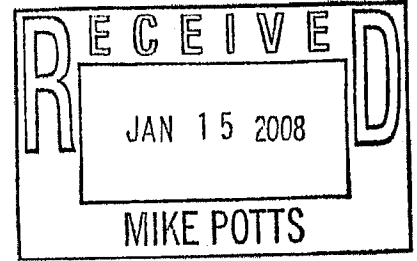


CITY OF
MANITOWOC

Jennifer Hudon, CMC CMTW CPFA
City Clerk/Deputy Treasurer

January 13, 2009



Dianne - original

Great Lakes Energy Technologies LLC and
Orion Energy Systems, Inc.
1204 Pilgrim Rd.
Plymouth, WI 53073

RE: Storm Water Management Facility Maintenance Agreement

Gentlemen:

Enclosed is a copy of a resolution which authorizes the City of Manitowoc to enter into a Storm Water Management Facility Maintenance Agreement with Great Lakes Energy Technologies LLC and Orion Energy Systems, Inc., as detailed therein.

This resolution was unanimously adopted by the Mayor and Common Council at the meeting of Monday, January 5, 2009.

The agreement was recorded at the Manitowoc County Register of Deeds office on January 8, 2009. An invoice for \$37.00 for recording fees is also enclosed.

If you have any questions, please contact me at 920-686-6950.

Very truly yours,
Jennifer Hudon

Jennifer Hudon
City Clerk

JH:dan

Enc: Dir. of Public Works/City Engr. Valerie Mellon
City Planner David J. Less



OFFICE OF CITY CLERK



 **COPY**



DATE	INVOICE NO
1/13/2009	0000516

BILL TO
ORION ENERGY SYSTEMS INC 1204 PILGRIM RD PLYMOUTH, WI 53073

DUE DATE
2/13/2009

DESCRIPTION	QUANTITY	EFFECTIVE RATE	AMOUNT
-------------	----------	----------------	--------

CLERK - Recording Fee - Stormwater Management Facility Maintenance Agreement:

REGISTER OF DEEDS	1.00	37.00	37.00
-------------------	------	-------	-------

INVOICE TOTAL: 37.00

[Handwritten Signature]
1/19/09

PLEASE DETACH BOTTOM PORTION & REMIT WITH YOUR PAYMENT

For questions please contact us at (920) 686-6962

Customer Name: ORION ENERGY SYSTEMS INC
Customer No: 000600
Account No: 0000616

DUE DATE	INVOICE NO
2/13/2009	0000516



Please remit payment by the due date to:

City of Manitowoc
900 Quay St.
Manitowoc, WI 54220-4543

INVOICE TOTAL: \$37.00
AMOUNT PAID: _____

RESOLUTION

012

*Street 4
1-5-09*

WHEREAS, §15.37(2)(h) of the Municipal Code provides the authority and establishes procedures by which the CITY's Planning Department may require execution of an agreement to assure compliance with all conditions attached to an approved site plan or certified survey map plan under §15.37(2) of the Code, and;

WHEREAS, the CITY requires the DEVELOPER to execute a storm water management and maintenance agreement to assure the DEVELOPER's long term management of its storm water facilities and thereby minimizing the detrimental effects of surface water runoff in accordance with §28.09 of the Municipal Code, and;

WHEREAS, SITE PLANS #SP33-07 and #SP16-08 related to the facility expansion projects for Great Lakes Energy Technologies, LLC is expressly incorporated herein by reference, and provides for the detention of storm water within the confines of the property and said PROPERTY is legally described within the agreement, and;

WHEREAS, the CITY and DEVELOPER agree that the health, safety and welfare of the residents of the CITY requires that on-site storm water management facilities be constructed and maintained on the PROPERTY, and;

WHEREAS, the CITY requires that on-site storm water management facilities as shown on the LOCATION MAP as shown in Exhibit "A", be designed, constructed, landscaped, and adequately maintained by the requirements listed in Exhibit "B" by the DEVELOPER so that it provides an aesthetic amenity, as well as adequate storm water storage capacity and storm water treatment, and;

WHEREAS, it is understood that any successors, transferees or assignees in interest of the parties hereto shall be subject to and shall comply with the terms of this AGREEMENT.

THEREFORE BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE CITY OF MANITOWOC, that the Director of Public Works and City Engineer be authorized to sign the attached agreement.

BE IT FURTHER RESOLVED that the City Clerk forward a copy of the signed document to Michael Potts, Orion Energy Systems, 1204 Pilgrim Road, Plymouth, WI 53073.

INTRODUCED JAN - 5 2009

T. J. J...

ADOPTED JAN - 5 2009

1-5-09

Committee recommends adoption of resolution.

T. F. L. H.
J. H. C.

Ans. By
D. J. D.

1.5.09

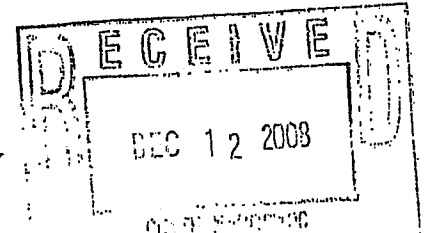
H. A. J.

Doc#
1057567



VOL 2424 PG 74

STATE OF WI - MTWC CO
PRESTON JONES REG/DEEDS
RECEIVED FOR RECORD
01/08/2009 1:00:58 PM



COPY

**STORMWATER MANAGEMENT FACILITY
MAINTENANCE AGREEMENT**

This Agreement (hereinafter "Agreement") by and between the City of Manitowoc, Wisconsin, a municipal corporation (the "City"), 900 Quay Street, Manitowoc, Wisconsin 54220-4543, and Great Lakes Energy Technologies, LLC, a Wisconsin Limited Liability Company ("Great Lakes") and Orion Energy Systems, Inc., a Wisconsin Corporation ("Orion"), 1204 Pilgrim Road, Plymouth WI 53073 (hereinafter "Owner/Developer").

