



City of Fort Atkinson
City Manager's Office
101 N. Main Street
Fort Atkinson, WI 53538

**CITY COUNCIL MEETING
IN PERSON AND VIA ZOOM
THURSDAY, JANUARY 4, 2024 – 7:00 PM
CITY HALL – SECOND FLOOR**

<https://us02web.zoom.us/j/5997866403?pwd=alcreldSbGpNUVI1VnR1RWF5bXovdz09>

Meeting ID: 599 786 6403

Passcode: 53538

Dial by Location
+1 312 626 6799

If you have special needs or circumstances which may make communication or accessibility difficult at the meeting, please call (920) 397-9901. Accommodations will, to the fullest extent possible, be made available on request by a person with a disability.

AGENDA

1. **Call meeting to order**
2. **Roll call**
3. **Public Hearings – None**
4. **Public Comment:** *The City Council will receive comments from City residents. Comments are generally limited to three minutes per individual. Anyone wishing to speak is required to sign up in advance or state the following items for the record when called upon: name, address, subject matter, and contact information. No action will be taken on any public comments unless the item is also elsewhere on the agenda.*
5. **Consent Agenda:** *The Consent Agenda outlined below is hereby presented for action by the City Council. Items may be removed from the Consent Agenda on the request of any one Council member. Items not removed may be adopted by one action without debate. Removed items may be taken up either immediately after the Consent Agenda or placed later on the agenda at the discretion of the Council President.*
 - a. Review and possible action relating to the **minutes of the December 19, 2023 regular Fort Atkinson City Council meeting** (Ebbert, Clerk/Treasurer/Finance Director)

6. Petitions, Requests, and Communications:

- a. Recognition of Fort Atkinson Police Officer Ryan Walters as the 2023 First Responder of the Year (Bump, Police Chief)

7. Resolutions and Ordinances – None

8. Reports of Officers, Boards, and Committees:

- a. City Manager's Report (Houseman, City Manager)

9. Unfinished Business – None

10. New Business:

- a. Review and possible action relating to **construction bid recommendation for Public Works and Parks Operations facility** (Selle, Director of Public Works)
- b. Review and possible action for **Angus-Young Construction Period Services** (Selle, Director of Public Works)
- c. Review and possible action relating to the purchase of a **Pentair MegaTherm Commercial Pool Heater** with 2024 Aquatic Center CIP funds at a cost not to exceed \$35,822 (Franseen, Director of Parks and Recreation)

11. Miscellaneous – None

12. Claims, Appropriations and Contract Payments:

- a. Review and possible action relating to the **Verified Claims** presented by the Director of Finance and authorization of payment (Ebbert, Clerk/Treasurer/Finance Director)

13. Adjournment

Date Posted: January 2, 2024

CC: City Council; City Staff; City Attorney; News Media; Fort Atkinson School District; Fort Atkinson Chamber of Commerce

Visit us online! City news and information can be found at www.fortatkinsonwi.gov, and be sure to follow us on Facebook @FortAtkinsonWI.



City of Fort Atkinson
City Clerk/Treasurer's Office
101 N. Main Street
Fort Atkinson, WI 53538

**CITY COUNCIL MEETING
IN PERSON AND VIA ZOOM
TUESDAY, DECEMBER 19, 2023 – 7:00 PM
CITY HALL – SECOND FLOOR**

1. CALL MEETING TO ORDER

President Johnson called the meeting to order at 7:00 pm.

2. ROLL CALL

Present: Cm. Becker, Cm. Jaeckel, Cm. Lescohier and President Johnson. Also present: City Manager, City Attorney, City Clerk/Treasurer, City Engineer, Public Works Superintendent, Park & Recreation Director, Wastewater Superintendent.

Excused absence: Cm. Schultz.

3. PUBLIC HEARINGS – NONE

4. PUBLIC COMMENT:

Jodie Raddatz, 1245 Janette Street – Thanked the Council for the discussions on the Budget and appreciated the planning done by Council. She has concerns about roads, Park Street and Riverside Drive specifically.

Omar Pennycook, 105 Hilltop Trail – Discussed an issue with a State Trooper and an incident on a work trip out of State that continued to other States. He states his family is mistreated in Fort Atkinson.

5. CONSENT AGENDA:

- a) Review and possible action relating to the minutes of the December 5, 2023 regular City Council meeting (Ebbert, Clerk/Treasurer/Finance Director)*
- b) Review and possible action relating to the minutes of the December 12, 2023 regular Plan Commission meeting (Ebbert, Clerk/Treasurer/Finance Director)*
- c) Review and possible action relating to the minutes of the December 13, 2023 Police and Fire Commission meeting (Ebbert, Clerk/Treasurer/Finance Director)*
- d) Review and possible action relating to the Appointment of additional Election Inspectors for a two-year term (Ebbert, Clerk/Treasurer/Finance Director)*
- e) Review and possible action relating to building, plumbing, and electrical permit report for November 2023 (Draeger, Building Inspector/Zoning Administrator)*
- f) Review and possible action relating to the City Clerk-issued License and Permit Report for November 2023 (Ebbert, Clerk/Treasurer/Finance Director)*

- g) City Sewer, Water, and Stormwater Utility Financial Statements as of November 30, 2023 (Ebbert, Clerk/Treasurer/Finance Director)*

Cm. Becker moved, seconded by Cm. Jaeckel to approve the Consent Agenda as presented, items 5.a. through 5.g. Motion carried unanimously.

6. PETITIONS, REQUESTS, AND COMMUNICATIONS: – NONE

7. RESOLUTIONS AND ORDINANCES:

- a) Review and possible action relating to a Resolution Authorizing the Submission of a Transportation Alternatives Program (TAP) Grant Application (Selle, City Engineer/Director of Public Works)*

Engineer Selle discussed the submitted grant applications for the following projects: Infill of sidewalk and paths around schools as a Transportation Alternative Program; N. 4th Street pavement replacement and Blackhawk Drive pavement replacement as Surface Transportation Local Program and finally Surface Transportation Urban Program which would apply to Banker Road. The design estimates for these projects are in line with designs that the City has traditionally accomplished through the annual, local, project funds. These grants, if awarded, require the City to follow a state/federal process with additional tasks that may increase design costs considerably. City staff currently has projects out for design proposals on grant funds awarded in 2022 and will be getting the first glimpse at the difference between a project design administered by Fort Atkinson versus one that follows State/Federal requirements.

Selle continued, even if the Council adopts the Resolution, the City is not committed to any of these projects until the design phase begins. If any or all of the grant applications are successful, the City Council would be appraised of the latest grant developments when the State Municipal Agreements are drafted and again at a final point, when the contract for design comes to Council for approval. The City will attempt to pay for the local portion of these grants through use of Fund 5, Transportation Funds comprised of the levied amount dedicated to roads (\$500K) and the Wheel Tax (\$210K) in future budget years. Shortfalls in these funding mechanisms can be made up through borrowing, if approved in the future by the City Council. The grant applications may not be funded by the DOT at all, nor have the projects been scoped for a schedule, so further budgeting at this point is premature.

