provisions

thereof for each day so employed.

Attention is called to Section 66.293, Wisconsin Statutes, 1951, which provides that a contractor who violates the provision of this law, to-wit, fails to comply with the municipal wage scale set forth in the contract may be fined not to exceed $500 for each offense. The failure to pay the required wage to an employee for only one week or part thereof constitutes a separate offense.

2.2.8 Wage and Hours Limitation

The provisions of Sections 309-21 to 309-37 inclusive of the Milwaukee Code shall apply, and the Contractor or any subcontractor is not to pay less than the minimum wage scale adopted by the Common Council of the City of Milwaukee pursuant to said provisions.

2.2.9 Days of Work and Shift Regulations

No work shall be performed under the contract on Saturdays, Sundays, or legal holidays, except with the approval of the Commissioner.

The Commissioner reserves the right to name the number of shifts per day, the hours per shift, and the starting time of each shift.

2.2.10 Wage and Hours Disputes

Whenever a dispute arises between the Contractor or Surety and the City as to the determination whether there is compliance with the provisions of the contract documents as to the hours of labor, wages, character, and classification of workers employed, the determination of the Commissioner shall be final, and in case of violations of said provisions, the Commissioner may declare the contractor in default and order the Surety to perform or re-let upon advertisement, the remaining portion of the contract as provided by Section 66.29 (8), Wisconsin Statutes, 1943.

2.2.11 Disqualification of Contractor

As provided by Section 309-33, Milwaukee Code, whenever any contractor or subcontractor engaged in any public work of the City has been found by the Commissioner, officer, or employee of the City or by a court of competent jurisdiction to have infringed any of the provisions of the minimum wage ordinance or any ordinance or any resolution or scale of wages adopted pursuant thereto,

in that event any such contractor or subcontractor shall not be deemed to be a competent and reliable bidder in the sense of Section 7-14 of the Milwaukee City Charter, 1984 compilation, and such contractor or subcontractor shall not be allowed to compete in securing future contracts with the City by such individual, or partner, or agent, or by any corporation of which such individual is a member, for a period of two years. A second violation by such individual, or partner, or agent, or by any corporation of which such individual is a member, shall disqualify such individual, or such partner, agent, or corporation from competing or doing any future City work for a period of three (3) years.

2.2.12 Lien Law

All provisions of Section 7-32, Milwaukee City Charter, shall be binding upon the Contractor.

2.2.13 Discrimination in Employment

In accord with Section 109-15, Milwaukee Code and federal guidelines, it shall be unlawful for any private employer performing work within the City involving any public works of the City to willfully refuse to employ or to discharge any person otherwise qualified because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories. The private employer agrees not to discriminate for the same reason in regard to tenure, terms, or conditions of employment; to deny promotion or increase in compensation solely for these reasons; to publish offer of employment based on such discrimination; to adopt or enforce any rule or employment policy which discriminates between employees; to seek such information as to any employee as a condition of employment; or to penalize any employee or discriminate in the selection of personnel for training, solely on the basis of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories.

The Contractor shall include or cause to be included in each subcontract covering any of the work covered by this contract, a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.

2.2.14 Americans With Disabilities Act

Contractor (Vendor, Consultant, Lessee, etc.) agrees that Contractor will comply with all applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, et seq.

CHAPTER 2.3.0
NECESSARY NOTICES AND PERMITS

2.3.1 Notice to Proceed with Work

The Commissioner shall notify the Contractor of the date to commence work covered by the contract. Upon receipt of such notice the Contractor shall comply with all notice requirements set forth below and in the specifications.

2.3.2 Notice to Fire, Police, and Sheriff

Contractor shall give notice in writing to the Chief Engineer of the Fire Department and to the Chief of Police of the City of Milwaukee and to the Sheriff of Milwaukee County at least three (3) days before blocking off any street.

2.3.3 Notice to Utilities, City Bureaus and Governmental Units

The Contractor shall notify all utilities, City bureaus, and governmental units whose property may be affected by the Contractor's operations at least three (3) days before breaking ground. The Contractor shall not interfere with said property until the expiration of the time specified in said notice and then only by permission of the Commissioner, nor shall the Contractor hinder or interfere with any person in the protection of such work or with the operation of buses at any time except with the permission of the Commissioner.

2.3.4 Notice to Railroads

The Contractor shall send by registered mail a notice to the district or division engineer or persons in charge of the operations of trains for any railroad at least ten (10) days prior to doing any work in the right-of-way or any track zone. Such Contractor shall ascertain the schedule of all trains and shall comply with all rules and regulations requested by the railroad company.

2.3.5 Notice for State Arterial Highways

Whenever the work will obstruct or in any other way affect through vehicular traffic on State arterial highways, the Contractor shall give notice at least three (3) days in advance thereof to the State of Wisconsin, Department of Transportation, Division of Highways, and the Traffic Division of the Infrastructure Division of the City.

2.3.6 Notice to Support Buildings

Whenever the work endangers the support or involves the undercutting of any building or other structure along the site of work, the Contractor shall send by registered mail, return receipt requested, a written notice to the owner or the owner's agent to support such building or structure, and following the service of the notice, the contractor shall allow a reasonable length of time for the placing of the necessary support. Such notice shall be in accordance with applicable law.

2.3.7 Notice of Work Suspension

In case the work is stopped and is to remain stopped for any considerable length of time, the Contractor shall promptly notify the Commissioner. At least three (3) days before the work is to be resumed, the Contractor shall again notify the Commissioner.

2.3.8 Permits and Licenses

The Contractor shall procure all necessary permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the work.

2.3.9 Permit for Parks and Parkways

The Contractor shall obtain a permit from the local park authority for construction work to be done within the limits of parks or parkways.

2.3.10 Permit for Storage of Materials

When the Contractor finds it necessary to store materials on a street which is open to traffic, such Contractor shall obtain a permit from the Department of Public Works to store such materials at the designated location.

2.3.11 Water Permit

If for any reason a contractor requires the use of a fire hydrant to supply water, the contractor shall obtain a hydrant use permit as required by the Milwaukee Water Works.

2.3.12 Permit for Excavation

Before starting excavation in any street, roadway, or other public way, the Contractor must obtain a permit from the Department of Public Works.

2.3.13 Permit for Street Closings

When it is necessary to close any street to traffic, the Contractor shall obtain a permit from the Department of Public Works. The only exception would be for contractors paving or reconstructing a street.

2.3.14 Permit for Blasting

Before doing any blasting the Contractor shall, with the approval of the Commissioner, obtain a permit from the Building Inspector. The Commissioner reserves the right to order the discontinuance of blasting operations at any time.

2.3.15 Copies of Notices and Permits

Copies of all written notices and permits shall be submitted to the Commissioner or the Commissioner's representative prior to the commencement of construction.

2.3.16 Notice to Cable Franchises

The Contractor shall notify all cable television franchises whose property may be affected by the Contractor's operations at least three (3) days before breaking ground. The Contractor shall not interfere with said property until the expiration of the time specified in said notice and then only by permission of the Commissioner, nor shall the Contractor hinder to interfere with any person in the protection of such work.