RECITALS

- A. Pursuant to a Warranty Deed dated May 5, 2004 and recorded in Volume 1995, Page 234-236, Document No. 969542, Manitowoc County Register of Deeds, Great Lakes Energy Technologies is the fee simple owner of the following property (the "Property") identified as Lot 1 of a Certified Survey Map recorded in Volume 24 of Certified Survey Maps, Page 63-64, Document No. 967193, Manitowoc County Register of Deeds.
- B. The City's Planning Department (the "Department") approved two (2) site plans for the Owner/Developer pursuant to Section 15.37(2) of the City's Municipal Code; said site plans are hereinafter identified as SP33-07 which was approved by the City on November 19, 2007, and SP16-08 which was approved by the City on July 23, 2008, both related to a facility expansion project of approximately 60,000sf at 2210 Woodland Drive in the City.
- C. A "Memorandum of Agreement" recorded in Volume 2330, Page 409 in the Manitowoc County Register of Deeds evidences a "Site Plan Performance Agreement" between the City and the Great Lakes dated November 27, 2007 regarding the roles and responsibilities of each party related to implementation of all site plan requirements.
- D. Orion f/k/a Orion Lighting, LTD and Orion Energy Systems, LTD is the sole Member of Great Lakes.

NOW, THEREFORE, in consideration of the Recitals and the mutual promises herein made and for other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the Owner/Developers and the City agree as follows:

- 1. Recitals. The Recital are deemed to be true and correct.
- 2. Owner/Developers Responsibilities. The Owner/Developers jointly and severally guarantee to the City that they will perform the following:
 - A. The Owner/Developers shall be responsible for the routine and extraordinary maintenance of the stormwater facilities located on the Property which include, but are not limited to, a wet detention basin and a bioretention rain garden and hereinafter referred to as the "Pond" identified in Exhibit "A", and shall perform all stormwater management practices identified in Exhibit "B"; said Exhibits "A" and "B" are attached and incorporated herein by reference.
 - B. The Pond is for the benefit of the Owner/Developers, and the Owner/Developers shall maintain and inspect the Pond and all appurtenances related thereto as required under Exhibit "B" which is attached and incorporated herein by reference, and shall comply

with a maintenance plan which is on file in the City's Engineering Department. The City Engineering Department shall be defined herein as the City Engineer or designee as its authorized representative.

- C. The Owner/Developers shall submit to the City Engineering Department an annual Pond inspection report for each and every calendar year (hereinafter "calendar year" is defined as October 1st through and including September 30th) beginning with the calendar year after which the Pond has been placed in service and approved by the City. The report shall be filed with the City's Engineering Department on or before October 1st of each calendar year, and shall be in form and content as required by the City. If the Pond is placed in service in calendar year 2008, the first inspection report shall be due on or before October 1, 2009.
 - D. The City or its designee is authorized by the Owner/Developers to access the Owner/Developers property, as necessary, to conduct inspections of the Pond to ascertain compliance with this Agreement.
 - E. Upon the City providing written notification to the Owner/Developers of a problem with the Pond that requires correction, the specified corrective action(s) shall be performed by the Owner/Developers within a reasonable time frame as set by the City Engineering Department.
 - F. The City is authorized to perform the corrective action(s) identified under E. above if the Owner/Developers do not make the required corrections within a time period specified by the City Engineering Department. The cost and expense of such corrections shall be expressly borne by the Owner/Developers, and if such corrections are not implemented to the City's sole satisfaction within the time period specified, the City may enter such costs on the tax roll against the Owner/Developers property as a special assessment, which shall be paid with other taxes levied thereupon for the calendar year in which the City completed the required corrections.
 - G. The City retains the express right to stop work performed by the Owner/Developers at the Pond, and to amend or alter such work being undertaken by the Owner/Developers.
3. Best Management Practices (BMP). The Owner/Developers agrees to follow the State of Wisconsin Department of Natural Resources Technical Standards for erosion and sediment control and post-construction storm water management at the Pond, shall comply with the standards and guidelines of the Wisconsin Department of Natural Resource (WDNR), and shall comply with any ~~additional~~ requirements as required by City regulation or by the City Engineering Department. *current 12/4/08*
4. Representations. All representations and warranties of the Owner/Developers and the City set forth in this Agreement and in all agreements expressly referred to herein, shall at all times be true, complete and correct. *12/16/08*
5. Obligation to Maintain and Repair. The Owner/Developers, shall, during the term of this Agreement, keep and maintain the Pond in good repair and working order, and will make or cause to be made from time to time all necessary repairs thereto, and renewals and replacements thereof so as to maintain a fully operational Pond that functions to control

and manage stormwater related to the Owner/Developers property. Pond maintenance responsibilities are detailed in Exhibit "B" which is attached and incorporated herein by reference.

6. Insurance. During the term of this Agreement, the Owner/Developers shall continually maintain in effect, insurance against such risks, both generally and specifically with respect to the Pond, as are customarily insured against improvements of like size and character including at least, but not limited to, Commercial General Liability Insurance, including Blanket Contractual Liability Insurance, against liability for personal injury, including the death of persons resulting from injuries occurring on or in any way related to the Pond, in the minimum amount of Two Million (\$2,000,000) Dollars per occurrence and against liability for damage to property occurring on, or in, or relating in any way to the Pond in the minimum amount of Two Million(\$2,000,000) Dollars per occurrence.

