

101 - DEFINITIONS

Wherever any of the following listed terms appear in these Standard Specifications or in the other Contract Documents, their meaning shall be understood to be as herein set forth, unless the context requires otherwise.

- 101.1 AASHTO
American Association of State Highway and Transportation Officials.
- 101.2 ASTM
American Society for Testing and Materials.
- 101.3 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.
- 101.4 Village Board
The terms "Village Board" or "Board" shall mean The Village Board of the Village of Slinger, Wisconsin.
- 101.5 Calendar Day
Every day shown on the calendar, Sundays and holidays included. Unless otherwise specified in the special provisions of the bidding documents, all references to day (or days) shall refer to calendar days.
- 101.6 Contract Documents
The essential portions of the complete contract listed below:
1. Official Notice to Bidders
 2. Instructions to Bidders
 3. Affidavit of Organization and Authority
 4. Full and Complete List of Subcontractors and Suppliers for Prime Contractors
 5. Contract
 6. Performance Bond
 7. Payment Bond
 8. Wage Rate Requirements
 9. Special Provisions
 10. Bid Proposal
 11. Addenda
 12. Plans (Drawings)
 13. Standard Village Specifications
 14. Other Documents Incorporated by Reference in the Contract
- 101.7 Contract Price
The moneys payable by the Village to the Contractor under the Contract Documents as stated in the contract.
- 101.8 Contract Time
The allowed number of days or the date stated in the contract for the completion of the work.

- 101.9 Contractor
The party or parties to whom a contract has been awarded to perform the work to be done under the specifications and the Contract Documents, or to the legal representative of such party or parties.
- 101.10 Drawings
The same as the term "Plans".
- 101.11 Emergency or Emergencies
Unforeseen occurrences or circumstances requiring immediate action or remedy.
- 101.12 Engineer
The Village Engineer or his authorized representatives.
- 101.13 Inspector
An authorized representative of the Engineer assigned to make detailed inspections of any or all portions of the work and materials.
- 101.14 Owner
The Village of Slinger.
- 101.15 Plans
The approved plans, profiles, typical cross sections, working drawings, and supplemental drawings, or exact reproduction thereof, which show the location, character, dimensions, and details of the work to be done.
- 101.16 Project
The specific work to be performed under the contract.
- 101.17 Project Area or Project Site
The location of the work to be performed under the contract.
- 101.18 Special Provisions
Specifications adopted subsequent to the publication of these specifications which modify, supplement, or otherwise depart from these specifications. The Special Provisions shall supersede the Standard Specifications in case of conflict.
- 101.19 Specifications
The body of directions, provisions, and requirements contained herein, or in supplements thereto, together with written agreements and all documents of any description, made or to be made, pertaining to the method or manner of performing the work, the plans, the quantities, and the quality of materials to be furnished under the contract.
- 101.20 Standard Specifications
The terms "Standard Specifications" or "Village's Standard Specifications" shall mean the "Standard Specifications for Public Works Construction, Village of Slinger, Wisconsin," as approved and adopted by the Village Board.
- 101.21 Subcontractor
Any individual, partnership, joint venture, or corporation to whom the Contractor sublets any part of the work.

- 101.22 Substantial Completion
The words "substantial completion" are used to indicate that the work on the project has progressed to the point where, as determined by the Engineer, it is sufficiently complete, in accordance with the Contract Documents, so that the work can be utilized for the purposes for which it is intended. The words "substantially complete" and "substantially completed" shall mean the same as "substantial completion."
- 101.23 Village
The Village of Slinger, Wisconsin.
- 101.24 Village Datum
The vertical datum for all mapping, planning, design, right of way engineering and construction on Village projects shall be the National Geodetic Vertical Datum of 1929.
- 101.25 Village Engineer
The person performing the duties of the office of Village Engineer for the Village of Slinger under the authority of the Village Board or his authorized representatives.
- 101.26 Wisconsin Construction Site Handbook
The words "Wisconsin Construction Site Handbook" or abbreviation "WCSH" shall mean the "Wisconsin Construction Site Best Management Practice Handbook," latest edition, with all supplements or addenda.
- 101.27 Wisconsin D.O.T. Specifications
The words "Wisconsin D.O.T. Specifications", "D.O.T. Specifications", or "WDOT" shall mean the "Standard Specifications for Road and Bridge Construction," latest edition, with all supplements, of the Wisconsin Department of Transportation.
- 101.28 Wisconsin Sewer and Water Specifications
The words "Wisconsin Sewer and Water Specifications" or "WSWS" shall mean the "Standard Specifications for Sewer and Water Construction in Wisconsin," latest edition, with all addenda.
- 101.29 Work
All material, equipment, labor, and everything necessary to meet the requirements of the Contract Documents.
- 101.30 Workday or Working Day
A calendar day, except Saturdays, Sundays, and Village recognized legal holidays. Unless otherwise specified in the special provisions of the bidding documents, all references to day (or days) shall refer to calendar days.

102 - BIDDING REQUIREMENTS AND CONDITIONS

102.1 Bidders Responsibility

The work shall be let in accordance with the following sections of the Wisconsin Statutes:

1. Section 62.15 regarding public works construction
2. Section 779.14 regarding bonds for contractors.
3. Section 779.15 regarding liens on contractors.
4. Section 66.0903 regarding wage scales.
5. Section 66.0901(2) regarding proof of responsibility.
6. Section 66.0901(7) regarding care in preparing bidders proposal.
7. Section 66.0901(9) regarding estimates of work done and release of funds.
8. Section 66.0831 regarding existing utilities.
9. Section 182.0175 regarding construction precautions near existing transmission facilities.

Failure to list a statute section does not mean that the section does not apply.

102.2 Qualification of Bidders

The Village reserves the right to require information before awarding the contract in order to determine qualification of the bidder to do the work of the contract.