CHAPTER 2.4.0
CONTROL OF WORK AND MATERIALS

2.4.1 Plans and Specifications to be Available

The Contractor shall keep a legible copy of the plans, if any, and specifications at the site of the work.

2.4.2 Contractor's Representative

The Contractor shall either give personal superintendence to the work and be present, or shall have at the site of the work at all times while work is in progress, a representative having authority both to receive orders from the Commissioner and to act for the Contractor. Such representative must be thoroughly familiar with the work and be acceptable to the Commissioner and must be capable of reading and understanding the plans and specifications and capable of directing the work as called for by the contract documents.

2.4.3 Authority and Duties of Inspectors

Inspectors employed by the City shall be authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the materials to be used. The Inspector is not authorized to revoke, alter, or waive any requirements of the specifications, nor is the Inspector authorized to approve or accept any portion of the completed project. The Inspector shall call the attention of the Contractor to any failure of the work or materials to conform to the specifications and contract and shall have the authority to reject materials. Any dispute between the Inspector and Contractor shall be referred to the Commissioner. Any advice which the Inspector may give the Contractor shall in no way be construed as binding the Commissioner or the Commissioner's representative in any way or releasing the Contractor from fulfilling any of the terms of the contract.

2.4.4 Performance of Work

All work to be performed must be in accordance with the contract documents and subject to the supervision, approval, and acceptance of the Commissioner.

2.4.5 Materials, Labor, Equipment, Etc.

All construction materials to be used on the work, all materials to be incorporated into the work, and all labor, equipment, plant, tools, appliances, or methods to be used on the work shall be subject to the inspection and approval or rejection of the Commissioner. It is understood that, except as otherwise specifically stated in the contract documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and all other service and facilities of every nature whatsoever necessary to execute, complete, and deliver the work within the specified time.

2.4.6 Decisions of the Commissioner

All work shall be done in compliance with the contract documents. The Commissioner shall decide all questions which shall arise as to the quality and acceptability of materials furnished, work performed, manner of performance, extensions of time, rate of progress of the work, interpretation of the plans and specifications, acceptable fulfillment of the contract, compensation, disputes, and mutual rights between Contractors under the Specifications. All questions as to the meaning of the contract documents and all questions as to the interpretation of any orders or directives which may have been issued in connection with the work shall be decided by the Commissioner whose decision shall be considered final and conclusive between the parties hereto and binding upon them.

2.4.7 Order of Work

The place of commencement, the sequence of operations, and the prosecution of the work may be determined by the Commissioner as he shall deem fit to best serve the needs and the convenience of the public and for the proper and timely completion of the contract.

2.4.8 Regulation of Tools, Equipment, and Plant Usage

The Commissioner reserves the right to regulate the time of usage or to prohibit the use of any type or kind of tools, equipment, and plant which may cause objectionable smoke, noises, odors, or damage to property.

2.4.9 Gas-Powered Equipment

The Commissioner reserves the right to prohibit the stationary use of gas or diesel-powered plant equipment when such usage would cause objectionable noises, odors, or damage to property or trees.

2.4.10 Electrically-Powered Plant

Where conditions are such that, in the opinion of the Commissioner, an electrically-powered plant should be used, the Commissioner shall have the right to order the Contractor to furnish an adequate plant powered by electric service.

2.4.11 Location and Type of Plant

The location and type of any plant, at the site of the work, including buildings, machinery, equipment, and tools, is subject to the approval of the Commissioner. If these are furnished, placed, or used without approval, the Commissioner may require the removal and substitution of any or all parts of the plant, including buildings, machinery, equipment, and tools, to a location and of a type acceptable to the Commissioner.

2.4.12 Right to Inspect and Test Materials

All materials to be used in the work are subject to the inspection, testing, and approval of the Commissioner or the Commissioner's authorized representatives at the place of manufacture, the site of the work, or other location, and before use, or before, during, or after the incorporation of such materials into the work. The Contractor shall, at all times, afford the necessary facilities for the Commissioner and the Commissioner's representatives to examine or sample all materials and to inspect the work, plant, equipment and tools in order to determine whether the materials, operations, workmanship, methods, and finished work comply with the requirements of the contract documents.

2.4.13 Inspection

All materials and each part or detail of the work shall be subject at all times to inspection by the Commissioner or the Commissioner's authorized representatives, and the Contractor shall be held strictly to the true intent of the specifications in regard to quality of materials, workmanship, and the diligent execution of the contract. Such inspection may include mill, plant, or shop inspection, and any material furnished under these specifications is subject to such inspection. The Commissioner or the Commissioner's representatives shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is determined by the Commissioner or the Commissioner's representative to make a complete and detailed inspection.

The Contractor shall, if the Commissioner requests, remove or uncover such portion of the finished work as the Commissioner may direct before the final acceptance. After the examination, the Contractor shall restore said portion of the work to the standard required by the specifications. If the work thus exposed and examined proves acceptable, the expense of uncovering or removing and replacing the parts removed shall be paid for as extra work but, if the work so exposed and examined is unacceptable, the expense of the uncovering or removing and replacing in accordance with the specifications shall be borne by the Contractor. Failure or negligence on the part of the Commissioner or the Commissioner's representative to condemn or reject substandard or inferior work or materials shall not be construed to imply an acceptance of such work or materials, if it becomes evident at any time prior to the final acceptance of the work by the City. Neither shall it be construed as barring the City at any subsequent time from the recovery of damages or of such a sum of money as may be needed to rebuild and/or replace all portions of the substandard or inferior work or replacement of improper materials wherever found. Any portion of the work or any material incorporated into the work, which may have become damaged during the progress of the work, shall be removed and replaced at the expense of the Contractor prior to final inspection and acceptance of the work.

2.4.14 Source of Supply

The Commissioner reserves the right to prohibit the use of materials from any source when such material is known to the Commissioner to be inferior and from any plant when its mode of operation is known to the Commissioner to be such as to make improbable the supplying of reasonably uniform material.

2.4.15 Or Equal Clause

Whenever a material, article, or piece of equipment is identified on the plans or in the specifications by reference to manufacturers or vendors names, trade names, catalogue numbers, etc., it is intended merely to establish a standard, and any material, article, or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design shall be considered equally acceptable provided the material, article, or equipment so proposed is, in the opinion of the Commissioner, of equal substance and function. It shall not be purchased or installed by the Contractor without the Commissioner's written approval.

2.4.16 Continuous Work

The Contractor shall execute the work only in the presence of the Commissioner or the Commissioner's representative during the working hours of the day unless, at the Contractor's own volition upon due notice to the Commissioner and with the Commissioner's approval, the Contractor desires to prosecute the work continuously or at night. In all cases, the Contractor shall provide such facilities for carrying on night work as the Commissioner directs. No claims shall be allowed for extra payment on account of night or continuous work nor for damages or detriment to the quality of work which may be incurred by the Contractor in being permitted to carry on work during such time, it being understood that full compensation for night or continuous work and all expenses incident thereto are included in the prices for the various items in the contract.