All insurance policies shall be purchased and maintained with insurance companies authorized to do business in the State of Wisconsin. Certificates of all such insurance shall be filed with the City Clerk's office, with the City named as a certificate holder and shall further be subject to the review and approval of the City Attorney. Copies of said policies and certificates shall be provided to the City Engineering Department within fourteen (14) calendar days after the Owner/Developers execute this Agreement. Each such policy of insurance shall contain a provision that the insurance company shall give the City at least thirty (30) calendar days prior written notice of cancellation, non renewal or material change during the term of this Agreement (or if the insurance company is unable or unwilling to provide such notification, the Owner/Developers shall provide said notice). In the event of a proposed cancellation or non renewal of any such policy by an insurance company, the Owner/Developers shall secure adequate replacement insurance policies prior to the effective date of such cancellation or non-renewal.

7. Claims and License; Injury and Property Damage. During the term of this Agreement, the Owner/Developers agree to protect, defend, indemnify and hold the City, its officers, agents and employees free and harmless from and against any and all claims of third parties which result in losses, penalties, damages, settlements, costs, charges, professional fees, attorney's fee, or other expenses or liabilities in connection with or arising directly or indirectly out of Owner/Developers obligations under this Agreement. In no event shall the Owner/Developers be liable for or have any indemnification obligations for any losses, damages, costs, fees, expenses, etc. arising out of the City's negligence or failure to perform its obligations under this Agreement. Without limiting the generality of the foregoing, any and all such claims, etc., relating to personal injury, death, damage to property, environmental claims, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The Owner/Developers further agrees that the City will, if the City and the Owner/Developers mutually deem it appropriate, provide any additional defense to any claim hereunder, the full costs of which shall be borne by the Owner/Developers. Furthermore, if a third party shall make claim against the City pursuant to this Agreement, the Owner/Developers at its sole option, shall have the right to participate in, or assume the defense of any such

claim, provided however, the City shall remain liable for all costs including attorney fees, to the extent of the City's negligence or failure to perform its obligations.

8. Notice and Right to Cure. A material default or material breach (whether material default or material breach, hereinafter referred to as a "breach") of this Agreement shall be defined as the failure of the parties to perform any material term, covenant, condition, warranty or promise of this Agreement required to be performed by the Owner/Developers or the City. In the event of any breach of this Agreement or any of its terms or conditions by any party hereto, such party shall, upon written notice from the other, proceed immediately to cure or remedy such breach, and in any event shall cure any such default or breach within thirty (30) calendar days of the receipt of such notice, if such breach is of a nature that can be reasonably cured within such thirty (30) day period. If such breach is of a nature that cannot be reasonably cured within such thirty (30) day period, such party shall have commenced such cure and shall be diligently pursuing the same. In the case such action is not taken or is not diligently pursued, the aggrieved party(ies) may have available the remedies provided for herein, however, it is expressly agreed that a breach of this Agreement shall not entitle the Owner/Developers to terminate this Agreement.
9. Additional Remedies. In the event of any breach of this Agreement which has not been cured in accordance with Section 7., the non-breaching party (ies) may utilize any remedies the parties may have at law or in equity. In the event that any party shall breach any of its obligations under this Agreement and shall not cure or remedy such breach, or commence to diligently pursue the same as provided in Section 7., and following notice as provided above, then the non-breaching party(ies) shall have the right to institute any other actions or proceedings as it may have available at law or equity if it deems desirable for effectuating the purposes of this Agreement, provided that any delay by the non-breaching party(ies) in instituting or prosecuting any such action or proceedings or otherwise asserting its rights under this section shall not operate as a waiver of such rights or to deprive it of, or, to limit such rights in any way (it being the intent of this provisions that the non-breaching party(ies) should not be constrained, so as to avoid the risk of being deprived of, or limited in the exercise of the remedy provided in this section because of concept of waiver, laches or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the breach created by the default involved); nor shall any waiver in fact made by the non-breaching party(ies) with respect to any specific default by the other party under this section be considered or treated as the waiver of the rights of the non-breaching party(ies) with respect to any other defaults by the other party under this section, or with respect to the particular default except to the extent specifically waived in writing.
10. Rights and Remedies Cumulative. The rights and remedies of the Owner/Developers and the City, whether provided at law or in equity or by this Agreement, shall be cumulative, and the exercise of any one (1) or more of such remedies shall not preclude the exercise at the same or different times of any other such remedies for the same event of breach or of any remedies for any other event of breach by the other parties. No waiver made by any party with respect to the performance or manner or time of any obligation of any party under the Agreement, shall be considered a waiver of any rights of the Owner/Developers or the City (as the case may be) to enforce any other obligations of the parties under this Agreement. A delay of any party in the enforcement of any term,

covenant, condition, warranty or promise contained in this Agreement shall not be construed as a waiver of any party's right to enforce said obligations.