102.3 Rejection of Bids

Any one or more of the following may be considered to be sufficient cause for rejection of a bid or bids:

1. Developments subsequent to establishment of bidder's competence and qualifications which, in the opinion of the Village Board, would reasonably be construed as affecting the ability or responsibility of the bidder.
2. Conviction of a violation of a State or Federal law or regulation, or rule or regulation of a State or Federal Department, board or commission, relating to construction work or reflecting on the competency of the bidder for performing construction work.
3. More than one proposal for the same work from an individual, partnership, joint venture, corporation, limited liability company, or limited liability partnership under the same or different names.
4. Noncompliance with terms of previous or existing contracts.
5. Uncompleted work which, in the judgement of the Village Board, might hinder or prevent the prompt completion of additional work if awarded.
6. Uncompleted work on other projects for the Village on which the actual time used has exceeded the contract time, or on which work the performance or progress is not satisfactory in the judgement of the Village Board.
7. Inability to obtain the bonds required in the Contract Documents.

8. Unsatisfactory references from other communities or other government agencies or no prior experience in the type of work proposed in the Contract Documents.
9. Any other cause which the Village Board determines to be a reasonable basis for rejection of a bid or bids.

In addition, one or more of the following may be considered as sufficient cause for disqualification of the bidder from bidding on other Village Projects for such periods of time as shall be determined by the Village Board.

1. Evidence of collusion among bidders.
2. Lack of responsibility as shown by past work for the Village.

Proposals may be rejected if they show any alterations of form; if they include additions or amendments not specifically requested by the Village prior to bidding; if they include conditional or alternate bids not specifically requested by the Village; or if the proposal is incomplete or contains any erasures

102.4

Method of Bidding

Bids shall be submitted on the Bid Proposal form prepared by the Village. An affidavit of organization and authority which indicates whether the bidder is a corporation, a partnership, or a sole trader must be attached to the bid proposal. The affidavit must contain a sworn statement that the bidder has examined and carefully prepared the proposal from the plans and specifications and has checked the same in detail. (Section 66.0901 (7), Wisconsin Statutes). Facsimile or other electronic transmission of the Bid Proposal and required supporting documents to the Village is not acceptable.

A bid bond in the form specified by the Village or a certified check for five percent (5%) or more of the total bid amount shall be submitted by the bidder with the bid as a guarantee that if the bid is accepted, the bidder will execute the contract and furnish the payment and performance bonds, or other required security, within the time stipulated by the Village.

102.5

Preparation of the Proposal

The bidder shall submit his proposal on the form or forms furnished by the Village. The bidder shall submit a dollar amount for each unit price and total bid price. In case of a conflict in the dollar amounts, the unit price multiplied by the respective quantity shall govern.

Proposals or bids shall be prepared in ink or typewritten and shall be signed by the bidder in ink.

102.6

Executing the Contract

If the bid is by a corporation, the Contract form shall be signed with the corporate name and by both the president and the secretary of the corporation. The corporate seal shall be affixed in the space provided. If the corporation has no seal, a statement to that effect shall be made. If the contract is with a corporation, and it is not signed by both the president and secretary, then a certified copy of action by the Board of Directors shall be supplied, which indicates the authority of the parties signing the contract to sign for the corporation.

If the bid is by a partnership, the Contract shall be signed in the partnership name and then by each of the partners. If it is not possible for all partners to sign the Contract, satisfactory proof shall be furnished, which indicates the authority of the partner or partners who sign the Contract to bind the partnership.

102.7

Examination of the Contract Documents and Work Site

Submission of a bid or proposal shall be considered conclusive evidence that the bidder has carefully examined the Contract Documents and work site and is satisfied with the conditions, including above ground and subsurface conditions, to be encountered while performing the work indicated therein. It will also be proof that the Contractor understands the character, quality and quantity of the work to be performed and the materials to be furnished and understands the requirements set forth in the Contract Documents. No increase in cost or extension of time will be granted for failure to know and understand the conditions relative to the work involved.

When the Plans or Special Provisions contain information relative to subsurface exploration, locations of underground structures, borings, soundings, water levels, elevations, profiles or other investigations, such information represents only the best knowledge of the Engineer and was obtained for design and estimating purposes only. It is made available to the bidder to provide him with the same information available to the Engineer and is not intended as a substitute for the personal investigation, interpretation and judgement of the bidder.

102.8

Estimate of Quantities

An estimate of the quantity of the work to be done under the specifications is set forth on the proposal form. The quantities of work shall be considered approximate and are used for comparison of bids only. Unless specified otherwise, the Village does not agree or imply that the actual quantities involved in the work will correspond exactly therewith and shall not be liable for any deviation of the actual quantities from the bid quantities, location, or conditions pertaining to the work.

102.9

Omissions and Discrepancies

Should a bidder find discrepancies in, or omissions from, the Plans, Specifications, Special Provisions, or Contract Documents, or should the bidder not fully understand them or their intent concerning any part of the work, he shall satisfy himself by making the necessary inquiries of the Engineer at least five (5) working days before bidding. If a discrepancy or omission is recognized and if considered significant by the Engineer, the Engineer shall correct the omission or discrepancy, in writing, as an addendum which shall be furnished to all plan holders.

103 - AWARD AND EXECUTION OF THE CONTRACT

103.1 Award of Contract

The contract shall be deemed as having been awarded when notice of Village Board action thereon has been duly delivered to the successful bidder. As each part of the proposal may constitute the improvement of separate streets, or parts, the work outlined in the proposal may be awarded as a whole or in part or parts, according to the best interests of the Village as determined by the Village Board.

103.2 Execution of Contract and Assurances

Within ten (10) calendar days after notification of award, the successful bidder shall contact the Village Clerk and properly execute, on the forms provided, the contract and the required payment and performance assurances.