Cm. Lescohier moved, seconded by Cm. Becker to approve the Resolution Authorizing the Submission of a Transportation Alternative Program (TAP) Grant Application for sidewalk and pedestrian path infill project. Motion carried unanimously.

8. REPORTS OF OFFICERS, BOARDS, AND COMMITTEES:

- a) City Manager's Report (Houseman, City Manager)*

No action taken.

9. UNFINISHED BUSINESS – NONE

10. NEW BUSINESS:

a) Review and possible action relating to moving City Council meeting dates due to holidays and elections (Ebbert, Clerk/Treasurer/Finance Director)

Clerk Ebbert reviewed the 2024 Council meeting schedule that coincides with elections and holidays. Ordinance section 2-52 allows the rescheduling of Council meetings from the 2nd or 4th Tuesday to the 2nd or 4th Thursday.

Cm. Jaeckel moved, seconded by Cm. Becker to reschedule City Council meetings as follows: Tuesday, January 2nd to Thursday, January 4th; Tuesday, February 20th to Thursday, February 22nd; Tuesday, April 2nd to Thursday, April 4th and Tuesday, November 5th to Thursday, November 7th. Motion carried unanimously.

b) Review and possible action relating to an Intergovernmental Agreement between Jefferson County and the City of Fort Atkinson regarding Geographic Information System (GIS) Services (Selle, City Engineer/Director of Public Works)

Engineer Selle reviewed how the City developed a GIS (Geographic Information System) Map beginning in 2017. The map overlays City infrastructure, zoning, trees, and other information on an aerial photo of the City including parcel lines. Each point, line, or polygon in the map represents a manhole, water line, or parcel. In 2023 through our current engineering consultant Ruekert and Mielke, staff has been able to establish this expertise and build a relationship that allowed field employees to call someone to fix the maps or make a strategic change to improve the tool for their needs. In parallel to this effort with Ruekert and Mielke, staff has been working with Jefferson County, who houses a suite of on-staff GIS professionals, to develop a position that might provide this expertise to Fort Atkinson as well as Watertown. Selle stated that in the 2024 budget includes \$10,000 in the Water Utility contracted services account (03-33-0092-3000); \$10,000 in the Wastewater Utility contracted services account (02-82-0831-0200); \$5,000 in the Stormwater Utility consultant services account (10-52-5251-0300); and \$5,000 in the Transportation Fund (Fund 5), for a total of \$30,000 to support this goal of additional GIS personnel.

Cm. Lescohier moved, seconded by Cm. Jaeckel to authorize the City Manager to enter into the attached Intergovernmental Agreement with Jefferson County regarding GIS services. An executable copy of this Agreement will be signed by all parties after approval at the County level. Motion carried unanimously.

c) Review and possible action to authorize the City Manager to enter into a contract for asbestos abatement services (Williamson, Superintendent of Public Works)

Superintendent Williamson discussed that on October 3, 2023, the City Council approved the contract with North Star Environmental, LLC, to test 8 buildings slated for removal as part of construction of the new Public Works and Parks Operations facility for lead paint and asbestos materials. After said testing, the report indicated that several buildings contain asbestos building materials. Safe removal of these proposed buildings, within State and Federal guidelines, requires professional abatement of the hazardous materials (asbestos) prior to demolition. Staff prepared and released a request for proposals for contractors licensed in the

State of Wisconsin to perform this work. Staff received 3 proposals for the proposed abatement work.

Cm. Becker moved, seconded by Cm. Lescohier to authorize the City Manager to enter into a contract with Dirty Ducts, LLC, for the abatement of asbestos materials from the City-owned buildings to be demolished for an amount not to exceed \$5,710.00. Motion carried unanimously.

d) Review and possible action to authorize the City Manager to enter into a contract for Electric Relocation Services with We Energies (Williamson, Superintendent of Public Works)

Superintendent Williamson shared that on March 28, 2023, the City of Fort Atkinson Department of Public Works entered into a contract for the design of a new Public Works Facility Campus with Angus Young Architects. The design process to redevelop the existing facility campus, at 700 James Place, requires the relocation of electric service facilities to the Fireside Dinner Theater and alteration of the electric supply lines to the existing Public Works Office and Shop. In preparation for this need the Department worked closely with the Fireside Theater and We Energies to map out the relocated electric supply, and transformer, to the Fireside Theater and alteration of the overhead supply line to the existing Public Works Office and Shop. This work will facilitate the construction of the proposed new salt shed located on the south end of the new Public Works Facility.

Cm. Becker moved, seconded by Cm. Jaeckel to authorize payment to We Energies for the of the electric service to the Fireside Theater and alterations to the electric supply lines to the existing Public Works Office and Shop not to exceed \$33,402.20. Motion carried unanimously.

e) Review and possible action related to purchase of Replacement Graphic Display Controller for Memorial Park Lift Station (Christensen, Wastewater Superintendent)

Superintendent Christensen discussed the Memorial Park Lift Station, the largest lift station that pumps wastewater collected from the Northwest part of the city to the Wastewater Treatment Facility. There are four pumps in two wet wells and a control building with a backup generator and pump controls at this location. The control of the lift station pumps consists of four pumps starters and breakers with a programmable logic controller and a 10" programmable graphic display. The programmable graphic display allows Utility staff to monitor, make adjustments, change lead and lag pumps, and displays all alarms and warnings. The programmable graphic display has failed and parts are no longer available. A loaner display has been provided by Altronix.

Cm. Becker moved, seconded by Cm. Jaeckel to approve the purchase of the replacement programmable graphic display controller from Altronix of Madison, WI for the cost of \$9,302.00 for the Memorial Park Lift Station. Motion carried unanimously.

11. MISCELLANEOUS – NONE

12. CLAIMS, APPROPRIATIONS AND CONTRACT PAYMENTS:

a) *Review and possible action relating to the Verified Claims presented by the Director of Finance and authorization of payment (Ebbert, Clerk/Treasurer/Finance Director)*

Cm. Becker moved, seconded by Cm. Lescohier to approve the list of Verified Claims presented by the Director of Finance and authorize payment. Motion carried unanimously.

13. THE CITY COUNCIL MAY CONSIDER A MOTION TO CONVENE IN CLOSED SESSION PURSUANT TO STATE STAT. §19.85(1)(C) TO CONSIDER EMPLOYMENT, PROMOTION, COMPENSATION, OR PERFORMANCE EVALUATION DATA OF ANY PUBLIC EMPLOYEE OVER WHICH THE GOVERNMENTAL BODY HAS JURISDICTION OR EXERCISES RESPONSIBILITY [NOMINATION OF CITY MANAGER FOR MERIT PAY PROGRAM]

Cm. Becker moved, seconded by Cm. Jaeckel to convene in closed session pursuant to State Stat. §19.85(1)(c) to consider employment, promotion, compensation, or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility re: Nomination of City Manager for Merit Pay program. Motion carried unanimously on a voice vote.