2.4.17 Progress of the Work

The Contractor shall proceed with diligence to do the work and shall work continuously without delay. The Contractor shall not suspend operations at own discretion for whatever purpose without City of Milwaukee approval. It is the intent under this Section of the General Specifications that the work proceed continuously and expeditiously to completion irrespective of time allowed for completion of the work. Should the Contractor fail to prosecute the work continuously and expeditiously, the Commissioner may invoke the provision of Section 7.14(2) of the Milwaukee City Charter with a recommendation to the Common Council that the Contractor is not deemed to be a competent and reliable bidder and be disbarred from bidding for a period of time. If interruption of the work occurs during the term of contract which is beyond the control of the Contractor, i.e., strikes, governmental regulations, severe shortage of building materials, fires, or floods which are entirely beyond the control of the Contractor, the Contractor shall within such time as the Commissioner deems reasonable present written notice of such conditions to the Commissioner with a request for interruption of the work or an extension of the time for the completion of the entire contract. If said delays are approved by the Commissioner, such delays will entitle the Contractor to an extension of time as provided herein, but the Contractor shall not be entitled to damages or additional payment due to these delays. Whenever the Commissioner shall have taken action for the reasons described above to change the term of the contract described in this agreement, it is incumbent upon the Contractor to notify the Surety of such change.

Should the Contractor fail to maintain the rate of progress required to complete the work within the contract time specified, the Commissioner may require that additional workers or equipment be placed on the work or a reorganization of plant layout be effected in order that the work be brought up to schedule and maintained there. Should the Contractor fail to comply therewith, the Commissioner may proceed under the provisions of 2.4.18 of these Specifications.

In the event work is prosecuted during adverse weather conditions, the Contractor will be required to exercise precautions necessary to produce satisfactory work and shall protect the finished work from the elements. It is agreed and understood that the cost thereof has been included in the unit prices bid for the various items of work in the contract and that no extra compensation be allowed therefore.

2.4.18 Default and Completion of Work

The Commissioner has the right, in case of the improper or imperfect performance of the work, to suspend the work at any time and to order the entire reconstruction of the same or to re-let the same to some other competent party. The Commissioner has the right, in case the work shall not be prosecuted with such diligence and with such number of employees to insure its completion within the time limited by the contract documents, to suspend such work and re-let the same to some other competent party or employ personnel and secure material for the completion of the same and charge the costs thereof to the Contractor.

When the Contractor or Surety, both if locally available, are notified that the Commissioner has elected to suspend the work, the Contractor shall cease to have the right to occupancy of the work site, and the Commissioner shall have the right to forthwith take possession of any materials, tools, equipment, or plant delivered thereon for work under the contract.

The Surety shall have the right to complete the contract, but in the event that performance has not been commenced within ten (10) days from the date of the notice of suspension, the Commissioner has the right to continue in the possession of and utilize, for the completion of the contract, any and all materials, tools, equipment, and plant which the Contractor has had delivered upon the site of the work, and to prosecute the work to completion either by force account or by contract.

Expenditures made by the Commissioner in completing the work under the contract and in payment of valid claims arising under the terms of the contract shall be deducted from monies due or which would have become due to the Contractor upon completion of the contract. No claims for "extras" arising from the Commissioner's actions in completing the work will be entertained. The Contractor and Surety shall be liable and shall reimburse the City for any costs, in excess of the contract amount, required to complete the work.

2.4.19 Assumption of Control of Work Not a Waiver

Neither the acceptance of any work by the Commissioner nor any order, measurement, or certificate by the Commissioner for payment of money nor any payment for nor acceptance of the whole or any part of the work by the Commissioner, nor any extension of time except for causes beyond the control of the Contractor as set forth above, nor any possession taken by the City or its employees, shall operate as a waiver of any portion of this contract or of any power herein reserved to the City or any right to damages herein provided; nor shall any waiver of any breach of this contract be held to be a waiver of any other or subsequent breach.

2.4.20 Workmanship

All workmanship shall conform to the best standard practice. Unless otherwise specified, the specifications of recognized association of manufacturers and contractors or industrial manufacturers shall be used as guides for the standards of workmanship.

All exposed items of work shall present a neat and acceptable appearance and shall be as true to shape and alignment as is possible to obtain with measuring or leveling instruments generally used in the respective types of work. Items of work shall be sound and fully protected against damage and premature deterioration. It is specifically understood that in all questions of quality and acceptability of workmanship, the Contractor agrees to abide by the decisions of the Commissioner.

The Contractor shall furnish all labor, materials, necessary tools, equipment, and accessories that are necessary for integrating all portions of the work included in the contract to fulfill the true purpose and intent of the contract.

2.4.21 Partial Acceptance

When requested by the Contractor and upon specific approval of the Commissioner, prior to final inspection and acceptance, the Contractor may be relieved of maintenance of sections of the work which have been completed. Such partial acceptance and assumption of the maintenance by the City shall be covered by a written notice from the Commissioner to the Contractor, and such notice shall definitely designate the sections of the work on which the Contractor is to be relieved of maintenance and shall also set forth the date upon which such notice will be effective. The assumption of maintenance by the City, however, shall not relieve the Contractor of any responsibility for defective workmanship or materials or for damages caused by the Contractor's own operations.

Such action shall not be construed to be a final inspection or acceptance of any part of the work nor waiver of any legal rights.

2.4.22 Final Acceptance

The Commissioner shall make an inspection of the work included in the contract as soon as practical after notification by the Contractor and confirmation by the Inspector that such work has, in their opinion, been completed and final clean up performed.

Should the inspection disclose any work, in whole or in part, as being unsatisfactory, the Commissioner shall give the Contractor the necessary instructions for correction of the same, and the Contractor shall immediately comply with and execute such instructions. Upon correction of the work, another inspection will be made which shall constitute the final inspection provided the work has been satisfactorily completed.

All work included in the contract shall be considered accepted on the date certified to the Commissioner as completed by the Engineer in Charge or other authorized representative.

2.4.23 Employee Qualifications

The Contractor shall employ only such foremen, mechanics, laborers, or other employees as are physically fit, competent, experienced, and qualified to handle each class of work on which they are employed. Any person previously discharged by order of the Commissioner from work on any City contract shall not be permitted to work on this contract without first obtaining written permission from the Commissioner.

2.4.24 Employees to be Discharged for Cause

When any employee willfully, negligently, or ignorantly fails to perform any of the duties or assignments or is disobedient or abusive and disrespectful to a fellow employee or to the Commissioner or the Commissioner's representative, such employee shall, upon written order from the Commissioner to the Contractor, be discharged from the work.

2.4.25 Blasting

In all blasting operations, the Contractor shall abide by all provisions of Section 32-26, Milwaukee Code of Ordinances.

2.4.26 Right of Entry

The Commissioner reserves the right of entry to any portion of the site of the work. Such right of entry shall also be available to the City forces, utilities, or contractors for the purpose of constructing collateral work or making emergency repairs. The contractor shall not be entitled to any damages for delays or hindrances resulting from such work.

2.4.27 Guarantee

Contractor guarantees the work performed under this contract for the period set forth in the technical specifications.

CHAPTER 2.5.0
SCOPE OF WORK AND SPECIFIC INSTRUCTIONS

2.5.1 Intent of Contract Documents

The true intent of the contract documents is to provide for the construction, execution, and completion in every detail of a complete work or improvement which the Contractor undertakes to do in full compliance with the contract documents and in accordance with recognized engineering and construction principles. The contractor shall perform all items of work covered and stipulated in the proposal and perform altered and extra work, all in accordance with the lines, grades, typical sections, and dimensions given and shall furnish, unless otherwise provided in the contract documents, all material, implements, machinery, equipment, tools, supplies, transportation, electric power and labor necessary to the prosecution and completion of the work.