103.3 Failure to Execute Contract

Failure on the part of the successful bidder to execute the contract and acceptable payment and performance assurances within ten (10) calendar days after the date of notification of the award of the contract will, at the discretion of the Village Board, be cause for the annulment of the award and for forfeiture of the bid bond or certified check to the Village, not as a penalty but in payment of liquidated damages sustained as a result of such failure.

103.4 Requirement of Payment and Performance Assurances

In accordance with Wisconsin Statute section 779.14, a contract shall not be effective unless the Contractor shall have furnished adequate performance and payment assurances, each in an amount at least equal to one-hundred (100) percent of the Contract Price as security for the faithful performance of the contract and for the payment by the Contractor of all claims for labor performed and materials furnished, used or consumed in the work of the contract including, without limitation because of enumeration, fuel, lumber, building materials, machinery, vehicles, tractors, equipment, fixtures, apparatus, tools, appliances, supplies, electric energy, gasoline, motor oil, lubricating oil, greases, state imposed taxes, premiums for worker's compensation insurance and contributions for unemployment compensation. The amount of the performance and payment assurances shall be adjusted to incorporate all extras, credits, and change orders through final payment. Unless specified otherwise in the Special Provisions, payment and performance bonds are required for all contracts. When payment and performance bonds are required, the bonds shall be executed on the forms provided in the Contract Documents or on similar forms that are standard for the industry. Whether the payment and performance assurances required for the contract are in the form of bonds, an irrevocable letter of credit, or an escrow account, the assurances must be issued by a company licensed by the State of Wisconsin to issue such assurances.

103.5 Waiver of Bonds

In accordance with Wisconsin Statute section 779.14, the Village Board may, prior to bidding, waive the requirement that the Contractor furnish bonds if adequate guarantees or warranties are otherwise provided by the Contract Documents.

104 - GENERAL PROVISIONS

104.1 Relationship of Parties

104.1.1 Independent Contractor

The Contractor shall be an independent Contractor and any provisions of this Contract that may appear to give the Village or its authorized representatives the right to direct the Contractor as to the details of doing the work or to exercise a measure of control over the work shall be deemed to mean that the Contractor shall follow the desires of the Village or its authorized representatives in the results of the work only and not in the means whereby the work is to be accomplished. The Contractor shall have complete and authoritative control as to the details of doing the work. Neither the agents, representatives, nor employees of the Contractor, nor those of any of its subcontractors, shall be deemed to be the agents, representatives, or employees of the Village.

104.1.2 Subcontractors

The Contractor shall be fully responsible to the Village for all acts and omissions of the subcontractors, suppliers, and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with the Contractor just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between the Village and any such subcontractor, supplier, or other person or organization, nor shall it create any obligation on the part of the Village to pay or to see to the payment of any moneys due any such subcontractor, supplier, or other person or organization except as may be required by law.

104.2 Authority of Engineer

104.2.1 Engineer's Authority on Projects

All work shall be done under the observation of the Engineer and shall be performed to his satisfaction. The Engineer shall decide all questions which arise as to the quality and acceptability of materials furnished, work performed, rate of progress of the work, interpretation of the plans and specifications, acceptable fulfillment of the contract, compensation, and disputes and mutual rights between contractors under the specifications. He shall determine the quantity of work performed and materials furnished and his decision and estimate shall be final. His estimate of quantities in such event shall be a condition precedent to the right of the Contractor to receive money due him under the contract. The Engineer shall have executive authority to enforce and make effective such decisions and orders as needed for the proper execution and administration of the project. If the Contractor fails to carry out the Engineer's orders promptly or fails to execute the work ordered by the Engineer, the Engineer may, at the expiration of a period of forty-eight (48) hours after giving written notice to the Contractor, proceed to execute such work as may be deemed necessary, and the cost thereof shall be deducted from compensation due or which may become due the Contractor under the contract.

All decisions of the Engineer shall, when so requested, be rendered in writing. The decisions shall be final and conclusive in all matters unless the Contractor applies in writing to the Village Board within ten (10) days after such decision for a review of such decision.

When an application for review of the Engineer's decision is presented, the Board shall promptly give opportunity for the Contractor to appear before it, present evidence bearing upon such decision, and present any claims for a modification or reversal thereof.

The Board shall render its decision within ten (10) days after such appearance and its decision shall be final.

104.2.2 Limitations on Engineer's Responsibility

Whenever the terms "as ordered", "as directed", "as required", "as allowed", "as approved", or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of the Engineer as to the work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the work for compliance with the Contract Documents. The use of any such term or adjective shall not be effective to assign to the Engineer any duty or authority to supervise or direct the furnishing or performance of the work or any duty or authority to undertake responsibility contrary to the provisions of the next two paragraphs.

The Engineer will not be responsible for the Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and the Engineer will not be responsible for the Contractor's failure to perform or furnish the work in accordance with the Contract Documents.

The Engineer will not be responsible for the acts or omissions of the Contractor or of any subcontractor, any supplier, or of any other person or organization performing or furnishing any of the work.

104.3 Cooperation By Contractor

The Contractor shall give the work the constant attention necessary to facilitate the progress thereof, and shall cooperate with the Engineer, his inspectors, and with other contractors and/or utilities on or near the work, in every way possible.

The Village reserves the right, at any time, to contract for and perform other or additional work on or near the work covered by any contract. The Contractor shall arrange and conduct his work so as not to interfere with or hinder the progress or completion of the work being performed by other contractors and to join his work to that of others in a proper manner, and in accordance with the spirit of the plans and specifications, and to perform his work in proper sequence in relation to that of other work, as may be directed by the Engineer.

The Contractor shall be held responsible for any damage done by him or his agents to the work performed by another contractor. Each contractor shall conduct his operations and maintain the work in such condition that adequate drainage shall be maintained at all times.

In case of a dispute arising between two or more contractors engaged on the same improvement or in different improvements, as to the respective rights of each under the specifications, the Engineer shall mediate between the contractors and the Engineer's decision shall be final and binding on all parties concerned. Neither the dispute nor the decision shall be cause for any extra compensation to any of the parties involved.