14. THE CITY COUNCIL MAY RETURN TO OPEN SESSION AND MAY TAKE ACTION ON THE MATTER CONSIDERED IN CLOSED SESSION

Cm. Jaeckel moved, seconded by Cm. Becker to reconvene into open session. Motion carried unanimously.

Cm. Jaeckel moved, seconded by Cm. Lescohier to approve the nomination of Merit Pay for the City Manager. Motion carried unanimously.

15. ADJOURNMENT

Cm. Becker moved, seconded by Cm. Jaeckel to adjourn. Meeting adjourned at 8:02 pm.

Respectfully submitted,

Michelle Ebbert

City Clerk/Treasurer/Finance Director



MEMORANDUM

DATE: January 4, 2024

TO: Fort Atkinson City Council

FROM: Andy Selle, PE - Director of Public Works

RE: Review and possible action relating to construction bid recommendation for Public Works and Parks Operations facility

BACKGROUND

The City worked with architectural firm Angus Young to design and bid the new Public Works and Parks Operations facility at its current location. Staff received four bids for public construction of the facility. The attached memo from Angus Young details their review and recommendation for award.

DISCUSSION

Following tonight's bid award, contract documents will be drawn up and signed, signaling the start of the construction period. The salt shed is expected to be one of the first buildings constructed, although the contractor can schedule the work within the parameters provided.

The alternate bid item for a truck scale was included to allow the City to determine the value of this piece of equipment primarily toward our management of salt. At the price noted by the low bidder, we will not exercise the alternate and plan to forego the scale at this time.

During the construction phase of the project, as Council may be aware from our previous Wastewater Treatment Plant upgrades, change order management is critical. A ten percent contingency budget (\$577,200.00) has been added to the base bid total to plan for unforeseen situations. This contingency is for the City to manage and is not accessible by the contractor. Staff request Council authorize the Director of Public Works with the approval of the City Manager to approve changes up to \$20,000. Staff will provide progress summaries of the project to Council every three months (+/- 5 updates), which will include the current and projected budget for the project.

Of note, there will be a change order coming to Council for approval early in the project. The truck wash system, estimated at about \$220,000 was incorrectly indicated to be owner supplied in the bid specifications. This was discovered only a few days prior to the bid deadline and the decision was made to handle this through a change order process with the contractor – who will be asked to solicit bids for the equipment.

FINANCIAL ANALYSIS

A tabulation of the bids is provided in the attached memo. Council has approved costs for the project to be covered in an anticipated borrowing to occur within the coming months. Given the bid results, the estimated project total is provided here in table format.

ITEM	% COMPLETE	DESCRIPTION	ESTIMATED COST
SOFT COSTS	75%	Land Purchase, Design, Permitting, Construction oversight, Utility relocation	\$1,166,975.00
BUILDING CONSTRUCTION	25%	Contract with Gilbank Construction (<i>includes 5% contingency</i>)	\$12,121,200.00
FURNISHINGS AND EQUIPMENT	0%	Truck wash, mechanic's shop equipment, office / break room equipment etc.	*\$545,000
		EST. PROJECT TOTAL	\$13,833,175.00

**Includes truck wash at \$220K*

Elements of the Furnishings and Equipment line item will come before Council for approval at forthcoming meetings.

RECOMMENDATION

Staff recommends the City Council approve the Award for construction to Gilbank Construction in an amount not to exceed \$11,544,000 and approve the use of a 5% contingency budget by City staff in the amount of \$577,200 for the project.

Staff further recommends the City Council authorize the Director of Public Works with the approval of the City Manager to authorize change orders up to \$20,000.00 on the project and provide Council project updates every 3 months.

PROJECT MEMO

TO: Mr. Andy Selle
COMPANY: City of Fort Atkinson
FROM: Brad Werginz, AIA - Project Architect
RE: Bid Summary and Recommendation
PROJECT: City of Fort Atkinson – Public Works & Parks Operations Facility

December 29th, 2023

Introduction

The purpose of this memo is to summarize the results of the construction bids received for Fort Atkinson's proposed 79,557 S.F. Public Works & Parks Operations Facility, parks garage renovation, 900-ton salt storage shed, and associated site improvements.

Below, I have provided an analysis of the bid process and supplemental information submitted by the apparent low bidder, followed by a recommendation for award of a construction contract.

Bid Summary

Bid documents were released by Angus-Young on November 28th, 2023. A 23-day bidding period was provided, with a non-mandatory pre-bid meeting conducted on December 6th, 2023, for all interested bidders. Site access was provided after the meeting, for all contractors interested in touring the existing on-site structures.

Public advertisement was provided by the Daily Jefferson County Union, on 11/24/23 and 12/05/23, for compliance with public notice state statutes.

A total of four (4) bids were received at City Hall and were publicly read aloud on December 21st, 2023, immediately following the 2:00 pm deadline for bid submittals.

Each bidder submitted costs for constructing the proposed public works & parks operations facility, parks garage renovations, salt shed, and all associated site improvements as detailed in the bidding documents prepared by Angus-Young.

Alternate Bid 01 was requested as a separate additive bid, to provide and install an on-site truck scale system.

In addition to acknowledging receipt of three (3) addendums issued during the bidding process, bidders were also required to submit a bid bond, construction change order mark-up percentage, and calendar day duration for completion of construction.

PROJECT MEMO

Base bid amounts ranged from \$11,544,000 to \$13,581,482 for all base bid work. The two lowest bidders were within 2.4% of each other. The bid tabulation is attached for reference. These bid amounts are favorable compared to earlier estimated construction costs most recently considered by the Common Council in October, which included the following items and total:

Salt Shed	\$450,000
Soil Improvements	\$1,260,000
Parks Garage Renovations	\$752,640
<u>Main Building Construction</u>	<u>\$6,322,764</u>
Pre-Bid Estimated Total	\$13,267,735

All (4) bidders included construction duration times with their bids, which are noted in the attached bid tabulation. It was noted in the bid package that construction could commence on January 22nd, 2024. Substantial completions dates of 04/16/2024 and 11/01/2024 for the salt shed and large vehicle parking garage, respectively, were noted. Expected final completion date of 06/01/2025 for all work was also noted.

After the bid opening, the lowest apparent bidder was asked to submit supplemental information including unit prices and proposed subcontractors for the project, which have been reviewed and are attached for reference.

Base Bid Information Analysis

Low Base Bid – Gilbank Construction, Inc. (Clinton, Wisconsin) - \$11,544,000

In reviewing the bid and supplemental information submitted by Gilbank Construction, no irregularities were noted.

Alternate Bid 01 – On-Site Truck Scale System

As an added cost to Gilbank Construction's base bid - \$115,000.

In review of the Gilbank Construction's alternate bid, which was also the lowest of the (4) bidders, no irregularities were noted.