11. Continuing Obligations. The obligations of each of the parties shall continue until such time as this Agreement is terminated in writing by the Owner/Developers and the City.
12. Termination. This Agreement shall terminate, and become immediately null and void, upon the date of execution of a written instrument releasing the Owner/Developers and the City from all obligations hereunder.
13. Approvals in Writing. Whenever under this Agreement approvals, authorizations, determinations, satisfactions or waivers are authorized or required, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing, signed by the duly authorized officer of the City, and delivered to the party to whom it is directed at the address specified in Section 14. Wherever any approval is required by the terms of this Agreement, and request or application for such approval is duly made, such approval shall not be unreasonably withheld.
14. Inspection of Records. The City shall have the right to inspect any and all records, contracts, financial statements, ledgers or written documents which relate to and are generated by the responsibilities and obligations of the Owner/Developers under the terms of this Agreement, and which are related to verification or documentation of the activities or actions related to the Pond. This right of inspection shall apply to not only those records and documents that are within the physical control and custody of the Owner/Developers, but the Owner/Developers shall also provide copies of any contracts, agreements or other documents with third parties if so requested by the City, that are necessary to verify or document the operation of the Pond.
15. Notices and Demands. A notice, demand or other communication under this Agreement by any party to any other party shall be sufficiently given or delivered if it is dispatched by facsimile transmission, or by first class mail, or by registered or certified mail, postage prepaid, return receipt requested, or delivered personally as set forth below:

Owner/Developers: Great Lakes Energy Technologies, LLC and Orion Energy Systems, Inc.
Attn: Michael J. Potts, Executive VP
1204 Pilgrim Road
Plymouth WI 53073

with a copy to: Great Lakes Energy Technologies, LLC and Orion Energy Systems, Inc.
Attn: Eric von Estorff, Counsel
1204 Pilgrim Road
Plymouth WI 53073

City: City of Manitowoc
Attn: City Clerk
900 Quay Street
Manitowoc WI 54220-4543

with a copy to: City Engineer
City of Manitowoc
900 Quay Street
Manitowoc WI 54220-4543

The above addresses may be changed at any time by the parties by notice given in the manner provided above.

The parties further agree that electronically reproduced signatures such as by facsimile transmission are valid for execution or amendment of this Agreement, and that electronic transmission/facsimile is an authorized form of notice as that term is used in this Agreement.

16. No Liability of the City. The City shall have no obligation or liability to any lender, architect, engineer, contractor, or subcontractors, or any other party retained by the Owner/Developers in the performance of the Owner/Developers obligations and responsibility under the terms and conditions of this Agreement. Each party specifically agrees that no representations, statements, assurances, or guaranty will be made by such party to any third party or by any third party which is contrary to the provisions of this Agreement.
17. Severability. If any provisions of this Agreement is deemed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to parties or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.
18. Amendments. This Agreement is the entire agreement between the parties, and can only be modified or changed in writing executed by all parties.
19. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto, as well as their respective successors, transferees and assigns. Any transfer of any party's interest under this Agreement shall not release the transferor from his or its obligations hereunder.
20. Recordation. This Agreement or at the City's sole option, a Memorandum of Agreement, and any subsequent modifications thereof or additions thereto shall be, upon being duly executed, recorded by the City at the Owner/Developers sole expense, at the Register of Deeds for Manitowoc County, Wisconsin, and shall be deemed to be and interpreted as a covenant running with the Owner/Developers property. The City shall, upon the parties agreement to terminate this Agreement, file and record at the Owner/Developers expense an instrument(s) at the Register of Deeds for Manitowoc County terminating the Agreement.
21. Time of Essence. Time is of the essence as to this Agreement and of every term, covenant, condition, warranty or promise to be performed by the parties.

22. Assignment. The Owner/Developers shall not assign this Agreement or any part of it, without the prior written consent of the City, which consent shall not be unreasonably withheld.
23. Applicable Law. This Agreement shall be deemed to have been made in Manitowoc County, Wisconsin, and shall be governed by, construed under, and enforced in accordance with, the law of the State of Wisconsin, except as otherwise provided herein. All actions or proceedings relating directly or indirectly to this Agreement, whether sounding in contract or tort, shall be litigated only in the circuit court located in Manitowoc County, Wisconsin. All parties to this Agreement hereby subject themselves to the jurisdiction of the circuit court for Manitowoc County, Wisconsin.
24. Headings. The section titles have been inserted in this Agreement primarily for convenience, and do not define, limit or construe the contents of such paragraphs. If headings conflict with the text, the text shall control.
25. Pronouns. Pronouns in this Agreement (including, but not limited to, those referring to the Owner/Developers and the City), importing any specific gender shall be interpreted to refer to limited liability companies, corporations, partnerships, men and women, as the identity of the parties hereto, or the parties herein referred to, may require. Pronouns, verbs, and/or other words in this Agreement importing the singular number shall be interpreted as plural, and plural words as singular, as the identity of the parties hereto, or the parties or objects herein referred to, may require.
26. Integration and Conflicts. This Agreement and any special terms and conditions appended hereto at the time of execution of this Agreement, shall constitute the entire, integrated agreement of the parties hereto with respect to the matters addressed herein. This Agreement, and each and every of its terms and conditions, may be added to or amended only by the mutual written agreement of the parties as permitted in Section 17., which amendment or modification shall be executed with the same formalities as this Agreement shall have been executed. Special terms and conditions, if any, which are agreed upon by the parties hereto at the time this Agreement is executed, shall be reduced to writing in accordance with Section 12.

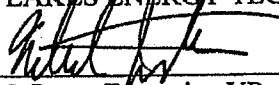
If the provisions of any deed, lease, agreement, contract, note, mortgage, security agreement, or other document between the parties hereto conflicts with the provisions of this Agreement, the provisions of this Agreement shall control.