104.4

Priority of Contract Documents

In the event of a conflict in the Contract Documents not resolved under Section 102.9 of these Standard Specifications, the Contract Documents shall have priority in the following order (earlier listed documents controlling over later listed documents), unless otherwise provided in the Contract Documents:

1. Contract
2. Change Orders
3. Addenda
4. Special Provisions
5. Plans
6. Standard Specifications for Public Works Construction in the Village of Slinger, Wisconsin
7. Bid Proposal
8. Official Notice to Bidders
9. Instructions to Bidders
10. Other documents incorporated by reference in the contract.

104.5

Intent of Plans and Specifications

The intent of the plans and specifications is to provide for the construction, complete in every detail, of a complete improvement which the Contractor proposes to do in full compliance with the plans, specifications, and all other Contract Documents. The specifications not only include the directions, provisions, and requirements contained within the Standard Specifications or in supplements thereto, but also includes all other written agreements and all documents of any description, made or to be made, pertaining to the plans, the quantities and quality of materials to be furnished under the contract, and to the method or manner of performing the work. The Contractor shall perform all items of work stipulated in the Contract Documents and all other altered or extra work in accordance with the lines, grades, typical sections and dimensions furnished, and shall furnish, unless otherwise provided, all materials, tools, equipment, supplies, transportation and labor necessary for the production and completion of the work in the most expeditious and workmanlike manner.

The intent of the Standard Specifications is that all public works facilities on projects in the Village of Slinger shall be constructed in conformance with the Standard Specifications, except as modified in the Contract Documents.

104.6

Conformance with Plans and Specifications

All work performed and all materials furnished shall be in conformance with the lines, grades, cross sections, dimensions and material requirements shown on the plans or indicated in the specifications. The work shall be finished to produce a product of quality construction and appearance within the limits of precision expected of good construction.

The lines, grades, typical sections, and dimensions shown on the plans are subject to adjustment by the Engineer during construction. Any deviation of a character not contemplated or provided for in the plans or specifications that may be required to successfully complete the project, will be determined by the Engineer and authorized by him in writing.

In the event that the Engineer finds the materials or the finished product in which the materials are used, not within reasonably close conformity with the plans and specifications, through no willful neglect or omission by the Contractor, but that

reasonably acceptable work has been produced, the Engineer shall make a determination if the work will be accepted and remain in place. If the Engineer decides that the work is acceptable and shall remain in place, the Engineer will document the basis of acceptance by contract modification which may provide for appropriate adjustment in the Contract Price for such work or materials as he deems necessary to conform to his determination based on engineering judgment.

In the event the Engineer finds the materials or the finished product in which the materials are used, or the work performed, are not in reasonably close conformity with the plans and specifications and have resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected, by the Contractor at no cost to the Village.

The Contractor shall immediately inform the Engineer of any apparent errors, conflicts, or omissions in the plans or specifications, and the Engineer shall make such corrections and interpretations as may be deemed necessary for the fulfillment of the intent of the plans and specifications.

104.7 Changes in the Work

104.7.1 Modifications

The Contractor shall modify the work whenever so ordered by the Engineer and such modifications shall not affect the validity of the contract. Modifications may involve increases or decreases in the amount of the work, for which appropriate adjustments will be made to the Contract Price.

Except for changes which involve no adjustment to the Contract Price or to the Contract Time, and with the exception of adjustments of estimated quantities for unit price work or materials to conform to actual pay quantities, all modifications shall be made under the authority of duly executed change orders. No modifications requiring a change order shall commence until the change order is processed and signed by the Village Engineer and the Contractor.

All modifications that do not adjust the Contract Price or the Contract Time and which do not change the intent of a specific provision of the contract shall be recorded on a duly executed field order.

104.7.2 Changing the Amount of Work

The Village reserves the right, upon the direction of the Village Board, to increase or decrease the amount of work or make changes in materials or work.

The quantity of materials or work of each bid item may be subject to increase or decrease, but the total price of all changes in the work shall not cause an increase of more than fifteen (15) percent above the total base bid, unless otherwise approved by the Village Board and contractor.

If extra work is required, it shall be done at a price agreed to in writing in advance. If less work is required, a deduction shall be agreed to in writing in advance and no allowance shall be made for any real or supposed damage, or loss of profit by such diminution. All extra work must be authorized by the Engineer.

Claims for extra work will not be paid unless the work covered by such claims is authorized in writing in advance by the Engineer. The Contractor shall not have the right to prosecute or maintain either an arbitration proceeding or an action in court to

recover costs for extra work unless the claim is based upon a written order from the Engineer.

Payments for extra work will be based upon lump sums or unit prices as agreed to in advance by the Engineer and the Contractor. Quantities will be measured as indicated in the Contract Documents.

104.7.3 Omission of Bid Items

The Village reserves the right to omit any items in the bid from the work and shall not be liable for any damage due to the loss of earnings for said omission, and it shall not be a waiver of any conditions of the Contract Documents, except those pertaining directly to the omitted item.

104.8 Schedule

104.8.1 Notice to Engineer of Intent to Begin Work

The Contractor shall not begin work on any part of the contract until a pre-construction conference, as described in Section 202 of these standard provisions, has been held and an Official Notice to Proceed is issued by the Engineer. At least forty-eight (48) hours in advance of commencing operations the Contractor shall give written notice to the Engineer of his intention to start the work. The Contractor shall schedule the work in such a manner as to cause a minimum of inconvenience to the general public.

104.8.2 Starting the Work

The Contractor shall commence the work embraced in the contract within ten (10) days after the issuance by the Engineer of the Official Notice to Proceed.

104.8.3 Contract Time

The Contract Time shall commence on the tenth day after issuance by the Engineer to the Contractor of the Official Notice to Proceed or on the day the Contractor actually starts the work, whichever occurs first. The Contractor shall complete all work specified in the contract within the number of calendar days agreed to in the contract or by the completion date specified in the contract, whichever completion date is earlier.