PROJECT MEMO

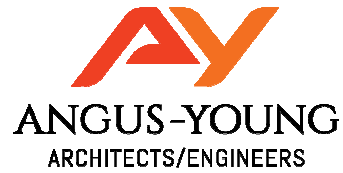
Recommendation and Award

The low bidder presented in this memo is a highly qualified general contractor, with the expertise and experience necessary to construct a quality building for the City of Fort Atkinson. Most notably, Gilbank Construction completed the Public Works Facility for the City of Delavan in 2020.

It is the recommendation of Angus-Young, for the City of Fort Atkinson to award the construction contract to Gilbank Construction, Inc. for all base bid work, as they were the lowest qualified bid received, for a total contract amount of **\$11,544,000**. The alternate bid, for the truck scale equipment, can be considered by the City as well, for an additional contract add of \$115,000.

Respectfully,

Brad Werginz, AIA, Project Architect



BID TALLY

Fort Atkinson - Public Works & Parks Operations Facility

AYA Project Number 76130

December 21st, 2023 2:00 PM (CST)

<u>Bidding Contractor</u>	Bid Bond	Addendum No. One	Addendum No. Two	Addendum No. Three	Change Order %	Construction Duration Calendar Days	Base Bid Division 0-41	Alternate Bid No. 1 Truck Scale
Gilbank Construction, Inc.	X	X	X	X	10%	480	\$11,544,000.00	\$115,000.00
Miron Construction Co., Inc.	X	X	X	X	10%	510	\$11,821,531.00	\$130,609.00
Hunzinger Construction Company	X	X	X	X	5%	513	\$13,169,000.00	\$125,500.00
Joe Daniels Construction Co., Inc.	X	X	X	X	15%	465	\$13,581,482.00	\$144,000.00

**SECTION 00 43 36
SUBCONTRACTORS LIST**

GENERAL

A list of subcontractors will not be required to be submitted with the bid; however, the successful bidder(s) shall submit in writing the names of prospective subcontractors and material suppliers for the owner's approval, as outlined in the Instructions to Bidders. The owner will review, approve or disapprove all subcontractors for prime contractors.

Use subcontractors who have adequate numbers of skilled workman that are thoroughly trained and experienced in the necessary crafts and who are completely familiar with the specified requirements and the methods needed for proper performance of the Work.

SUBMITTAL

Each Prime Contractor shall submit a complete listing of subcontractors and product suppliers to be used, for each item specified in each section indicated below. Enter the contract amount included in base bid.

SUBCONTRACTOR / SUPPLIER		
SECTION	NAME & CITY	BASE BID AMOUNT
3 - CONCRETE FLATWORK	GILBANK, CLINTON	\$480,000.00
4 - CONCRETE MASONRY	LAVERY & SONS, FOOTVILLE	\$199,000.00
4 - PRECAST WALL PANELS	STONECAST, GERMANTOWN	\$1,630,000.00
4 - PRECAST FLOOR PLANK	STONECAST, GERMANTOWN	INC. ABOVE
5 - STRUCTURAL STEEL	ENDRES, WAUNAKEE	\$885,000.00
5 - STEEL JOISTS	ENDRES, WAUNAKEE	INC. ABOVE
5 - METAL STUDS/GYPSUM	DAVCO, WAUKESHA	\$70,000.00
6 - FINISH CARPENTRY	GILBANK, CLINTON	\$50,000.00
6 - CASEWORK	HILLCRAFT, MADISON	\$43,000.00
7 - TPO ROOFING	JT RAMS, SAUKVILLE	\$480,000.00
7 - SHEET MTL FLASHING	JT RAMS, SAUKVILLE	INC. ABV
8 - ALUMINUM FRAMES	COUNTRY GLASS, BELOIT	\$87,000.00
8 - OVERHEAD DOORS	RAYNOR, ROCKFORD	\$191,000.00
8 - DOORS/FRAMES/HARDWARE	QUALITY DOORS & HARD., WISCONSIN RAPIDS	\$87,000.00
9 - HARD TILE	MACCO'S, JANESVILLE	\$30,000.00

9 - CARPETING	MACCO'S, JANESVILLE	INC. ABV
9 - PAINTING	HOWARD GROTE, MCFARLAND	\$162,000.00
21 -FIRE PROTECTION	LAZER FP, STOUGHTON	\$121,000.00
22 -PLUMBING	DEGARMO PLUMBING, JANESVILLE	\$675,000.00
22 – LUBE EQUIPMENT	WALT'S PETROLIUM, SCHOFIELD	\$100,000.00
23 -MECHANICAL	TOTAL, JANESVILLE	\$920,000.00
26 -ELECTRICAL	VP PLUS, LAKE GENEVA	\$695,000.00
31 -EARTHWORK	SILHA, JANESVILLE	\$562,000.00
41 -BRIDGE CRANES	AERO MAT. HANDELING, ANOKA MN	\$215,000.00

END OF SECTION

**SECTION 00 43 22
UNIT PRICE FORM**

Unit costs shall be submitted to the Architect / Engineer within 24 hours after notification of bid results.

1. SECTION 31 23 16 - Excavation:
The cost per cubic yard to cut and remove from site, unsuitable soils:
\$20.00
2. SECTION 31 05 03 - Fill:
The cost per ton to provide, place, and compact, engineered granular fill:
\$20.00
3. SECTION 32 12 16 - Asphalt Paving:
 - A. Light Duty Pavement:
Cost per square yard to provide specified binding course, wearing course, and compacted granular fill. **\$35.00**
 - B. Heavy Duty Pavement:
Cost per square yard to provide specified binding course, wearing course, and compacted granular fill. **\$45.00**
4. SECTION 03 30 00 - Concrete Flatwork: Cost per square foot to provide the following:
 - A. 4" thick concrete sidewalk including 4" under slab compacted granular fill and sealer:
\$8.50
 - B. 4" thick concrete slab on grade including specified woven wire mesh and 8" compacted granular fill and sealer:
\$8.00
 - C. 6" thick concrete slab on grade including specified reinforcing, and 8" compacted granular fill and sealer:
\$9.50
5. SECTION 04 22 00 - Concrete Masonry:
 - A. Cost per square foot to furnish and install smooth-face concrete masonry units:
4" units **\$19.00**
6" units **\$20.00**
8" units **\$23.00**
10" units **\$25.00**
6. SECTION 09 90 00 - Paints: The cost per square foot to finish the following substrates in accordance with the Project Manual and Drawings:
 - A. Drywall **\$1.30**
 - B. Concrete Unit Masonry **\$1.80**
7. SECTION 26 00 00 - Electrical: The cost per fixture or appliance.
 - A. Added Phone/Data Port and 75' Conduit **\$1,300.00**
 - B. Added Electrical Outlet and 75' Conduit **\$1,500.00**

END OF SECTION



MEMORANDUM

DATE: January 4, 2024

TO: Fort Atkinson City Council

FROM: Andy Selle, PE - Director of Public Works

RE: Review and possible action for Angus-Young Construction Period Services

BACKGROUND

Angus-Young served as the Architect for the City's new Public Works and Parks Operations Facility. With bids now in hand and assuming the bid is awarded on January 4th, the design period is ending and the construction period of the project beginning.