2.5.2 Location of Underground Structures

It is the responsibility of the Contractor to become acquainted with the location of all underground structures which may be encountered or which may be affected by work under the contract.

The locations of any underground structures furnished, shown on the plans, or given on the site are based upon the available records but are not guaranteed to be complete or correct and are given only to assist the Contractor in making a determination of the location of all underground structures. The Contractor understands and acknowledges that the City is not responsible for any representations made by it to the Contractor relating to the location or dimensions of underground structures.

2.5.3 Harmonious Relations

The Contractor shall work in harmony with other contractors or with utility or City forces engaged in collateral work. The Contractor's operations shall be arranged to prevent interference or damage to the work of others. In case of dispute the decision of the Commissioner shall be final and binding upon the parties affected.

2.5.4 Cleaning of Work Site

The Contractor shall at all times keep the site of the work, including streets, alleys, and all private or public property involved in or adjacent to the work free from any rubbish, surplus, or waste materials that have been deposited by the employees or which have accumulated as a result of the work.

The Contractor shall remove all surplus materials, tools, equipment, or plant, leaving the site of the work and all portions of the finished work clean, unobstructed, and ready for use before the work will be considered completed. The Commissioner may have removed from the site of the work all rubbish, surplus, or waste materials which the Contractor has neglected or refused to remove and deduct the costs of such removal from any monies due the Contractor.

2.5.5 Items Not Listed in "Estimate of Quantities"

Sundry items which are incident to or required in the construction of the work but are not included as items in the estimate of quantities shall be considered an integral part of the contract, and all labor, materials, etc., required for such items shall be furnished by the Contractor and the cost of same included in the unit prices bid.

2.5.6 Omissions, Discrepancies and Corrections

It is the intent of the contract documents that all performance under the contract be in accordance with the best practice. The Contractor shall carefully check the plans both before commencing and throughout the work. The Contractor shall immediately call the Commissioner's attention to any errors, omissions, or discrepancies that the Contractor may discover in the plans before proceeding with the work affected. The Commissioner reserves the right to make such corrections as deemed necessary for the fulfillment of the true intent of the contract documents.

2.5.7 Work to be Done at Contractor's Risk

All work to be done under the contract documents from the commencement until the final acceptance of such work shall be done entirely at the Contractor's risk. No partial payment for, or partial acceptance of, any part of the work shall absolve the Contractor from such risk.

2.5.8 Guarantee

The Contractor shall be liable for the acceptable condition of all work under the contract, both during construction and throughout any guarantee period. The guarantee period, if any, shall commence on the Date of Completion.

If, within said guarantee, repairs, or changes are required in connection with the work, which, in the opinion of the Commissioner, is rendered necessary as a result of the use of materials, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the contract, the Contractor shall promptly, upon receipt of the notice from the Commissioner, and without expense to the City, install the work to a satisfactory condition, correct all defects, make good all damage to the structure, site, or contents thereof, which damage, in the opinion of the Commissioner, results from the use of such inferior or defective materials, equipment, or workmanship.

2.5.9 Breakdown for Partial Estimates

Whenever the Commissioner sanctions partial payments for work completed during any specified period, the Contractor upon request by the Commissioner shall furnish a breakdown of the actual quantities and unit prices used in preparing unit bid price for each item in the Proposal. The breakdown must be balanced and not contain prices which are proportionately higher for work to be completed first than for work to be completed later. The Commissioner reserves the right to order such changes as may, in the Commissioner's opinion, be necessary to balance such breakdown.

2.5.10 Time for Completion - Essence of Contract

The parties hereto specifically understand and agree that the time specified for completion is of the essence of this contract, and the Contractor shall not be entitled to claim performance of this agreement unless the work is satisfactorily completed in every respect within the time specified in the contract.

2.5.11 Contractor to be Charged for Inspection After Time Allowed for Completion has Expired

The Contractor shall be charged for inspection provided by the City or by an agent for the City for each and every day inspection is required on all construction projects after the time allowed for completion has expired. This per diem rate for inspection, when provided by the City, shall include the cost of inspection, construction supervision, clerical, and administrative costs, traffic engineering, vacations, pensions, holidays, overtime, and other similar overhead charges. This charge for inspection will be deducted from monies due the Contractor at the completion of the contract. The amount of the per diem charge shall be set forth in the Bureau Specifications.

An inspector shall be assigned to the project upon notice from the Commissioner to the Contractor to start work. If more than one crew is utilized by the Contractor, as many additional inspectors will be assigned to the work as the Commissioner deems necessary. An additional charge per day after the time allowed for completion shall be made for each such additional inspector. Inspection will be continuous until, in the judgment of the Commissioner, the work is complete. This period of time will include all construction operations, including cleaning of work site. If for any reason a Contractor wishes to suspend operations, a request for permission to do so shall be made in writing to the Commissioner. Such permission will only be granted for conditions beyond the control of the Contractor such as strikes, governmental regulations, severe shortage of building materials, fires, floods, or for other reasons authorized by the Commissioner.

When the official notice requires completion of the contract by a specific calendar date or a specified number of calendar/work days from date of order to proceed, all work including cleanup of the work site must be complete by that date. However, upon written request from the Contractor, an extension of time may be granted by the Commissioner due to conditions beyond control of the Contractor such as strikes, governmental regulations, severe shortage of building material, fires, floods, or for other reasons authorized by the Commissioner.

When a portion of the contract is required to be completed by a specific calendar date or within a specified number of calendar/work days, the per diem charge for inspection will be assessed for each work day beyond that date until the required portion is complete unless an extension of time has been granted.

The decision of the Commissioner shall be considered final in all matters pertaining to the necessity for inspection, the number of inspectors, and the granting of time extension.

2.5.12 Substitution of Materials

The Contractor may submit plans and specifications for a type of material other than those covered by the contract documents, provided they conform to requirements of the contract documents covering the particular type of material for which a substitute is proposed. In all cases, however, the plans and specifications for the proposed substitution must be approved by the Commissioner in writing.

In the event of such substitution, the Commissioner shall require from the Contractor a credit deduction from the contract amount equal to any saving in material cost resulting from use of the proposed substitute.

The name of the manufacturer and location of the plant shall be furnished together with the proposal for the use of any substitute.

CHAPTER 2.6.0
EXTRA WORK AND CREDITS

2.6.1 Revision of Plans

In case the Commissioner deems it advisable or necessary in the execution of the work to make any alteration which will increase or diminish the quantity of labor or material or the expense of the work, such alterations shall not annul or vitiate the contract nor release the Surety. The Contractor shall furnish the necessary labor, material, etc., to complete the work as altered within the time limit originally specified or as extended by the Commissioner. The difference in cost of the work so altered shall be added to or deducted from the amount otherwise due the Contractor, as the case may be, and shall be determined in accordance with the methods specified in this chapter.