104.8.4 Extending the Contract Time

For work added to the contract, the Engineer may add time to the Contract Time or may extend the specified completion date.

104.9 Suspension of Work by the Village

The Engineer may, from time to time, suspend the work or a portion of the work, if, in his opinion, public need requires it. The Engineer shall not have the right to suspend the work completely for more than one week at any one time. The Contract Time shall be extended by as many days as the work shall have been suspended. In all cases, days of time extension or suspension shall be calendar days and not working days.

The Village may, at any time and without cause, suspend the work or any portion thereof, for a period of not more than ninety (90) days, by giving written notice to the Contractor, which shall fix the date on which the work shall resume. If requested by the Contractor and approved by the Engineer, the suspension period may be for a mutually acceptable time period. The Contractor shall resume the work on the date stated in the notice, upon approval of the Village Board, the Contractor may be allowed an increase in the Contract Price for performance of the contract, excluding additional profit, or an extension of the Contract Time, or both, directly attributable to

any suspension, if he makes a claim in writing.

104.10 Charges by Village for Failure to Complete the Work Within the Allotted Time Frame
Whenever the Contractor fails to complete the work within the Contract Time, he shall be liable for the costs of the inspector or inspectors on the work at the rate established in the Contract Documents, from the end of the specified Contract Time until the actual completion of the work, and the amount of such costs will be deducted from the moneys which may be due the Contractor from the Village. In addition, a daily sum as established in the Contract Documents will be deducted for the same period, not as a penalty but as an estimated and agreed to amount, as liquidated and fixed damages to the Village for failure to complete the work at the time specified. The time of completion of the contract is an essential element of consideration. In case the Village grants an extension of time to the Contractor, the costs of the inspectors and the damage to the Village will be computed from the date to which the time is extended, until the actual completion of the work.

104.11 Default and Completion of the Work

104.11.1 Default Notification And Discontinuance of the Work
If, at any time, the Village shall be of the opinion that the work is unnecessarily delayed and will not be finished within the prescribed time limit, or if the work is being constructed improperly, the Village shall notify the Contractor in writing to that effect. If the Contractor does not, within ten (10) days after written notification, take such measures as shall, in the judgment of the Village, insure the satisfactory completion of the work, the Village may then notify the Contractor to discontinue all work under this contract; and the Contractor shall immediately respect such notice, stop his work, vacate the premises, and leave all of the materials and completed work in place.

104.11.2 Completion of the Work by the Village
The Village shall, thereupon, have the power to place such and so many persons as it may deem necessary, by contract or otherwise, to work at and complete the work; to use such materials that they may find upon the project site; to procure other materials for the completion of the same; and to charge the expense of such labor and materials to the Contractor; and the expense so charged shall be deducted and paid out of such moneys as may then be due, or may, at any time thereafter, become due to the Contractor, or such expense shall be collected from the Contractor's bondsman, guarantor, or surety.

104.12 Termination

104.12.1 Termination by the Village
The Village may terminate the contract upon the occurrence of any one, or more, of the following events. The Village's right to terminate the contract is not limited to the occurrence of the events listed below.

1. If the Contractor is adjudged to be bankrupt or insolvent.
2. If the Contractor makes a general assignment for the benefit of creditors.
3. If a trustee or receiver is appointed for the Contractor or for any of the Contractor's property.
4. If the Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws.

5. If the Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment.
6. If the Contractor repeatedly fails to make prompt payments to subcontractors or suppliers for labor, materials, or equipment.
7. If the Contractor violates laws, ordinances, rules, regulations, or orders of any public body having jurisdiction.
8. If the Contractor disregards the authority of the Engineer.
9. If the Contractor otherwise violates in any substantial way any provisions of the Contract Documents.
10. Any other event caused by or under the responsibility of the Contractor that the Village Board determines to be a reasonable basis for termination of the contract.

The Village may, after giving the Contractor and his surety, guarantor, or bondsman seven (7) days written notice, terminate the services of the Contractor, exclude the Contractor from the site and take possession of the work and all materials stored at the site or for which the Village has paid the Contractor but which are stored elsewhere, and finish the work as the Village may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the work, including compensation for additional professional services, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor shall pay the difference to the Village or such difference shall be collected from the Contractor's bondsman, guarantor, or surety. Such costs incurred by the Village shall be incorporated in a Change Order, but in finishing the work the Village shall not be required to obtain the lowest figure for the work performed.

104.12.2

Rights of the Village After Termination

Where the Contractor's services have been terminated by the Village, said terminations shall not affect any rights of the Village against said terminated Contractor then existing or which may thereafter accrue. Any retention or payment of moneys, due said Contractor, by the Village will not release the Contractor from liability.

104.12.3

Abandonment of Project

Upon seven (7) days written notice to the Contractor, the Village may, without cause and without prejudice to any other right or remedy, elect to abandon the work and terminate the contract. In such case the Contractor shall be paid for all work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit, and damages.

104.12.4

Contractor May Stop Work or Terminate

If, through no act or fault of the Contractor, the work is suspended by the Village or under an order of court or other public authority for a period of more than ninety (90) days, or the Engineer fails to act on any Application for Payment within sixty (60) days after it is submitted, or the Village fails for sixty (60) days to pay the Contractor any

sum finally determined to be due, then the Contractor may, upon ten (10) days written notice to the Village, terminate the contract and recover from the Village payment for all work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit, and damages. If the Engineer has failed to act on an Application for Payment or the Village has failed to make any payment as aforesaid, the Contractor may, in addition to or in lieu of terminating the contract and upon ten (10) days notice to the Village, stop the work until receipt of payment of all amounts then due. The provisions of this paragraph shall not relieve the Contractor of his obligations to carry on the work in accordance with the progress schedule and without delay during disputes and disagreements with the Village.