DISCUSSION

Angus-Young and the project manager Bradley Werginz have done an excellent job to date in delivering the bid documents through the design process on time and under budget. Continuing this relationship into construction is in the best interest of the City and has been consistent with our approach of contracting with the design firm for construction period services.

FINANCIAL ANALYSIS

Council has approved costs for the project to be covered in an anticipated borrowing to occur within the coming months. Given the bid results, the estimated project total is provided here in table format. The expense for construction oversight is included in the "soft costs" category below.

ITEM	% COMPLETE	DESCRIPTION	ESTIMATED COST
SOFT COSTS	75%	Land Purchase, Design, Permitting, Construction oversight, Utility relocation	\$1,166,975.00
BUILDING CONSTRUCTION	25%	Contract with Gilbank Construction (<i>includes 5% contingency</i>)	\$12,121,200.00
FURNISHINGS AND EQUIPMENT	0%	Truck wash, mechanic's shop equipment, office / break room equipment etc.	*\$545,000
		EST. PROJECT TOTAL	\$13,833,175.00

**Includes truck wash at \$220K*

RECOMMENDATION

Staff recommends the City Council approve the contract for construction period services with Angus-Young in an amount not to exceed \$121,000.

ATTACHMENT

Angus-Young Construction Administration Proposal



Thursday, November 30, 2023

Andy Selle, Director of Public Works
City of Fort Atkinson
700 James Place
Fort Atkinson, WI 53538

Re: Public Works & Parks Operations - Construction Administration

Page 1 of 4

Dear Andy:

Thank you for having Angus Young Associates provide you with this proposal for architectural and/or engineering services for your project. We hope that this proposal format provides you with the needed information to select our firm. Please let us know if you have any questions or require changes.

This engagement letter is for professional services for the project scope described in the 'project scope' description. The professional services to be provided are those services checked under 'professional services included'. Should the project scope or services being provided change during the development of the project, an adjustment in the fees for the revised scope will be made to the fee described below. The risk allocation amount shall be the limit of our professional liability as defined in the 'Risk Allocation' section of this engagement letter.

Project Scope:

Angus Young will provide construction related services for the new Fort Atkinson Public Works & Parks Operations Facility, which will include the following:

- 1) Review shop drawings,
- 2) Attend bi-weekly job meetings
- 3) Review construction on-site weekly
- 4) Prepare clarifications and answer questions as called upon (RFIs).
- 5) Prepare construction bulletins for pricing of work changes during construction.
- 6) At notification by the contractor of substantial completion, we shall closely review the project with you and prepare a list of all items that the contractor must complete, repair or provide prior to final completion and payment.
- 7) As part of the final completion of the project, we shall assist in gathering as built documents, warranties, instruction and operation manuals from the contractor, and preparing closing documents and paperwork required for reduction of retainage and final payment.

Terms:	Contract form: B101-2017 Owner-Architect Agreement
	Angus-Young Associates Risk Allocation: \$1,000,000.00
	Type of Billing: Fixed fee plus reimbursable expenses
	Professional Services Fee: \$120,000.00
	Estimated Expenses: \$1,000.00
	<hr/>
	Estimated Total: \$121,000.00

Professional Disciplines Included**Services Included:**

Hourly Rate	Principal/Director/Partner V	\$225.00	Principal/Director/Partner IV	\$205.00
	Principal/Director/Partner III	\$180.00	Principal/Director/Partner II	\$155.00
	Principal/Director/Partner I	\$130.00	Professional V	\$205.00
	Professional IV	\$180.00	Professional III	\$155.00
	Professional II	\$130.00	Professional I	\$105.00
	Designer V	\$170.00	Designer IV	\$150.00
	Designer III	\$135.00	Designer II	\$105.00
	Designer I	\$95.00	Technician V	\$135.00
	Technician IV	\$125.00	Technician III	\$110.00
	Technician II	\$100.00	Technician I	\$90.00
	Administrative V	\$100.00	Administrative IV	\$90.00
	Administrative III	\$75.00	Administrative II	\$55.00
	Administrative I	\$45.00		

Work will begin on the project after a signed copy of this engagement letter is received. If for any reason, work has begun without a signed engagement letter, contract or purchase order, we may terminate work on the project without notice. Receipt of a purchase order for this project will constitute agreement with the terms of this engagement letter. This agreement and the contract form defined under "Terms" above shall be the basis of our agreement. The contract form will be provided at your request.

We look forward to working with you on this project.

Sincerely,

Accepted By:



Bradley Werginz, Principal, Architect, AIA

Signature

Printed Name

Date

STANDARD OF CARE

Angus-Young Associates, Inc. and any and all professionals providing professional services under the agreement created by acceptance of this engagement letter shall exercise ordinary professional care in performing all services under the agreement, without warranty or guarantee expressed or implied.

INFORMATION REQUIRED FROM CLIENT

To provide the required professional services, we may require information from you or others. Depending on the scope of the project and services, we will require you or others to provide: space needs or program statement; detailed site survey; soils engineering report; written design criteria and project requirements; and existing building as-built drawings/ construction documents. We will rely on the content, accuracy, and completeness of all information provided by you or others on your behalf. Please confirm the accuracy of all information provided. Angus-Young is not responsible for confirming information provided by you or others.

SCOPE OF BASIC SERVICES

Services that we may provide for your project include: architectural, structural, electrical, plumbing, and mechanical engineering. These services are implied unless omitted because of project scope or limitation of requested professional services. Unless otherwise stated, scope of professional services and form of agreement between the Angus-Young Associates, Inc. and the Owner shall be defined by the AIA contract form referenced previously. This contract form is available upon request.

REIMBURSABLE EXPENSES

Reimbursable expenses shall be billed in addition to professional fees at cost plus fifteen percent. Expenses may include but not limited to: submittal and approval fees; printing, reproduction of drawings and specifications; mailing; advertising fees; and travel expenses. Where proposal is provided to include expenses, these fees are included in the profession fees listed.

SERVICES NOT INCLUDED

Angus-Young Associates shall not provide, coordinate nor be responsible for: services not specifically listed above; soils, concrete, material and performance testing; site surveying services; pre-engineered building components design; other professional services such as real estate, accounting or legal services. Angus-Young, except for its own services, shall not specify construction procedures, manage or supervise construction, or implement or be responsible for health and safety procedures, and shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs.

INSTRUMENTS OF SERVICE

All original documents prepared for Client by Angus-Young Associates, Inc. or Angus-Young Associates, Inc.'s independent professional associate(s) and subconsultant(s) pursuant to the agreement created by acceptance of this engagement letter (including but not limited to calculations, computer files, drawings, specifications, or reports) are Instruments of Professional Service in respect of this Agreement. Angus-Young Associates, Inc. shall retain ownership and property interest therein whether or not the services that are subject of this Agreement are completed. Unless otherwise confirmed by written Addenda to the agreement, signed by duly authorized representatives of both Client and Angus-Young Associates, Inc., no Instrument of Professional Service in respect of this agreement constitutes, or is intended to document or depict any "as-built" conditions of the completed Work. Client may make and retain copies for information and reference in connection with the use and occupancy of the completed project by Client and others; however, such documents are not intended or represented to be suitable for reuse by Client or others on extensions of the project, or otherwise. And reuse without Angus-Young Associates, Inc.'s written consent shall be at Client's sole risk and responsibility, and without any liability to Angus-Young Associates, Inc., or to Angus-Young Associates, Inc.'s independent professional associate(s) and subconsultant(s).