2.6.2 Authority for Altered Work

No alteration in the work under the contract shall be made without a written order from the Commissioner. No verbal suggestion or order of any employee of the Department of Public Works or of any other person shall be construed as authorizing any claims on the part of the Contractor for extra compensation for labor, materials, or other items pertaining to such work, or for damages or any other expense because of the Contractor's compliance therewith.

Verbal orders and suggestions as to the performance of the work may be given from time to time by representatives of the Commissioner, but when, in the opinion of the Contractor, such orders or suggestions involve extra work for which added compensation should be received, a written order from the Commissioner authorizing such work shall be requested. In the event of any disagreement as to the amount of work involved under any authorized order for extra work, it is specifically agreed by all parties that the decision of the Commissioner shall be binding and conclusive.

2.6.3 Basis of Payment or Credit for Altered Work

The method of determining the basis of payment or credit resulting from such altered work shall be:

A. By the UNIT BID PRICE named in the proposal for like items of work.

B. By a SUPPLEMENTAL SCHEDULE OF PRICES stated by the Contractor in the proposal when such bids are requested and when the Unit Bid Price is not applicable.

C. By the predetermined FIXED UNIT PRICE contained in the "Supplemental Schedule" included in the contract documents when the Unit Bid Price is not applicable or when a Supplemental Schedule of Prices bid by the Contractor was not required.

In the event that none of the three foregoing methods are applicable, the Commissioner reserves the right to employ any of the following methods:

D. By Unit Prices submitted by the Contractor and accepted by the Commissioner.

E. By a Lump Sum Price submitted by the Contractor and accepted by the Commissioner

F. By a Cost Plus 15% Basis. Cost is hereby defined as including the actual cost of labor, foremen over labor actually employed upon the extra work (time of foreman if engaged upon supervising other work to be prorated), labor liability insurance, the Contractor's payroll taxes, if any, and materials delivered upon and forming a part of the extra work, but excluding all administration and clerical expenses, all supervision and superintendence above foreman, and use and upkeep of small tools, plant and machinery and rent of storage yard. Prevailing rental rates on special tools and equipment and actual cost of special services will be allowed the Contractor without the above specified 15% added thereto.

2.6.4 Claims for "Cost Plus" Extra Work

Claims for such extra work shall not be considered unless the Contractor presents to the Commissioner's representative on the work an itemized statement in duplicate of the hours of labor, quantities of materials, etc., upon which payment is to be based. The Commissioner's representative shall verify such amounts and shall retain the original for the Commissioner and return the duplicate copy to the Contractor. The verification of such items by the Commissioner's representative shall not in itself be construed as authorization or acceptance of such claims. No claims will be considered until the original bills, receipts, or vouchers have been furnished to the Commissioner by the Contractor.

2.6.5 Time Limit for Filing Claims for Extra Work

Claims for extra work shall be filed at such intervals as directed by the Commissioner or as designated in the contract documents, but in all cases not later than five (5) days after the Date of Completion.

Chapter 2.7.0
PROTECTION OF WORK

2.7.1 Protection of Work

During performance and up to completion date of work, the Contractor shall be under an absolute obligation to protect finished and unfinished work against any damage, loss, or injury, and in the event of such damage, loss or injury, the Contractor shall promptly replace or repair such work, whichever the Commissioner shall determine to be preferable. The performance of any work by City forces, when done in conjunction with work under the contract, shall not relieve the Contractor from full responsibility and liability.

2.7.2 Street Barricades, Signs, and Warning Devices

The Contractor shall be responsible for the erection and maintenance of all barricades, lights, and signs necessary for public safety and convenience in accordance with the specifications entitled "Minimum Requirements for Warning Devices to be Used for Work Performed in the Public Ways." In general, all hazards within the limits of the work or on detour around the work must be marked with well-painted, well-maintained barricades, reflectors, electric lights, flashers, and warning and directional signs in sufficient quantity and size adequate to protect life and property. These safeguards shall be moved, changed, increased, or removed as required during the progress of the work to meet changing conditions.

2.7.3 Street Barricades and Detour Signs

Whenever the Contractor shall have received a permit to close any street, alley, or public right of way to travel, the Contractor shall immediately upon the closing of such thoroughfare furnish, erect, and maintain substantial barricades across the streets, alleys, or property affected and shall furnish, post, and maintain detour signs thereon. Detour signs shall also be posted and maintained at immediately adjacent street and alley intersections for the convenience and guidance of traffic. The barricades and detour signs shall be illuminated by yellow lights throughout the night, or, when visibility is poor, detour signs shall conform to the standard detailed and shown in the specifications.

2.7.4 Flagpersons Required

Whenever the Contractor's operations obstruct or endanger a traffic lane and no marked detour has been provided, the Contractor shall furnish a flagperson to direct traffic through or around the congested area. The Commissioner shall have the right to require additional flagpersons as may be deemed necessary.

2.7.5 Removal of Snow

The Contractor shall be responsible for immediate removal of snow from those sections of streets and/or alleys which the Contractor has obstructed.

CHAPTER 2.8.0
PROPERTY PROTECTION AND SANITATION

2.8.1 Protection of Work and Property - Emergency

A. The Contractor shall at all times safely guard City property from injury or loss in connection with this contract. Contractor shall at all times safely guard and protect the work site, and that of adjacent property, from damage. The Contractor shall replace or make whole any such damage, loss, or injury unless such be caused directly by the City.

B. In case of some emergency which threatens loss or injury of property and/or safety of life, the Contractor will be allowed to act, without previous instructions from the Commissioner, in a diligent manner. The Contractor shall notify the Commissioner immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly submitted to the Commissioner for approval. The Commissioner's determination shall be final and conclusive.

C. Where the Contractor has not taken action but had notified the Commissioner of an emergency threatening injury to persons or damage to the work or any adjoining property, the Contractor shall act as instructed or authorized by the Commissioner.

2.8.2 Safeguarding Adjacent Buildings

Prior to commencing an excavation or tunnel in the immediate vicinity of any building or other structure, the safety of which may be endangered thereby, the Contractor shall comply with all requirements of applicable law. The Contractor shall serve the required notice upon the owner of such building or structure or the agent, naming the date of commencement of such work and allotting a reasonably sufficient length of time for the owner to take steps to protect the property. Throughout the course of the work adjacent to such property, the Contractor shall exercise due precaution and care and, at own expense, shall furnish and place such extra timbering, bracing, and sheathing as may be necessary to insure against the loss of ground adjacent to the excavation or tunnel and, when so indicated on the plans or when so ordered in writing, as an extra, by the Commissioner, shall leave such portions of timbering, bracing, and sheathing in place, as the Commissioner may direct. The Contractor must also take necessary precautions in the work operations to prevent the loss or settlement of such adjacent grounds and avoid the use of equipment which would tend to encourage such settlement or loss of ground.

2.8.3 Property Safeguards

The Contractor shall safeguard from and be solely responsible for all damage resulting from the work operations to water, gas, steam or drain pipes, street and building sewers, building services, catch basins, manholes, conduits, cables, hydrants, valve and stop boxes, light poles, street lighting cables and transformers, traffic signals, traffic and street signs, fire and police alarm boxes, mail boxes, or any

other privately or publicly owned existing installation or structure and the right-of-way structure of any steam or electric railway or railroad. The Contractor shall also safeguard from and be solely responsible for damage to pavements, sidewalks, curbs, gutters, trees, shrubbery, or lawns, except in such cases where the removal without replacement has been authorized in the contract documents or by the Commissioner. The cost of all safeguarding shall be included in the price bid for work under the contract.