104.13 Interference with Utilities

The Contractor shall meet the requirements of all Wisconsin Statutes including Sections 66.0831 and 182.0175 regarding existing utilities and construction precautions near existing transmission facilities, respectively.

Every effort has been made by the Village to show underground utilities on the Plans. This shall not relieve in any degree the Contractor's responsibility or obligation with regard to utilities either shown or not shown on plans.

No extra compensation will be paid for delays caused by the interference of existing structures.

104.14 Removal of Defective Materials and Workmanship

All materials furnished and work done will be subject to inspection by the Engineer, and if these are found by the Engineer to not be in accordance with the plans and specifications, or if the materials are found to be defective, they will be rejected and shall immediately be removed from the premises and other materials furnished and work done in accordance with the plans and specifications. If the Contractor refuses to remove the work and materials when so ordered, the Engineer shall have the right and authority to immediately stop the Contractor's work on the project and the Engineer shall cause the faulty work and materials to be removed and corrected at the cost and expense of the Contractor. Such expense shall be deducted from the monies then due or to become due to the Contractor. If the Engineer fails or neglects to correct any faulty or defective material or work as outlined above, the Contractor shall not be relieved of the responsibility of correcting said faulty material or work and the right of final acceptance or rejection of the work shall not be waived in any manner by reason of said failure or neglect on the part of the Engineer.

104.15 Construction Noise Abatement

In order to abate objectionable noise to the extent feasible, motorized construction equipment shall not be operated between the hours of 10:00 P.M. and 6:00 A.M. without the prior written approval of the Village Engineer. Each item of motorized construction equipment shall be equipped with a muffler constructed according to the equipment manufacturer's specifications or a system of equivalent noise reducing capability. Mufflers and exhaust systems shall be maintained in good operating condition, free from leaks and holes.

104.16 Guarantee

Unless otherwise provided, the Contractor shall guarantee the work performed under this contract against defects for a period of one year from the date of final acceptance by the Village. If any defect should appear during the guarantee period, the Contractor

shall replace or repair the defect in conformance with the specifications for the work at his expense. This expense includes total and complete restoration of any disturbed surface to a condition equal to or better than the original condition which existed prior to the repairs or replacement, regardless of the type of improvements existing on the lands where the repairs or replacement is required. The Contractor shall guarantee each repair or replacement for a period of one year after the repair or replacement is made and accepted by the Village.

104.17 Subletting or Assignment of Contract

The Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of the contract or any portion thereof, or of his right, title, or interest therein, without written consent of the Village.

Consent to sublet any portion of the contract shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the contract or to release the Contractor of his liability under the contract and bonds.

Requests for permission to sublet any portion of the contract shall be made in writing, and the Village may require that such requests be accompanied by a statement that the organization which will perform the work is particularly experienced and equipped for such work.

Work by a subcontractor shall not proceed until the request for permission to sublet such work is approved.

104.18 Entire Agreement

The Contract Documents constitute the entire agreement between the parties with respect to the matters covered. All prior negotiations, representations, and agreements unincorporated in the Contract Documents are cancelled. The Contract Documents may be modified or amended only by a document duly executed on behalf of the parties to the contract.

104.19 Non-Waiver of Provisions

No waiver or waivers by either party of any breach or default of any provision shall be deemed a waiver of any other provision or a waiver of any subsequent breach or default. No payment made under the contract shall be, or be construed to be, final acceptance or approval of that part of the work to which such payment relates or any other part of the work. No payment shall relieve the Contractor of any of his obligations or shall constitute a waiver of or otherwise affect the covenants and warranties of the Contractor.

104.20 Section Headings

The section headings used in the contract are for convenience only and shall in no way define, limit, or describe the scope or intent of the contract or any part thereof.

104.21 Gender, Singular, and Plural

Every word in the Contract Documents importing the masculine gender may extend and be applied to females as well as males, and every word importing the singular number only may extend and be applied to several persons or things as well as to one person or thing; provided that these rules of construction shall not be applied to any provisions which shall contain any express language excluding such construction or when such rules of construction would be inconsistent with the manifest intent of the provision.

105 - LEGAL REQUIREMENTS AND PUBLIC RESPONSIBILITY

105.1 Laws To Be Observed

The Contractor shall at all times observe and comply with all federal, state, and local laws, regulations, and ordinances which are in effect or which may be placed in effect during the contract period, which may affect the conduct of the work and the hiring of labor. He shall indemnify and save harmless, the Village and all its agents, representatives, officers and employees, against any claim or liability arising from or based on the violation of any such law, ordinance, regulation or order, whether by himself or his employees. The Contractor shall procure all permits and licenses and pay all charges and fees and give all notices necessary and incidental to the lawful prosecution of the work.

105.2 Patented Processes

It is understood and agreed that, without exception, the contract prices bid in the proposal are to include all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the work, and the Contractor shall indemnify and save harmless the Village and all its agents from any and all claims of infringement by reason of said use.

105.3 Safety, Health and Sanitation

The Contractor shall provide all safeguards, safety devices and protective equipment, and take any other needed actions, on his own responsibility, reasonably necessary to protect the life, health, and safety of persons, and to protect property in connection with the performance of the work covered by the contract.

105.4 Public Protection and Safety

At the earliest possible date the Contractor shall notify the Engineer, Police Department, Fire Department, and all utilities and railroad companies whose facilities are located at or near the project site of the starting date of any construction so that arrangements may be made, if necessary, for closing a street and providing satisfactory detours, space, ingress and egress. The Contractor shall conduct the work at all times in such a manner as to minimize the amount of obstruction to traffic. The convenience of the general public and of the residents along the project site shall be of prime consideration.

105.5 Protection and Restoration of Property

The Contractor shall use every reasonable precaution to prevent the damage or destruction of private property including, but not limited to, poles, trees, shrubbery, crops, fences, and lawns; all overhead structures such as wire, cables, etc.; and all underground structures such as water or gas shutoff boxes, water meters, pipes, conduits, manholes, catch basins, etc., either within or outside of the right-of-way.