Further, Client shall indemnify, defend and hold Angus-Young Associates, Inc., or Angus-Young Associates, Inc.'s independent professional associate(s) and subconsultant(s) fully harmless from all liability and loss, cost or expense (including attorneys' fees and other claims expenses) in any way arising from or in connection with such reuse.

EXISTING FACILITY LIMITATIONS

We are informing you of risk you assume associated with our work as it relates to the existing building construction. Since we are unfamiliar and unable to verify without damaging the facility, we shall assume that the existing building construction is: as indicated on drawings provided; meets all code requirements; and is consistent with the construction that is visible. Construction that is buried, covered or not readily visible will not be verified by our staff prior to construction demolition. Should demolition expose structural, code or other conditions inconsistent with the information provided or available, additional costs to remedy will be borne by the Owner. Costs for investigation, recommendations and/or design efforts by our staff will be charged in addition to the fees previously established at our standard hourly rates.

LIMITATION OF LIABILITY

In recognition of the relative risks and benefits of the Project to both the Client and Angus-Young Associates, Inc., the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of Angus-Young Associates, Inc. to the Client for any and all claims, losses, costs, damages of any nature whatsoever, or claim expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of Angus-Young Associates, Inc. to the Client shall not exceed the risk allocation amount indicated under 'Terms' in this engagement letter. It is intended that this limitation apply to any and all liability or cause of action ~~however alleged or arising, unless otherwise permitted by law.~~ Furthermore, in no event will Angus-Young Associates, Inc. be liable to the Client or to any third party for any loss of use, revenue or profit or loss of data or for any consequential, incidental, indirect, exemplary, special or punitive damages whether arising out of breach of contract, tort (including without limitation negligence) or otherwise, regardless of whether such damage was foreseeable and whether or not such party has been advised of the possibility of such damages.

PAYMENT TERMS

Angus-Young Associates, Inc. (the Firm) shall bill monthly based on the progress of work completed. Payment shall be due within 21 calendar days from date of invoice. Compounding interest of 1% per month (12% per year) on outstanding balances over 60 calendar days from date of invoice will be charged in addition to professional service fees. If invoice has not been paid within 90 calendar days of date of invoice, the Firm may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, terminate the performance of service. If the Client fails to make payments when due and the Firm incurs any costs in order to collect overdue sums from the Client, the Client agrees that all such collection costs, including actual reasonable attorneys fees and time by Angus-Young Associates, Inc. professionals at standard hourly rates incurred in addition to any fixed fee arrangement, shall immediately become due and payable.

NO ASSIGNMENT

The agreement created by acceptance of this engagement letter is not subject to assignment, transfer or hypothecation without the express written consent of both parties acknowledging such assignment, transfer or hypothecation.

GOVERNING LAW

The agreement created by acceptance of this engagement letter, as amended (if applicable), and any disputes or controversies arising in connection with the agreement, shall be governed and resolved by the laws of the State of Wisconsin, without regard to said state's choice of law rules.

SEVERANCE OF CLAUSES

In the event that any term, provision or condition of the agreement created by acceptance of this engagement letter is void or otherwise unenforceable under the law governing the agreement, then such terms shall be stricken and the balance of the agreement shall be interpreted and enforced as if such stricken terms never existed.

INTEGRATED AGREEMENT

The agreement created by acceptance of this engagement letter is the parties' final and entire agreement and is expressed in the engagement letter and these standard terms and conditions associated with the engagement letter. All prior oral agreements or discussions, proposals and/or negotiations between the parties are merged into and superseded by the agreement created by acceptance of this engagement letter. No term of the parties' agreement may be orally modified, amended or superseded.

SOLE BENEFIT OF THE PARTIES

The agreement created by acceptance of this engagement letter is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of the agreement, except as expressly stated herein.

INTENT TO LIEN

As required by Wisconsin Construction Lien Law, contractor hereby notifies Owner that persons or companies furnishing labor or materials for the construction on Owner's land may have lien rights, in Owner's land and buildings if not paid. Those entitled to lien rights, in addition to Angus-Young Associates, Inc., are those who contract directly with the Owner or those who give the Owner notice within 60 calendar days after they first furnish labor or materials for the construction. Accordingly, Owner will probably receive notices from those who furnish labor or materials for the construction, and should give a copy of each notice received to his mortgage lender, if any. Angus-Young Associates, Inc. agrees to co-operate with the Owner and the Owner's lender, if any, to see that all potential lien claimants are duly paid.

This is to notify the Owner that if not paid for any or all services provided, Angus-Young Associates, Inc. may exercise it's right to place a lien on property.



MEMORANDUM

DATE: January 4, 2024

TO: Fort Atkinson City Council

FROM: Brooke Franseen, Parks and Recreation Director

RE: Review and possible action relating to the purchase of a Pentair MegaTherm Commercial Pool Heater with 2024 Aquatic Center CIP funds at a cost not to exceed \$35,822

BACKGROUND

The current Fort Family Aquatic Center pool heater was purchased in 2008. Typically, pool heaters have a lifespan of 11-15 years prompting staff to budget for a new pool heater in the 2024 CIP.

At the beginning of the 2023 summer season, the Fort Family Aquatic Center pool heater experienced a malfunction, resulting in a series of disruptions to operations and services. The malfunction prompted staff to engage Richter Heating and Cooling, the City's pool service contractor, for multiple service calls to address the issues with the heater. During the short time the heater was down, the water was cold, which impacted the overall experience for families enjoying the pool and participants in the swim lessons.

DISCUSSION

Several contractors were invited to assess the heater and provide quotes for a replacement. The contractors highlighted several deficiencies in the current heater, including wires melting and other structural issues that compromise its functionality.

The current heater is a Pentair Megatherm commercial pool heater. Staff has been happy with the performance of the current heater and the lifespan resulting in requesting proposals for a similar replacement.

FINANCIAL ANALYSIS

In Section Q of the 2024 Capital Improvements Budget, \$39,000 was budgeted for the replacement of the pool heater. The source of these funds is the 2024-2025 borrowing. Staff solicited proposals for the purchase and installation of the Pentair Megatherm heater and received two proposals from Richter Heating and Air Conditioning and Neuman Pools shown in the following table.

Supplier	Location	Price	Warranty
Richter Heating & Air Conditioning	Watertown, WI	\$35,822.00	1-year parts 1-year labor
Neuman Pools	Beaver Dam, WI	\$56,578.80	1-year parts

Richter has a lead time of 4-7 weeks from date of purchase to receive the heater, and Neuman has a lead time of 12-14 weeks. Due to the current heater's malfunctions during the 2023 season, staff recommends replacement prior to the 2024 season. Richter Heating and Air Conditioning provided a proposal with the lowest price and shortest lead time.