2.8.4 Access to Properties

During the work the Contractor shall not shut off nor unnecessarily interfere with either pedestrian or vehicular access to property without the consent of the Commissioner.

2.8.5 Work in Private Right-of-Way

Whenever the work is to be prosecuted through private property for which the City has obtained a license or an easement, the Contractor shall abide fully with the terms of the license or the easement, a copy of which is on file in the Department of Public Works.

2.8.6 Statement from Easement Grantors

Before final payment will be made, the Contractor shall obtain and submit to the Commissioner a statement from the parties granting the license or easement, which statement shall be in the following form:

Date _____

Commissioner of Public Works,
City of Milwaukee:

The property owned by the undersigned has been left in a satisfactory condition, following the recent completion of construction work through such property, as described in the license or easement agreement permitting such work.

_____ _____
(Witness) (Owner)

_____ By _____
(Witness) (Title)

2.8.7 Failure to Secure Statement

In case the Contractor is unable to secure the above statement, the Contractor shall inform the Commissioner of the reasons for failure to do so. The Commissioner or the Commissioner's representative shall then examine the site, and the Commissioner shall direct the Contractor to complete any work that may be necessary to satisfy the terms of the license or easement. Should the Contractor refuse to do the work, the Commissioner reserves the right to have it done by contract or force account and deduct the cost of same from monies due the Contractor, or the Commissioner may require the Contractor to furnish a bond in a sum satisfactory to the Commissioner to cover any legal claims for damages. When the Commissioner is satisfied that the work has been completed in compliance with the contract documents and the terms of the license or easement, the Commissioner reserves the right to waive the requirement of obtaining the statement, when the Contractor's failure to obtain such statement is due to the grantor's refusal to sign and this refusal is not based upon any legitimate claims that the Contractor has failed to fulfill the terms of the license or easement or when the Contractor is unable to find or undue hardship would be imposed to solicit the grantors.

2.8.8 Maintenance of Crosswalks and Gutters

Suitable pedestrian crossings, at least four feet in width, shall be provided and maintained by the Contractor as directed by the Commissioner. Gutters must not be obstructed at any time, and where it is necessary to cover them, a continuous pipe or timber drain ample to carry off the storm waters shall first be laid along the gutter, and such pipe or drain shall be kept open and free from obstructions.

2.8.9 Sanitary Regulations

The Contractor shall construct and maintain properly sheltered sanitary conveniences for the employees, and their use must be strictly enforced. When permission is granted to use the manholes of designated sewers for sanitary outlets, such manholes must be flushed and cleaned periodically and thoroughly cleaned when no longer in use.

2.8.10 Drainage

Drainage must not be obstructed at any time. When necessary, a continuous pipe or timber drain of ample capacity shall be laid to carry off the storm water. Such pipe or drain shall be kept open and free of obstructions. All storm or ground water, which is to be removed from the site of the work, must be conveyed to an inlet of a storm or combined sewer, or when so approved by the Commissioner to some other point of disposal.

All sanitary sewage must be conveyed by closed pipe or hose to an inlet of a sanitary or combined sewer, or when so approved by the Commissioner, to some other point of disposal. Proper precautions shall be taken to prevent excessive quantities of clay, sand, or silt from entering existing sewers. All existing structures which are disturbed must be restored to a condition at least equal to their original condition and to the satisfaction of the Commissioner.

2.8.11 Access to Public and Private Underground Structures and Appurtenances

Free access must always be maintained to fire hydrants, fire alarm and police call boxes, water and gas gate valves, catch basins, sewer, water, Bureau of Traffic Engineering and Electrical Services, utilities, manholes, and appurtenances. Whenever free access to any such structure shall have been obstructed or interfered with during the progress of the work, the Contractor shall immediately remove, at the Contractor's own expense, such obstruction or interference.

2.8.12 Water Line Connections to Hydrants

The piping and fittings which the Contractor employs for connecting a water supply line to a City hydrant shall be equipped with a valve to be used in place of the regular hydrant valve which shall remain fully opened during usage. The fitting and valve assembly shall be watertight.

2.8.13 Traffic

The Contractor shall maintain vehicular traffic as specified in the contract documents or as otherwise directed by the Commissioner.

2.8.14 Emergency Maintenance and Protection

In the event it becomes necessary for the City to perform emergency maintenance and protection, which is the responsibility of the Contractor under the contract documents, the cost of such work shall be billed to the Contractor or deducted from the final payment if not paid.

CHAPTER 2.9.0
LEGAL RELATIONS

2.9.1 Laws and Regulations

The Contractor, the Contractor's agents, and employees, shall at all times observe and comply with all Federal laws, rules and regulations, statutes, codes, rules and regulations of the State of Wisconsin, and all applicable charter provisions, codes, regulations, and ordinances of the City of Milwaukee, all amendments thereto, and all the provisions of the contract documents, which in any manner affect the conduct of the work and all such orders or decrees as exist at the present and which may be enacted later of bodies or tribunals having jurisdiction or authority over the work. The Contractor shall protect and save harmless the City, its officers, and representatives, against any claim or liability arising from the violation of any such law, ordinance, code, rule, regulation, or order.

2.9.2 Assignment and Subletting

Any subcontracting of this agreement is mutually recognized by all parties only to the extent of its approval and acceptance by the Commissioner at the time of the award of this contract. The Contractor shall not subsequently assign this contract or any interest therein, nor subcontract the work or any part thereof, without written consent of the Commissioner having first been obtained. If the Contractor submits subsequent written request to the Commissioner for substitution(s) of listed subcontractor(s), the Contractor shall give the Commissioner written assurance that the Contractor will save the City harmless from any damages which may arise from litigation between the original subcontractor(s) and the Contractor as a result of such substitution(s). The decision of the Commissioner shall be final in determining consent for said substitution(s). It is incumbent upon the Contractor to notify the Surety of such consent granted by the Commissioner for said substitution(s).

If the Contractor shall so assign or subcontract without such consent, the Commissioner shall have the right to rescind this contract and to declare the same null and void or to re-let the work to some other competent party, thereupon adjusting and determining the damages to the City arising thereby, and the Contractor shall be liable to the City for such damages as the Commissioner shall so adjust and determine, which adjustment and determination thereof, shall be final and conclusive on the parties thereto.

The Contractor assumes full liability for all acts and omissions of any subcontractor or of anyone employed directly or indirectly by either said Contractor or any subcontractor, and this liability shall be in addition to any other legal liability of the Contractor. Neither the approval nor endorsement of the Commissioner nor anything contained in the contract documents shall be construed as creating any contractual relationship between any subcontractor and the City.

Consent to the assignment or subletting of this contract or of any part thereof or any alterations which may be made in the terms of this contract or in the work to be done under it or the granting of any extension of time for the performance of the contract or any other forbearance on the part of either the Commissioner or Contractor to the other shall not in any way release the Contractor or Surety or their heirs, executors, administrators, successors, or assigns from their liability hereunder.