The Contractor shall notify the owners of all property which interferes with the work, advise them of the nature of the interference, and arrange for the disposition of such property. The Contractor shall furnish copies of all such notifications and final agreements to the Engineer, upon request.

The Contractor shall be responsible for the damage or destruction of property resulting from neglect, misconduct, or omission in his manner or method of execution or non-execution of the work, or caused by defective work or the use of unacceptable

materials, and shall restore such property to a condition similar to or equal to that existing before such damage or injury was done, by repairing, rebuilding, or replacing it as may be directed by the owner, or he shall otherwise make good such damage or destruction.

Before final payment will be made, the Contractor shall obtain and submit to the Engineer a statement from property owners who sustained damage to their property caused by the Contractor's work or who had granted construction easements for the project, stating that their property has been left in a satisfactory condition following the completion of the construction work.

105.6 Contractor's Responsibility for Work

The work shall be under the charge and care of the Contractor until final acceptance by the Village. The Contractor shall assume all responsibility for injury or damage to the work by action of the elements or from any other cause whatsoever, and shall rebuild, repair, restore, and make good, at his expense, all injuries or damages to the work, except that when the project is placed in operation by order of the Engineer, the provisions of this article shall not apply to damage caused by such operation and which are not due to the Contractor's negligence or other fault.

If the Contractor suspends the work for any reason whatever, except for the reasons described in sections 104.12.3 and 104.12.4, the Contractor shall, prior to suspension and at his expense, take such precautions as may be necessary to prevent damage to the project and provide for normal drainage, and shall erect any necessary temporary barricades, signs or other facilities, to provide for the safety of the public.

105.7 Insurance Requirements

105.7.1 General

No contractor shall commence work on any contract until he has obtained all insurance required under this section with policy limits not less than those indicated herein, and such insurance has been approved by the Village. No contractor shall allow any subcontractor to commence work on his subcontract until the same insurance has been obtained by the subcontractor and approved by the Village. Each and every contractor and subcontractor shall maintain all required insurance under this section during the life of the contract and for not less than one year thereafter.

In the event a subcontractor appears at the project site and has not submitted satisfactory evidence of adequate insurance, the subcontractor shall not be allowed to perform any work on the contract. Any work stoppage, delays, or additional costs due to such an event shall be borne by the Contractor at no additional cost to the Village and with no additions to the Contract Time.

No insurance required under the contract shall be carried with an insurer not authorized by the Office of the Commissioner of Insurance to do business in Wisconsin. The Village reserves the right to disapprove any insurer or policy.

105.7.2 Certificates of Insurance

The Contractor shall furnish a certificate of Worker's Compensation insurance for the statutory limits and also a certificate of public liability insurance, both personal and property, which, in the opinion of the Village Board, shall be adequate, considering the size and hazards encountered in the execution of the work. This provision shall also apply to subcontractors. Where the Village Board has not determined what limits are adequate for liability insurance, the minimum limits shall be as indicated below.

The Contractor shall file certificates of insurance with the Village Clerk on all policies specified in this section and such certificates shall provide for a minimum of thirty (30) days prior written notification to the Village of cancellation, material change, or non-renewal of any coverages.

The certificates of insurance shall also clearly state that, if applicable to the work under the contract, explosion, collapse, and underground hazard coverage is provided.

105.7.3 Worker's Compensation and Employer's Liability Insurance

The Contractor shall maintain a Worker's Compensation policy complying with all of the statutory benefits required by the Worker's Compensation and Occupational Disease laws of the State of Wisconsin. The policy shall be endorsed to provide Employer's Liability coverage with minimum limits of liability of \$100,000 per occurrence.

105.7.4 General Liability Insurance

The Contractor shall maintain a Commercial General Liability insurance policy covering all operations of the Contractor.

This policy shall include the following:

1. Contractual Liability Coverage.
2. Explosion and Collapse Hazard Coverage (if applicable to the work).
3. Underground Hazard Coverage (if applicable to the work).
4. Completed Operations and Products. Liability coverage for the life of the contract and coverage maintained for a period of two (2) years after final acceptance by the Village.

The minimum coverage limits for the Commercial General Liability Insurance and for each of the above listed provisions shall be as follows:

Bodily Injury, Property Damage, and Personal Injury must have \$1,000,000 combined single limits per occurrence. Insurance may be subject to an annual aggregate limit of not less than \$2,000,000.

105.7.5 Commercial Motor Vehicle Liability Insurance

The Contractor shall maintain a Commercial Motor Vehicle Liability Insurance policy providing coverage for all owned, hired, and non-owned motor vehicles, wherever located, with the following coverage limits:

Bodily Injury & Property Damage Combined of \$1,000,000 per occurrence

105.7.6 Excess Liability Insurance

The Contractor may furnish bodily injury and property damage coverage for Commercial Motor Vehicle Liability and Commercial General Liability through the use of primary liability policies in combination with an umbrella form excess liability policy.

105.7.7 Professional Errors and Omissions Insurance

For contracts where the Contractor is to provide professional services (such as engineering, architectural, surveying, or other professional services), the Contractor shall maintain a Professional Errors and Omissions Insurance policy providing for a minimum coverage limit of not less than \$1,000,000.00.

105.8 Indemnification

The Contractor shall indemnify and hold harmless the Village, its officers, agents and employees from and against all claims, damages, losses and expenses, including

attorney's fees, arising out of or resulting from the performance of the work.

In any and all claims against the Village, its officers, agents and employees, by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under Workers' Compensation Acts, disability benefit acts or other employee benefit acts.

The provisions of this section shall survive the termination or expiration of the contract without limit in time (except applicable statutes of limitations).