RECOMMENDATION

Staff recommends that the City Council authorize staff to accept the proposal from Richter Heating & Air Conditioning for the purchase and installation of the Pentair Megatherm Commercial Pool Heater at a cost not to exceed \$35,822.00.

ATTACHMENTS

- Richter Heating & Air Conditioning Proposal
- Neuman Pools Proposal

RICHTER

Heating & Air Conditioning Inc.

421 Water Tower Ct., Watertown, WI 53094
Bill & Adam Richter 920-988-7050 RichterHVAC@gmail.com
RichterHVAC.com

***Proposal for Fort Atkinson Parks & Recreation Dept.
SA: Fort Atkinson Aquatic Center
1300 Lillian St., Fort Atkinson, WI 53538
Brooke 920-563-7781/920-397-9910
bfranseen@fortatkinsonwi.gov***

***Date Submitted 6/26/2023, Revised 11/28/2023, Revised
12/29/23***

HVAC Proposal for Pool Heater Replacement

- Pentair Megatherm Commercial Pool Heater #MT2800EN18CCAN
- Water Piping
- Low Voltage Wiring Connected as Needed
- Stand
- Gas Piping
- Crane Rental
- Local Permit
- Proper Removal of Old Pool Heater
- Proper Start-up of New Pool Heater

Check/Cash Price = \$35,822.00

If paying with a credit card add 3% convenience fee to the total cash/check price.

Draws upon request

Price quoted include sales tax

Changes can be made through change request forms.

Prices good until 1/29/23

**AS REQUIRED BY THE WISCONSIN CONSTRUCTION LIEN LAW, CLAIMANT
HEREBY NOTIFIES OWNER THAT PERSONS OR COMPANIES PERFORMING,
FURNISHING, OR PROCURING LABOR, SERVICES, MATERIALS, PLANS, OR
SPECIFICATIONS FOR THE CONSTRUCTION ON OWNER'S LAND MAY HAVE**

LIEN RIGHTS ON OWNER'S LAND AND BUILDINGS IF NOT PAID. THOSE ENTITLED TO LIEN RIGHTS, IN ADDITION TO THE UNDERSIGNED CLAIMANT, ARE THOSE WHO CONTRACT DIRECTLY WITH THE OWNER OR THOSE WHO GIVE THE OWNER NOTICE WITHIN 60 DAYS AFTER THEY FIRST PERFORM, FURNISH, OR PROCURE LABOR, SERVICES, MATERIALS, PLANS OR SPECIFICATIONS FOR THE CONSTRUCTION. ACCORDINGLY, OWNER PROBABLY WILL RECEIVE NOTICES FROM THOSE WHO PERFORM, FURNISH, OR PROCURE LABOR, SERVICES, MATERIALS, PLANS, OR SPECIFICATIONS FOR THE CONSTRUCTION, AND SHOULD GIVE A COPY OF EACH NOTICE RECEIVED TO THE MORTGAGE LENDER, IF ANY. CLAIMANT AGREES TO COOPERATE WITH THE OWNER AND THE OWNER'S LENDER, IF ANY, TO SEE THAT ALL POTENTIAL LIEN CLAIMANTS ARE DULY PAID.

Richter Heating & Air Conditioning, Inc.

_____ **Date** _____
Bill Richter, President

Acceptance of Proposal – The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Final payment will be made within 30 days of completion.

_____ **Date** _____
Acceptance Signature



SERVICE CONTRACT

Date: 12/14/2023
Owner Address: Fort Atkinson Aquatic Center
30 North Water Street
Fort Atkinson, WI 53538
Attn: Brooke Franseen
Phone: (920) 397-9910
Email: bfranseen@fortatkinsonwi.gov

SCOPE OF SERVICES:

Replacement of the pool heater

- Removal of the existing Pentair MegaTherm 2,800,000 BTU Natural Gas pool heater
- Installation of a new Pentair MegaTherm 2,800,000 BTU Natural Gas pool heater
- Startup & commissioning of the new pool heater
- Travel, materials & installation

NOTES:

- If any venting, gas, or electrical modifications are needed, they must be completed by licensed mechanical or electrical contractors which are not included in this contract.
- 12-14 week lead time to receive the heater once it is ordered.

PRICING – VALID FOR 30 DAYS

Price:	\$	56,578.80
Tax:	\$	0.00
Total:	\$	56,578.80

PAYMENT TERMS

50% initial payment and 50% due upon completion.

BUILDING YOUR IMAGINATION

W9684 Beaverland Parkway | PO Box 413 | Beaver Dam, WI 53916 | 920-885-3366 | neumanpools.com

SIGNATURES

Owner has read and understands the payment terms, conditions, and lien rights.

Neuman Pools, Inc.

Signature: _____

Jeff Gruszynski – Service Manager

Date: _____

Owner

Signature: _____

Print Name / Title: _____

Date: _____

WISCONSIN LIEN RIGHTS

As required by Wisconsin Construction Lien Law, NEUMAN POOLS, INC. hereby notifies the Owner that persons or companies furnishing labor or materials for construction on Owner's land may have lien rights on Owner's land and buildings, if not paid. Those entitled to lien rights, in addition to NEUMAN POOLS, INC., are those who contract directly with the Owner, or those who give the Owner notice within 60 days after they first furnish labor or materials for the construction improvement. Accordingly, Owner probably will receive notices from those who furnish labor or materials for the construction improvement and should give a copy of each notice received to his mortgage lender, if any. NEUMAN POOLS agrees to cooperate with the Owner and their lender, if any, to see that all potential lien claims are duly paid.

SALES TERMS AND CONDITIONS

Terms and Conditions. These terms and conditions shall apply to all orders or transactions entered into by and between the buyer listed on this order ("Buyer") and Neuman Pools, Inc. ("NPI"). NPI will accept orders, sell Products and Services (defined below), and do business only on these terms and conditions. These terms and conditions, the terms and conditions on the first page of this order and any NPI quotation accepted by Buyer, shall be collectively referred to hereinafter as the "Agreement." As used herein, "Products and Services" shall mean all items being sold by NPI to Buyer, whether materials, products to be manufactured or delivered, services to be rendered or any combination thereof. NPI's acceptance of Buyer's order is expressly conditioned on Buyer's unqualified acceptance of the Agreement. Buyer, upon placing an order for the purchase of Products and Services shall be deemed to have accepted all the terms and conditions of the Agreement without modification. Buyer may also accept an order in writing or electronically. Unless otherwise agreed to in a writing signed by NPI, any term or condition contained in any Buyer purchase order or other form or correspondence that purports to add to or is in any way inconsistent with the Agreement shall be inapplicable and of no force or effect whatsoever.