The Contractor, to the extent practicable, shall maintain a list of all subcontractors and suppliers performing work or furnishing materials under each formal contract. This list must be submitted to the Commissioner upon request.

2.9.3 Patents and Trade Secrets

The Contractor shall hold and save the City and its officers, agents, servants, and employees harmless from liability of 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 City, unless otherwise specifically stipulated in the contract documents.

If the Contractor uses any design, device, or materials covered by letters, patent or copyright, the Contractor shall provide for such use by suitable agreement with the owner of such patented or copyrighted design, device, or material. It is mutually agreed and understood, that without exception, the contract prices shall include all royalties or costs arising from the use of such design, device, or materials, in any way involved in the work. The Contractor and/or Contractor's Sureties shall indemnify and save harmless the City from any and all claims for infringement by reasons of the use of such patented or copyrighted design, device, or materials or any trademark or copyright in connection with work agreed to be performed under this contract and shall indemnify the City for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after the completion of the work.

License and/or Royalty Fees for the use of a process which is authorized by the City must be reasonable and paid by the Contractor to the holder of the patent or authorized licensee.

2.9.4 Liens and Taxes

Any and all taxes and license or permit fees imposed by the Federal, State, and local municipalities are the sole responsibility of the Contractor. Any and all liens or claims of damages which may be chargeable to the Contractor are the sole responsibility of the Contractor. Commissioner reserves the right to withhold a sufficient amount from the contract payment to indemnify the City against such liens or claims of damages.

No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that the Contractor has good title to all materials and supplies used in the work, free from all liens, claims, or encumbrances.

2.9.5 Sales Tax

The City is exempt from Wisconsin Use, Sales Tax, and the .5% County Tax. Bidders, therefore, shall not add sales tax to their proposals when bidding to the City but shall include in their lump sum bids only the sales tax they will be required to pay directly as a consumer when obtaining materials, etc., to fulfill the contract requirements should they be the successful bidder.

2.9.6 Protection Against Liability

Contractor covenants and agrees that Contractor shall save and indemnify and keep harmless the City against all liability, judgments, costs, and expenses, which may in any way come against the City in consequence of the granting of the contract, or which in anyway results from the carelessness or neglect of the Contractor or the agents, employees, or workers of the Contractor or Subcontractors in any respect whatever, and in every such case where judgment is recovered against the City by reason of the carelessness or negligence of the Contractor or the Contractor's agents, employees or workers, or Subcontractors, such judgments shall be conclusive against the Contractor, not only as to the amount of damages, but as to Contractor's liability to the City.

2.9.7 Liability and Insurance

The Contractor shall be responsible for and shall save the City harmless from, and defend the City against all liability for damages occasioned by the digging up, use or occupancy of the street, alley, highway, public grounds, and private grounds, or which may result therefrom or which may result in any way from the negligence or carelessness of the Contractor, the Contractor's agents, employees, workers,

by reason of the elements, unforeseen or unusual difficulties, obstructions, or obstacles encountered in the prosecution of the work, and they shall indemnify the City for and save it harmless from all claims and liabilities, actions, causes of action, and liens for materials furnished or labor performed in the construction or execution of the work and from all costs, charges, and expenses incurred in defending such suits or actions and from and against all claims and liabilities for injury or damage to persons or property emanating from defective or careless work methods, or from and against all claims or liabilities for royalties, license fees, actions, suits, charges, and expenses or damage from infringement for reason of the use of any invention or improvement in tools, equipment or plant or any process, device or combination of devices used in the construction of the work.

Each Prime Contractor must furnish to the City of Milwaukee, prior to the start of work, certificates of insurance which confirm that the Prime Contractor has the types and amounts of insurance referenced in Sections (A) through (D). The Prime Contractor shall require all of its subcontractors to carry the same types and amounts of coverage as required of the Prime or may instead provide the coverage for any or all subcontractors. The Prime Contractor is fully responsible for assuring subcontractor compliance with all the insurance requirements specified herein.

A. WORKER'S COMPENSATION AND EMPLOYEES LIABILITY

Coverage Amounts

Worker's Compensation		Statutory
Employer's Liability		
Bodily Injury by Accident	each accident	$100,000
Bodily Injury by Disease	each employee	$100,000
Bodily Injury by Disease	policy limit	$500,000

To Include

Other state's coverage
United States Longshoremen and Harbor
Worker's Endorsement (Required only when the contract Involves work on navigable bodies of water)

B. COMMERCIAL GENERAL LIABILITY

Limits of Liability

Bodily Injury/Property Damage	each occurrence	$1,000,000
	general aggregate	$1,000,000
	products/completed Operations aggregate	$1,000,000
Personal Injury	aggregate	$1,000,000

To Include:
Occurrence form
Premises/operations coverage
Products/completed operations coverage including extension of coverage for two (2) years after acceptance of work by the City of Milwaukee
Independent contractors (Owners/Contractors Protective) coverage
Contractual liability for risks assumed in this agreement
No exclusion for explosion, collapse, or underground occurrences

C. AUTOMOBILE LIABILITY

Limits of Liability

Bodily Injury/Property Damage	each accident	$1,000,000

To Include:
Coverage on all owned, non-owned, and hired vehicles

D. UMBRELLA LIABILITY

Limits of Liability

Personal Injury/Property Damage	each occurrence	$2,000,000
	aggregate	$2,000,000

To Include:
Occurrence form
First dollar defense coverage
Insuring agreement which will provide excess protection to the primary coverages

For coverages referred to in section 2.9.7.(b), (c), and (d), the City of Milwaukee shall be named as an additional insured.

The worker's compensation and employer's liability certificate should confirm that thirty (30) days notice of cancellation must be provided. For all other insurance coverages referenced above, sixty (60) days notice of cancellation must be provided.

A separate certificate need not be filed if the Prime Contractor has a current certificate on file with the City of Milwaukee. It is the responsibility of the Prime Contractor to make this determination and to provide evidence of coverage if a previous certification has been filed. No Prime Contractor or Subcontractor shall perform any work under the contract after a certificate has expired or been canceled unless a new or renewal certificate is provided prior to the expiration or cancellation date of the previous certificate. The Prime Contractor shall have the responsibility of ensuring that valid certificates are on file for itself and all Subcontractors it plans to use.

2.9.8 Performance Bond and Payment Bond

For all Public Works contracts over $25,000, the contractor is to submit to the Commissioner, prior to or at the time of execution of the contract, a performance bond and a payment bond in an amount equal to 100% of the Contract price. For contracts of $10,000 or more, but not over $25,000, the contractor may be requested, in lieu of 100% bonds, to provide an irrevocable letter of credit or a performance bond and a payment bond in an amount equal to 50% of the contract price. The bonds required on any contract will be based on the estimated contract amount and will be specified in the bid specifications. All bonds must be executed by a surety company authorized to do business in the State of Wisconsin and must be accompanied by a Power-of-Attorney for the Attorney-in-Fact. The performance bond and the payment bond must be submitted as separate instruments. The performance bond shall also cover all work required under the guarantee provisions of the contract.