27. Relationship of Parties. Nothing in this Agreement nor any act of the Owner/Developers or the City shall be deemed or construed to create any relationship of third party beneficiary, of principal or agent, of limited or general partners, of joint venture, or of any association whatsoever between the parties hereto.
28. Survival of Warranties, Representations and Agreements. Any warranty, representation or agreement herein contained shall survive the date of this Agreement.
29. Construction. All parties have contributed to the drafting of this Agreement. In the event of a controversy, dispute or contest over the meaning, interpretation, validity or enforceability of this Agreement or any of its terms or conditions, there shall be no

inference, presumption or conclusion drawn whatsoever against any party hereunder by virtue of that party having drafted this Agreement or any portion thereof.

30. Creation of New Tracts of Land from Owner/Developers Property. Unless so directed by the City, on or after the effective date of this Agreement, any land divisions creating new parcels of property out of the lands legally described in items A., B., C. or D of the Recitals or any developments occurring on these same lands under a lease or similar arrangement, and which shall be designed to drain stormwater to the Pond, shall be required to enter into an amendment to this Agreement or a similar agreement with the City on terms and conditions substantially the same as those included in this Agreement.
31. Counterparts. This Agreement may be executed in counterpart originals, each of which when duly executed and delivered shall be deemed an original and all of which when taken together shall constitute one instrument.
32. Date. This Agreement shall be dated and effective and binding as of the date of the last execution.

GREAT LAKES ENERGY TECHNOLOGIES, LLC



Michael J. Potts, Executive VP
Great Lakes Energy Technologies, LLC

Date

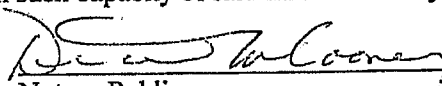
12/5/08

STATE OF WISCONSIN)

)ss.

MANITOWOC COUNTY

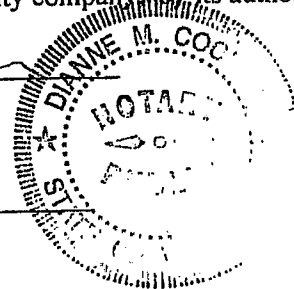
Personally came before me this 5th day of December, 2008, the above named Michael J. Potts, to me known who executed the foregoing instrument and to me known to be such Executive Vice President of Great Lakes Energy Technologies, LLC, and acknowledged that he executed the foregoing instrument in such capacity of said limited liability company, by its authority.



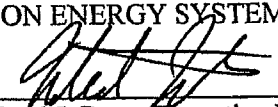
Notary Public
Manitowoc County, Wisconsin

My commission (expires)(is):

2/27/11



ORION ENERGY SYSTEMS, INC.



Michael J. Potts, Executive VP
Orion Energy Systems, Inc.

Date

12/5/08

STATE OF WISCONSIN)

)ss.

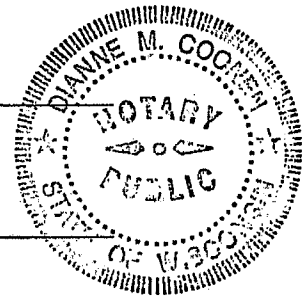
MANITOWOC COUNTY

Personally came before me this 5th day of December, 2008, the above named Michael J. Potts, to me known who executed the foregoing instrument and to me known to be such Executive Vice President of Orion Energy Systems, Inc., and acknowledged that he executed the foregoing instrument in such capacity of said corporation, by its authority.

[Handwritten Signature]

Notary Public
Manitowoc County, Wisconsin
My commission (expires)(is):

2/29/11



CITY OF MANITOWOC

By: Valerie Mellon, P.E.
Valerie Mellon P.E.,
Director of Public Works

12/15/08
Date

STATE OF WISCONSIN)

)ss.

MANITOWOC COUNTY

Personally came before me this 15th day of December, 2008, the above named Valerie Mellon, P.E., to me known who executed the foregoing instrument and to me known to be such Director of Public Works and City Engineer of the City of Manitowoc, WI, a Wisconsin Municipal Corporation, and acknowledged that they executed the foregoing instrument as such Officers of said City, by its authority.

[Handwritten Signature: Kim M. Blanchard]

Notary Public Kim M. Blanchard
Manitowoc County, Wisconsin
My commission (expires)(is):

2/22/11

This instrument was drafted by:
Janet Sosnosky, Stormwater Aide
Filename: Y:\Stormwater\Ponds\Maintenance Agreements\2008\Orion Energy Maintenance Agreement.doc
Rundate: 9/24/2008

Exhibit A - Location Map

Storm Water Management Practices Covered by this Agreement

The storm water management practices covered by this Agreement are depicted in the reduced copy of the construction plans, as shown below. The practices include:

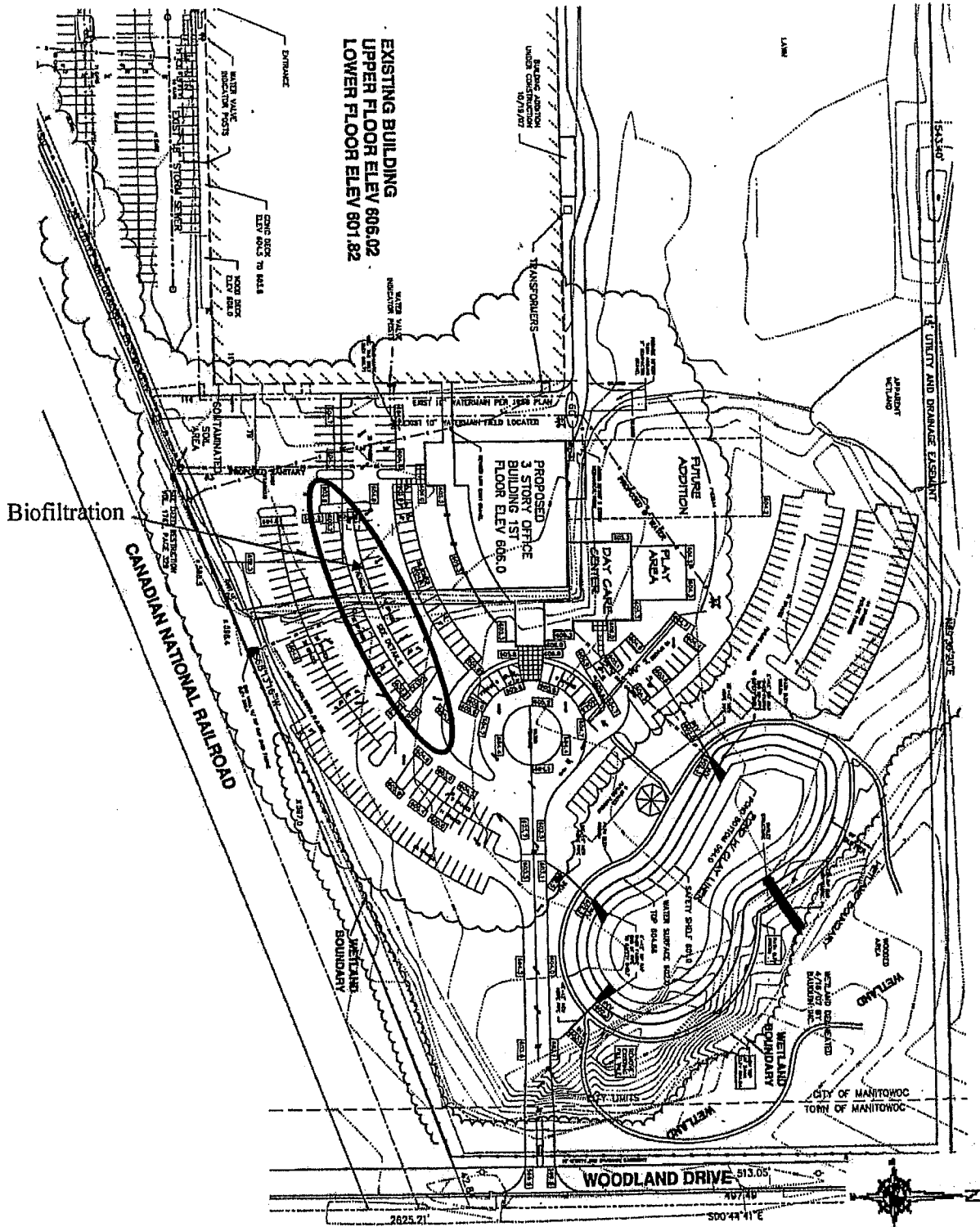


Exhibit B Minimum Storm Water Practice Maintenance Requirements

This exhibit explains the basic function of each of the storm water practices listed in Exhibit B and prescribes the minimum maintenance requirements to remain compliant with this Agreement. The maintenance activities listed below are aimed to ensure these practices continue serving their intended functions in perpetuity. The list of activities is not all inclusive, but rather indicates the minimum type of maintenance that can be expected for this particular site. Access to the stormwater practices for maintenance vehicles is shown in Exhibit B. Any failure of a storm water practice that is caused by a lack of maintenance will subject the responsible party to enforcement of the provisions listed on page 1 of this Agreement by the City of Manitowoc.

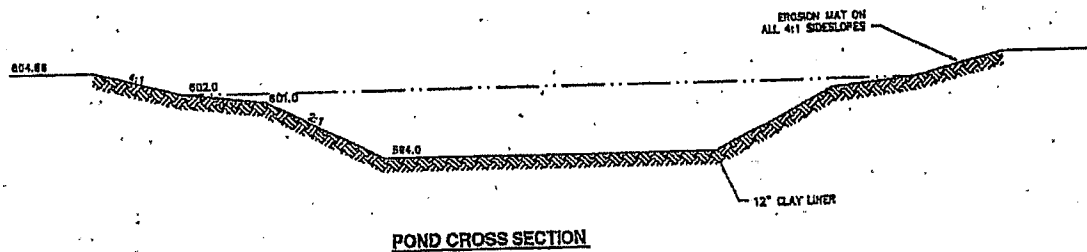
System Description:

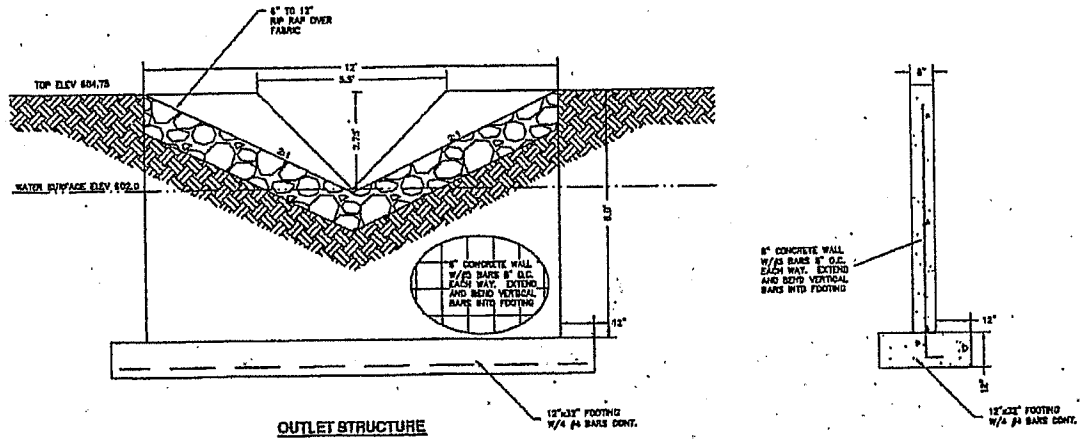
Total suspended solid removal will be achieved on the post-developed site through a wet detention basin and a biofiltration system. The wet detention basin was designed in accordance with the requirements of the WDNR Standard 1001. The wet detention basin will handle polluted runoff from the new building addition and parking and roadways in the northern area of the site. The roof and yard runoff for the existing developments will not be directed to the basin. The southern parking area will be treated by a biofiltration system between the middle parking aisles.