Time of Delivery. NPI shall use commercially reasonable efforts to fill Buyer's orders within the time stated but in no event shall NPI be liable for any damages associated with NPI's inability to meet any such timeframes or deadlines.

Price; Taxes. Unless otherwise stipulated, all prices stated in NPI's quotations shall be good only for a period of thirty (30) days from the date of such quotation. Thereafter, the price for Products and Services sold hereunder shall be NPI's price in effect as of the date of shipment. Unless specifically otherwise set forth in the Agreement, Buyer shall be responsible for obtaining any and all permits or other governmental approvals required in connection with the Products and Services, and prices do not include the cost of such approvals, cost of freight or handling, cost or charges for insurance or any production, sales, use, transfer, transportation, excise or other taxes, tariffs, or customs duties, or costs arising from unforeseen, concealed or unusual conditions or circumstances, and Buyer shall pay directly or be charged by NPI for all such costs and/or charges in addition to the price(s) of the Products and Services supplied hereunder and Purchaser shall be obligated to pay such charges and costs on the same terms as apply to payment of the price(s) hereunder. NPI may make partial shipments.

Shipment; Payments. As applicable, all materials and products shall be shipped F.O.B. NPI's plant, unless otherwise agreed. Risk of loss and title to Products and Services shall pass to Buyer upon performance of the services and delivery of the material or products to the carrier for shipment. Payment of each invoice shall be due, without deduction or setoff, within thirty (30) days of the invoice date. Interest of 1.5% per month will be added to all amounts outstanding more than thirty (30) days.

Specifications. NPI may make any change in design of, or in the way it manufactures or produces, any Product if, in NPI's sole judgment, such changes are necessary or desirable to improve the safety or performance of such Product.

Cancellation. Buyer may not cancel orders placed with NPI, except with NPI's prior written consent and then only if Buyer makes payment to NPI to indemnify it against all loss and damage incurred by NPI on account of such cancellation.

Inspection. Buyer shall inspect all Products and Services within ten (10) days after receipt thereof and shall notify NPI of any rejection of such Products and Services within such ten (10) day period, after which Buyer shall be deemed to have accepted such Products and Services.



BUILDING YOUR IMAGINATION

Service Contract
Page 2 of 3

Security Interest. Buyer hereby grants to NPI and NPI hereby retains a security interest in all materials and products sold hereunder and all accessories and additions thereto, whether presently upon Buyer's premises or hereafter acquired, and all proceeds from the sale or other disposition of the foregoing. Buyer hereby authorizes NPI and its agents to file any financing statements and other documents necessary to create, perfect and maintain the perfection of the security interest granted hereunder

LIMITED WARRANTY. NPI warrants to Buyer that (a) at the time of delivery, the Products and Services shall conform to the written specifications approved by NPI for such Products and Services; and (b) the Products and Services shall be free from defects in material and workmanship. **THE FOREGOING LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. ANY AND ALL OTHER EXPRESS, STATUTORY OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED. NO WARRANTY IS MADE WHICH EXTENDS BEYOND THAT WHICH IS EXPRESSLY CONTAINED HEREIN.**

Inspection and Return under Warranty. Buyer must give written notice to NPI of any suspected defect in the Products and Services within the above-described inspection period; otherwise, Buyer will be deemed to have accepted such Products and Services. Buyer must obtain a return authorization from NPI prior to returning any materials or products for warranty service under this Section. Buyer shall be responsible for all costs and expenses associated with returning the materials or products to NPI for warranty service. NPI reserves the right to apply a restocking charge of 35% of the purchase price of the returned goods, plus freight charges to all returns.

LIMITATION OF LIABILITY. **THE REMEDIES OF BUYER SET FORTH HEREIN ARE EXCLUSIVE AND, IN ANY EVENT, THE TOTAL AGGREGATE LIABILITY OF NPI WITH RESPECT TO ANY CLAIMS UNDER THE AGREEMENT OR REGARDING THE EQUIPMENT, SERVICES, WORK, SPARE OR REPLACEMENT PARTS AND SERVICES INCIDENTAL THERETO AS FURNISHED HEREUNDER, WHETHER BASED IN CONTRACT, INDEMNITY, TORT, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PRICE PAID FOR THE PRODUCTS AND SERVICES UPON WHICH ANY SUCH CLAIM IS BASED. IN NO EVENT SHALL NPI BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES ARISING FROM ANY CAUSE WHATSOEVER, WHETHER BASED ON CONTRACT, TORT, WARRANTY OR ANY OTHER THEORY OF LIABILITY.**

Indemnification. Buyer shall defend, indemnify and hold NPI and its officers, directors, shareholders, affiliated companies, employees, agents and representatives harmless against any claims, losses, damages, liabilities or expenses (including, without limitation, reasonable attorneys' fees and other costs and expenses of litigation) resulting from or otherwise connected with any of the following: (a) bodily injury, death or property damage caused by Buyer's or its agents' acts or omissions with respect to the Products and Services; or (b) any design, specification, material or component supplied or approved by Buyer for the design, manufacture, installation, repair or services in connection with the Products and Services.

Intellectual Property Rights. NPI shall retain all intellectual property rights in and to the Products and Services, including, without limitation, any rights under patents as well as any unpatented information such as trade secrets, confidential information, trademarks, trade dress or copyrights. Nothing in the Agreement shall be deemed or construed to be a transfer or license of any of NPI's intellectual property. Buyer shall obtain rights to such intellectual property only to the extent that NPI may grant such rights in writing.

Force Majeure; Remedies; Limitation of Actions. NPI shall not be liable for any delay in the performance of the Agreement by reason of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, earthquakes, telecommunications outages, acts of God, war, terrorism, governmental action or any other cause which is beyond the reasonable control of NPI. In the event of any such delay, NPI's performance hereunder shall be postponed by such length of time as may be reasonably necessary to compensate for the delay. Each of the rights and remedies of NPI under the Agreement is cumulative and in addition to any other or further remedies provided under the Agreement or at law or equity. Any action by Buyer for any loss or damage with respect to the Agreement shall be commenced within one (1) year from the earlier of the date of: initial operation, substantial completion, last date of services or date of shipment, as applicable.

Miscellaneous. If any court of competent jurisdiction determines that any provision of the Agreement is invalid or unenforceable, then such invalidity or unenforceability shall have no effect on the other provisions hereof, which shall remain valid, binding and enforceable and in full force and effect, and such invalid or unenforceable provision shall be construed in a manner so as to give the maximum valid and enforceable effect to the intent of the parties expressed in the Agreement. Buyer may not assign any of its rights, duties or obligations under the Agreement without NPI's prior written consent. The rights of all parties hereunder and the construction of every provision hereof shall be governed by the laws of the State of Wisconsin, without giving affect to principles of conflicts of law. The parties agree that any action arising out of the Agreement or in connection with the goods covered hereunder shall be brought in the federal, state or local court located in or otherwise having jurisdiction over Dodge County in the State of Wisconsin and the parties hereby consent to personal jurisdiction in such courts and waive any objection based on jurisdiction or venue of any such action.