2.9.9 Unforeseen Delay

If the City is prohibited or enjoined from proceeding with the work or from authorizing its prosecution, either before or after its commencement, by reason of any litigation or otherwise, the Contractor shall not be entitled to any damages by reasons of the delays thereby caused, except for the actual cost of protection of such work as the Contractor may have underway for the cost of removal and replacement of such tools, plant, and materials, as the Contractor may have delivered upon the work site, and such cost is to be determined by the Commissioner. The time of completion may be extended for such time, as in the judgement of the Commissioner, shall be equal to the aggregate delay.

2.9.10 Default, Neglect, or Delay Shall Not Render the City Liable

The default, neglect, or delay of any other Contractors, or the extension of time to any of them by the City for the completion of their work, shall not render the City liable to the Contractor or its Surety nor relieve them or either of them in any manner or sum whatsoever.

2.9.11 Termination of Contract for Cause

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the City shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination, specifying the effective date thereof, at least five (5) days before the effective date of such termination. The City may relet the work to be performed under this Contract to some other competent party, or employ persons and secure material for the completion of same, and charge the costs thereof to the Contractor. In such event, all finished or unfinished work accomplished by the Contractor under this Contract shall, at the option of the City, become its property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Contract by the Contractor, and the City may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due to the City from the Contractor is determined.

2.9.12 Termination for Convenience of the City

The City may terminate this Contract at any time for any reason by giving at least ten (10) days notice in writing to the Contractor. If the Contract is terminated by the City as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the work actually performed bears to the total work of the Contractor covered by this Contract, less payments of compensation previously made. However, if less than sixty percent (60%) of the work covered by this Contract has been performed upon the effective date of such termination, the Contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under the Contract) incurred by the Contractor during the Contract period which are directly attributable to the uncompleted portion of the work covered by this Contract.

2.9.13 Collusive Agreements - Prohibited

Each bidder submitting a bid for any portion of the work contemplated by the documents on which bidding is based shall execute, and attach thereto, an affidavit substantially in the form provided to the effect that the bidder has not entered into a collusive agreement with any other person, firm, or corporation in regard to any bid submitted and also include therein compliance with Sec. 3.29, Milwaukee City Charter, such forms of affidavit being on file in the office of the Commissioner.

Before executing any subcontract, the successful bidder shall submit the name of any proposed subcontractor for prior approval and a non-collusive affidavit substantially in the form provided.

2.9.14 Progress Payments

If the Contractor shall proceed properly and with diligence to perform and complete this contract, the Commissioner may, from time to time as the work progresses, grant to the Contractor a payment for the estimated amount already earned, reserving five percent thereof, except that at any time after fifty percent of the work is completed and the Commissioner finds that satisfactory progress is being made, remaining progress payments may be paid in full, which shall entitle the holder thereof to receive the amount due thereon, when the conditions, if any, annexed to such estimate shall have been complied with, and that a payment may be granted by the Commissioner for any fabricated or manufactured materials and components specified, previously paid for by the Contractor and delivered to the work site or properly stored and suitable for incorporation in the work embraced in the contract. The granting of any such estimate shall not be construed as an acceptance of the work or any portion thereof. Generally, payments will be made not more than once a month or for less than $5,000.

Nothing herein shall prevent the Commissioner from withholding additional retainage if work on the project is not satisfactory. In no event, however, shall more than ten (10%) percent of the value of the work completed be retained.

For contracts involving $10,000 or more, the City reserves the right to pay the Contractor with checks that are made payable to the Contractor and one or more subcontractors.

2.9.15 Final Payment

Upon the completion of the work by the Contractor pursuant to the terms of this contract and according to the contract documents and the true intent and meaning of this contract and after the acceptance of the work by the Commissioner, the City shall pay the Contractor, subject to any retainer or guarantee provisions in the contract documents, any balance then remaining due and payable by the terms of this contract.

Final payment may be withheld if prevailing wage statements are not filed or if there is noncompliance with requirements concerning the hiring of residents, disadvantaged businesses and apprentices. If these deficiencies are not satisfied within one (1) year of completion of the work, the department, following a final notification to the prime contractor, may close out the contract account and retain the contract proceeds permanently.

All monies paid or owed by the City to the Contractor shall be and constitute a trust fund, in the hands of the Contractor only, to the amount of all claims due and to become due or owing from the Contractor for lienable labor and materials until all such claims have been paid. The using of such monies by the Contractor for any other purpose until all such claims have been paid is, as declared by Section 779.02(5), and 779.16 Wisconsin Statutes, punishable as therein provided by law.

2.9.16 Final Payment to Terminate Liability of City

A. The acceptance by the Contractor of the "Final Payments" provided for in the contract shall operate as, and shall be, a release to the City and its representatives from all claims by the Contractor for anything done or furnished for or relating to the work or for any act or neglect of the City or of any person relating to or affecting the work.

B. It is the City's policy to pay all invoices within 30 days. If the City does not make payment within 45 days after receipt of properly completed supporting payment and other required contract documentation, the City shall pay simple interest beginning with the 31st calendar day at the rate of one percent per month (unless the amount due is subject to a good-faith dispute and, before the 45th day of receipt, notice of the dispute is sent to the contractor by first-class mail, personally delivered, or sent in accordance with the notice provisions in the contract). If there are subcontractors, consistent with s.66.0135(3), Wis. Stats., the prime contractor must pay the subcontractors for satisfactory work within seven days of the contractor's receipt of payment from the City of Milwaukee, or seven (7) days from receipt of a properly submitted and approved invoice from the subcontractor, whichever is later. If the contractor fails to make timely payment to a subcontractor, the contractor shall pay interest at the rate of 12 percent per year, compounded monthly, beginning with the 8th calendar day. Reference Common Council File No. 101137 adopted January 2011.

2.9.17 Time for Completion

The time specified for the completion of the work is of the essence of this contract, and the Contractor shall not be entitled to claim performance of this contract unless the work is satisfactorily completed in every respect within the time herein specified.

2.9.18 Contractor/City Relationship

The relation of the Contractor to the City is and shall be that of an independent Contractor.

2.9.19 Special Conditions - Federally-Aided Projects

Any special conditions relating to contracts involving the Economic Development Administration (EDA), the Department of Housing and Urban Development (HUD), or federally-assisted projects are subject to the special conditions attached hereto, which special conditions insofar as inconsistent with the provisions and general conditions heretofore stated shall be controlling.

2.9.20 Assignment of Payments

All monies payable under the contract, or any part thereof, will be paid to the contractor in accordance with the provisions of this section, and no assignment or order executed by the contractor directing payment of any portion or all of such funds to any other person or persons will be recognized by the City unless such assignment or order is given and shall have attached thereto, by endorsement or otherwise, the consent of the surety, and any designated assignee. No such assignment or order shall be binding on the City.

2.9.21 Records

Both parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et.seq*. Contractor acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Agreement, and that the Contractor must defend and hold the City harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of final payment under this Agreement.

2.9.22 Audit

Audits and Inspections. At any time during normal business hours and as often as the City, or if federal or state grants or aids are involved, as the appropriate state or federal agency may deem necessary, there shall be made available to the City or such agency for examination all of its records with respect to the matters covered by this Contract and the Contractor shall permit the City or such agency and/or their representatives and agents to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions or employment, and other data relating to all matters covered by this contract.