105.9 Personal Liability of Public Officials

In carrying out any of the provisions of this contract or in exercising any power or authority granted to them thereby, there shall be no personal liability upon the agents and employees of the Village, it being understood that in such matters they act as agents and representatives of the Village. Any right of action by the Contractor against the agents or employees of the Village, is hereby expressly waived.

105.10 Other Agreements

Any agreements made between property owners and the Contractor to perform work for the property owner are not a part of, but are separate and distinct from, the contract between the Village and the Contractor. In addition, the Village is not liable for the performance of that work, is not responsible for inspection of that work, and is not responsible for damage due to that work. The Contractor shall be responsible to inform the property owner of the limitations of this section.

105.11 Taxes

105.11.1 Taxes and Contributions

The Contractor shall have sole and exclusive liability for the payment of any and all taxes and contributions for sickness and unemployment insurance, retirement benefits, life insurance, pensions, annuities, and similar benefits which may now or hereafter be imposed by law or agreement with respect to persons employed by the Contractor or any of its subcontractors for performance of the work. The Contractor shall comply with all laws and regulations applicable to the compensation paid to its employees. The compensation to be paid to the Contractor under this contract includes all such taxes and contributions, including any interest accrued and penalties imposed thereon. The Contractor shall be liable for, shall pay, and shall indemnify, defend, and save harmless the Village from and against, all such taxes and contributions, including any interest accrued and penalties imposed thereon.

105.11.2 Changes in Taxes

To the extent that any new or changed taxes, other than those referred to in Section 105.11.3 hereof, become applicable to the performance of the work, an adjustment will be made in the Contract Price and the Village will pay the Contractor for the net difference arising from increased taxes and the Contractor will reimburse the Village for the net difference arising from decreased taxes. In addition, the Contractor shall take all steps within its control to minimize the incidence and limit the application of any taxes and the Village shall have no liability to reimburse the Contractor for any taxes to the extent that such taxes are eligible for reduction or recovery by the Contractor.

105.11.3

Corporate and Income Taxes

Notwithstanding anything else herein to the contrary, it is not intended that the Village be liable to the Contractor for the reimbursement of any corporate franchise taxes or any taxes levied directly or indirectly on or measured by income or chargeable gains.

105.12

Equal Employment Opportunity

The Contractor shall not discriminate against employees and applicants for employment on any basis prohibited by federal or state law.

106 - MEASUREMENT AND PAYMENT

106.1 Measurement of Quantities

All work completed under the contract will be measured by the Engineer according to United States standard measure. The method of measurement and computations to be used in the determination of quantities of material furnished and of the work performed under the contract will be those methods generally recognized as conforming to good engineering practice.

The completed work will be measured for final payment by the Engineer, as specified for the various items elsewhere in the specifications, to determine the quantities of such items of work performed, except when contract change orders have been executed providing for other methods of measurement. The Contractor will be paid for the actual amount of work performed in accordance with the contract, as shown by the final measurements or upon the basis of plan quantities.

106.2 Basis of Payment

The Contractor shall accept the compensation, as provided, in full payment for:

1. Furnishing all materials, labor, supervision, transportation, supplies, tools, equipment, and incidentals necessary for performing all work contemplated and embraced under the contract.
2. Loss or damage arising from the nature of the work or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the work until the final acceptance by the Village.
3. All insurance, compensation and risks of every description connected with the prosecution of the work.
4. For all expenses incurred in consequence of the suspension or discontinuance of the work as herein specified.
5. Any infringement of patent, trademark, or copyright.
6. Completing the work according to the contract.

The payment of any current estimate prior to final acceptance of the work by the Village, shall in no way constitute an acknowledgement of the acceptance of the work, nor does it constitute an acceptance of the estimated quantities as being actual final quantities, and in no way shall it prejudice or affect the obligation of the Contractor, at his expense, to repair, correct, renew or replace any defects or imperfections in the construction or in the strength or quality of the materials used in or about the construction of the work under contract and its appurtenances, or any damage due or attributable to such defects, which defects, imperfections or damage shall have been discovered on or before the final inspection or acceptance of the work. The Engineer shall be the sole judge of such defects, imperfections or damage and the Contractor shall be liable to the Village for failure to correct the same as provided herein.

106.3 Payments

The Village will make no payment, except for release of retainage money, without an

invoice from the Contractor.

106.3.1

Progress Payments

The Village shall make payments on the account of the contract as follows:

Each month the Village Engineer shall, with the approval of the Village Board, grant to the Contractor an estimate of the amount and proportionate value of the work done, which shall entitle the Contractor to receive the amount thereof, less the retainage, from the proper fund. On all contracts the retainage shall be consistent with the requirements of Wisconsin Statute section 66.0901(9). When the work has been substantially completed, except for work which cannot be completed because of weather conditions, lack of materials or other reasons, which in the judgement of the Engineer, are valid reasons for noncompletion, the Village may make additional payments, retaining at all times an amount sufficient to cover the estimated cost of the work still to be completed or in the alternative, may pay out the entire amount retained and receive from the Contractor guarantees in the form of a bond or other collateral sufficient to ensure completion of the job. For the purposes of this section, estimates may include any fabricated or manufactured materials and components specified, previously paid for by the Contractor and delivered to the work or properly stored and suitable for incorporation in the work embraced in the contract.

106.3.2

Final Payment

The Contractor shall submit to the Engineer the following items of documentation before final payment can be approved:

1. Material certificates as described in the specifications.
2. Confirmation that disposal sites, if any, have been left in a condition satisfactory to its owner.
3. Certificates of compliance with the wage rates of the contract, if applicable, signed by the Contractor and all subcontractors.
4. Certificate of completion signed by the Contractor stating that the work is complete and that the Contractor will make no further requests for payment.
5. Lien waivers from subcontractors and suppliers for the project.

Final payment shall be due and owing within thirty (30) days after the final acceptance of the work, provided the work shall be completed and the contract fully performed.

- END OF SECTION 100 -