The total suspended solid removal rate for the total 6.6 acre Orion Energy site is calculated at 98%. The infiltration basin is calculated to remove TSS at 96%. The biofiltration systems are calculated to remove TSS at 84% with a 0.22 acre portion of the eastern end of the southern parking lot included as having no removal.

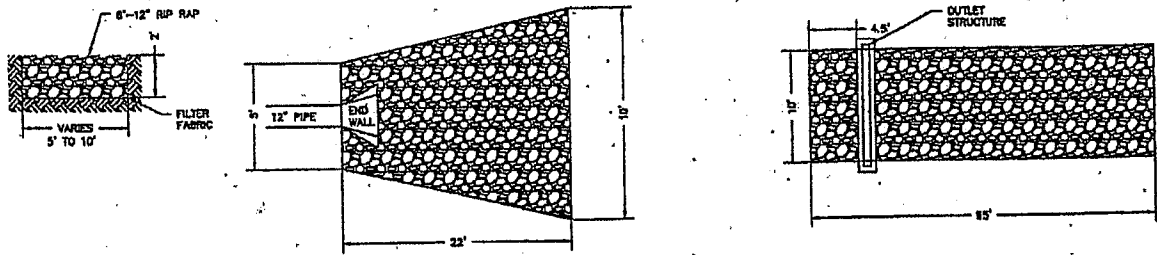
Wet Detention Basin:	1.4 acres	99% TSS removal
Biofiltration system	1.28 acres	98% TSS removal
Untreated Parking	0.22 acres	0% TSS removal
<i>Entire Site Weighted Removal:</i>	<i>6.6 acres</i>	<i>96% removal</i>

WET DETENTION POND DETAIL:



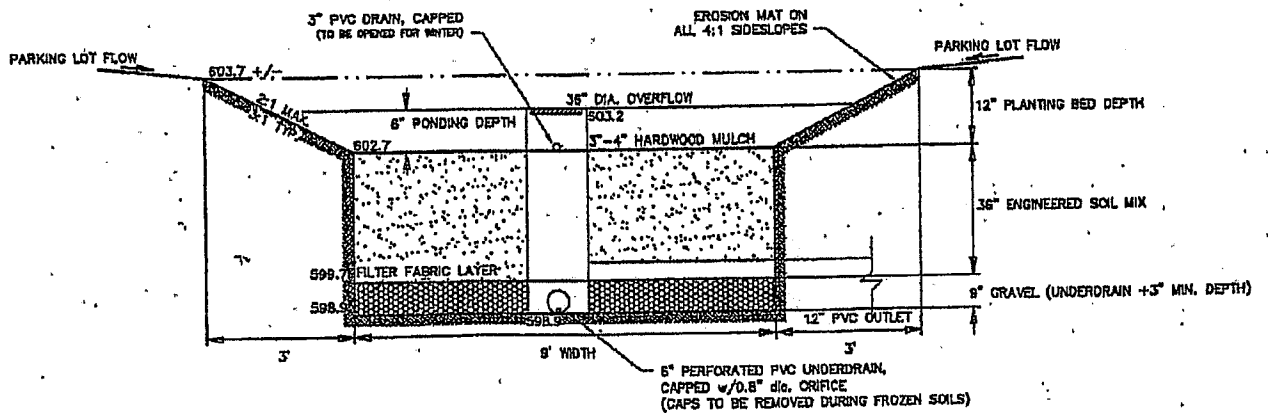


OUTLET STRUCTURE



RIP RAP DETAILS

BIOFILTRATION DETAIL:



BIOFILTRATION CROSS SECTION

Minimum Maintenance Requirements:

To ensure the proper function of the storm water management practices described above, the following activities must be completed in April and September of every year and after each rainfall event of greater than 2 inches within any 24-hour period:

Wet Detention Basin:

1. All outlet pipes must be cleaned to ensure there is no blockage from floating debris or ice, especially the washed stone in front of the outlet structure and the trash rack on the riser in the main basin. Any blockage must be removed immediately. The washed stone must be replaced when it becomes clogged.
2. Remove any debris or litter that has accumulated in the structure. Detention facilities tend to accumulate debris and litter. It is important to remove to ensure proper functioning of the structure.
3. Grass swales shall be preserved to allow free flowing of surface runoff in accordance with approved grading plans. No buildings or other structures are allowed in these areas. No grading or filling is allowed that may interrupt flows in any way.
4. Grass swales, inlets and outlets must be checked after heavy rains (minimum of annually) for signs of erosion. Any eroding areas must be repaired immediately to prevent premature sediment build-up in the downstream forebays or basin. Erosion matting is recommended for repairing grassed areas.
5. NO trees are to be planted or allowed to grow on the earthen berms. Tree root systems can reduce soil compaction and cause berm failure. The berms must be inspected annually and any woody vegetation removed.
6. If floating algae or weed growth becomes a nuisance (decay odors, etc.), it must be removed from the basin or the forebay and deposited where it cannot drain back into the basin. Removal of the vegetation from the water reduces regrowth the following season (by harvesting the nutrients). Wetland vegetation must be maintained along the waters edge for safety and pollutant removal purposes.
7. When sediment in the forebays or the basin has accumulated to an elevation of three feet below the outlet elevation, it must be removed. All removed sediment must be placed in an appropriate upland disposal site and stabilized (grass cover) to prevent sediment from washing back into the basin. The forebays will likely need sediment removal first. Failure to remove sediment from the forebays will cause resuspension of previously trapped sediments and increase downstream deposition.
8. Periodic mowing of the grass swales will encourage rigorous grass cover and allow better inspections for erosion. Waiting until after August 1st will avoid disturbing nesting wildlife. Mowing around the basin or the forebays may attract nuisance populations of geese to the property and is not necessary or recommended.
9. The application of EPA/State Registered Chemicals to detention basins/ponds or lakes is regulated by the WDNR. With few exceptions, a permit must be filed with and approved by the WDNR, prior to chemical treatment.
10. Any other repair or maintenance needed to ensure the continued function of the storm water practices or as ordered by the City of Manitowoc under the provisions listed on page 1 of this Agreement.

Bioretention :

1. Remove any debris or litter that has accumulated in the structure. Stormwater facilities tend to accumulate debris and litter. It is important to remove to ensure proper functioning of the structure.
2. Bioretention devices shall be preserved to allow free flowing of surface runoff in accordance with approved grading plans. No buildings or other structures are allowed in these areas. No grading or filling is allowed that may interrupt flows in any way.
3. Bioretention devices must be checked after heavy rains for signs of erosion. Any eroding areas must be repaired immediately.
4. The outlet structure shall be inspected a minimum of twice annually and after each rainfall event of 2" or more. Debris and litter shall be removed; this shall occur at least every month. Mulch shall be placed to fill voids as they occur. Additional mulch shall be placed once per year to maintain the designed thickness.
5. Plants shall be watered as necessary during the first growing season. During dry periods of subsequent dry periods, the plants shall be watered as necessary. Diseased plantings shall be treated as necessary. Dead plants shall be replaced as necessary.
6. If standing water remains 72 hours after a rainfall even, the bioretention may have become clogged with sediment or the engineered soil mix may have become compacted. If the problem persists, the engineered soil mix shall be replaced. (Routine sweeping of the parking lot from April to October can remove sediment before it enters the bioretention device and may help extend the device's functional lifespan.)
7. Storm sewer shall be inspected at a minimum of twice annually. Litter, debris, and blockages shall be removed if they are found to be present.
8. The owner shall keep a log of all maintenance activities, including the date and type of maintenance performed.
9. Snow shall not be dumped directly onto the conditioned planting bed.
10. Any other repair or maintenance needed to ensure the continued function of the storm water practices or as ordered by the City of Manitowoc under the provisions listed on page 1 of this Agreement.

ACORD CERTIFICATE OF LIABILITY INSURANCE		OP ID: LW ORIOE-1	DATE (MM/DD/YYYY) 11/24/08
PRODUCER Mortenson, Matzelle & Meldrum, Inc. P.O. Box 8950 Madison WI 53708-8950 Phone: 608-273-0655 Fax: 608-273-1725		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED Orion Energy Systems, Inc.; Clean Energy Solutions LLC dba Orion Energy Services; Great Lakes Energy Technologies, LLC dba Orion Lighting 1204 Pilgrim Rd Plymouth WI 53073		INSURERS AFFORDING COVERAGE	NAIC #
		INSURER A: Nat'l Fire Ins Co of Hartford	20478
		INSURER B: Valley Forge Insurance Co	20508
		INSURER C: Transcontinental Insurance Co.	
		INSURER D:	
		INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY	C2089036849	04/15/08	04/15/09	EACH OCCURRENCE	\$ 1,000,000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 5,000
						PERSONAL & ADV INJURY	\$ 1,000,000
						GENERAL AGGREGATE	\$ 2,000,000
						PRODUCTS - COMP/OP AGG	\$ 2,000,000
A		AUTOMOBILE LIABILITY	C2089036852	04/15/08	04/15/09	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
		<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
		<input checked="" type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
		<input checked="" type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
		<input checked="" type="checkbox"/> HIRED AUTOS				AUTO ONLY - EA ACCIDENT	\$
	<input checked="" type="checkbox"/> NON-OWNED AUTOS	OTHER THAN AUTO ONLY: EA ACC	\$				
		AGG	\$				
C		EXCESS/UMBRELLA LIABILITY	C2089036902	04/15/08	04/15/09	EACH OCCURRENCE	\$ 10,000,000
		<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$ 10,000,000
		<input type="checkbox"/> DEDUCTIBLE					\$
		<input type="checkbox"/> RETENTION \$					\$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WC2089036897	04/15/08	04/15/09	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	\$ 100,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$ 100,000
		OTHER				E.L. DISEASE - POLICY LIMIT	\$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
Re: Orion Stormwater Management Facility at project address 2210 Woodland Drive, Manitowoc, WI 54220.

CERTIFICATE HOLDER <div style="text-align: center;">CITYM42</div> City of Manitowoc 900 Quay Street Manitowoc WI 54220-4543	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Gregory Wagner</i>
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IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.