



AGENDA ITEM #13C

**AGENDA ITEM EXECUTIVE SUMMARY
Village Board Meeting
1/9/2023**

Item Title: Chesapeake Lift Station Improvements Contract Award

Staff Contact: Karen Young, P.E., Director of Public Works

OLD BUSINESS

VILLAGE BOARD ACTION:

Adopt a resolution authorizing the Mayor to execute an agreement for the Design-Build Services for the Chesapeake Lift Station Improvements between the Village of Roselle and Burke, LLC in the amount of \$460,000.

Executive Summary:

The Chesapeake Lift Station was originally constructed in 1979 and is one of the three remaining wet well/dry well can type lift stations that has not been rehabilitated. The FY 23 budget includes funding to upgrade the station due to the age, condition, and maintenance accessibility issues.

Two options improvement options were considered:

- **Option #1 Complete Replacement** – A full reconstruction of this lift station was evaluated and determined not feasible or cost effective. This option would have required a much larger property footprint and possible relocation of several utilities. The estimated cost for this option was \$2.5 million, which does not include any utility relocation or easement costs. These costs were estimated based on the traditional design, bid, build process.
- **Option #2 Retrofit** – This option includes retrofitting the existing station converting it from a can type lift station to a submersible pump station which will improve the accessibility of the equipment for maintenance. The cost for this work is \$460,000, based on the design-build process.
- **Standby Generator** - The current lift station does not include any back up generation, both options include installation of a standby generator to better protect our critical facilities against failure during a power outage.

Staff recommends utilizing the design-build process with Christopher B. Burke Engineering, LLC, who would lead the project performing both the design and construction of the project. Due to the complexity of the work and interaction with specialized equipment there are few contractors capable of performing this type of work. CBBEL has performed this type of lift station conversation successfully through the design-build process with several other communities. CBBEL can provide turnkey delivery of the design and construction with expertise in surveying, civil, mechanical, traffic, electrical, and construction engineering.

Project is anticipated to begin in Spring 2023.

Implications:

Is this item budgeted? Yes, funds are budgeted in the Water-Sewer Capital Fund. There is currently \$450,000 budgeted for this project. The project is \$10,000 over budget due to changes the Village requested to the pump type which better aligns with our long-term operational needs.

Estimated cost: \$460,000

Any other implications to be considered? No

Strategic Priority:

Reliable Infrastructure

Attachments:

Resolution

THE VILLAGE OF ROSELLE
DUPAGE AND COOK COUNTIES, ILLINOIS

RESOLUTION
NUMBER _____

**A RESOLUTION
APPROVING AND AUTHORIZING
THE EXECUTION OF AN AGREEMENT
BY AND BETWEEN
THE VILLAGE OF ROSELLE AND
BURKE, LLC**

DAVID PILESKI, Mayor
AMANDA HAUSMAN, Village Clerk

BRUCE BERKSHIRE
WAYNE D. DOMKE
CHERYL LENISA
TOM DELLA PENNA
TOM PIORKOWSKI
LEE TREJO

Village Board

Published in pamphlet form by authority of the
Mayor and the Board of Trustees of the Village of Roselle
on this the 9th day of January, 2023

RESOLUTION NO. _____

**A RESOLUTION
APPROVING AND AUTHORIZING
THE EXECUTION OF AN AGREEMENT
BY AND BETWEEN
THE VILLAGE OF ROSELLE AND
BURKE, LLC**

WHEREAS, the Village of Roselle is a municipal corporation organized pursuant to the laws of the State of Illinois possessing certain powers and perform certain functions pertaining to its local government and affairs as provided for by and through the Illinois Constitution of 1970, Illinois Municipal Code and Illinois Statute;

WHEREAS, the Village of Roselle (hereinafter referred to as "Village") upon approval of the corporate authorities may enter into an agreement with another party pursuant to Illinois Statute;

WHEREAS, Burke, LLC (hereinafter referred to as "Construction Manager") provides various professional services to its various clients including but not limited to construction management services;

WHEREAS, the Village has previously contracted with Construction Manager for various projects and services and has been pleased with the level of professionalism and the services performed by the Construction Manager on behalf of the Village;

WHEREAS, the Village desires to retrofit of the Chesapeake Lift Station instead of a complete replacement (hereinafter referred to as the "Project") , due to the complexity of the work and the interaction with specialized equipment there are very few contractors capable of performing this type of work,

WHEREAS, the Village recognizes that the utilization of a design-build format will provide the Village with the ability to save significant time and money as the designer must work alongside the contractor to complete the project;

WHEREAS, the Construction Manager possesses the required expertise, knowledge and ability to execute the requirements of the Project and the Village desires to enter into a design-build agreement with the Construction Manager; and

WHEREAS, the Corporate Authorities of the Village of Roselle have determined that it is in the best interests of the health, welfare and safety of the residents of the Village to approve the agreement with Burke, LLC for the purposes referenced herein.

NOW, THEREFORE, BE IT RESOLVED, in open meeting assembled, by the Mayor and Board of Trustees of the Village of Roselle, DuPage and Cook Counties, Illinois, as follows:

Section One – Recitals

The Corporate Authorities hereby find that all of the recitals hereinbefore stated as contained in the preamble to the resolution are full, true and correct and do hereby, by reference, incorporate and make them part of this resolution as legislative findings.

Section Two – Approval of Agreement for Design-Build

The Village hereby approves the agreement (hereinafter referred to as the “Agreement”) substantially in the form attached hereto and made a part hereof as Exhibit A in an amount not to exceed \$460,000.00 (four hundred sixty thousand dollars and no cents).

Section Three – Authorization and Direction

The Mayor is hereby authorized to execute, Agreement, substantially in the form of such agreement attached hereto as Exhibit A, with such changes therein as shall be approved by the Village Attorney and the officials of the Village executing the same, their execution thereof to constitute exclusive evidence of their approval to any and all changes or revisions therein from and after the execution and delivery of such agreements.

Section Four - Other Actions Authorized

The officers, employees and/or agents of the Village shall take all actions necessary or reasonably required to carry out and give effect to the intent of this resolution and otherwise to consummate the transactions contemplated herein and shall take all actions necessary in conformity therewith including, without limitation, the execution and delivery of all documents required to be delivered in connection with the transaction contemplated herein.

Section Five - Acts of Village Officials

That all past, present and future acts and doings of the officials of the Village that are in conformity with the purpose and intent of this resolution are hereby, in all respects, ratified, approved, authorized and confirmed.

Section Six - Authorization of Expenditures

The Corporate Authorities hereby authorize, allocate and direct the expenditure of all costs related to the execution of the agreements, additionally, the Village is authorized and directed to allocate and spend all necessary funds to fulfill the requirements of the agreements and of this resolution.

Section Seven - Waiver of Bidding Process

To the extent that any requirement of bidding would be applicable to the transactions contemplated hereunder, the same is hereby waived.

Section Eight – Effective Date

This resolution shall be in full force and effect from and after its passage, approval and publication as provided by law.

Section Nine - Publication

This resolution shall be published in book or pamphlet form as provided by the Illinois Municipal Code.

Section Ten – Saving Clause

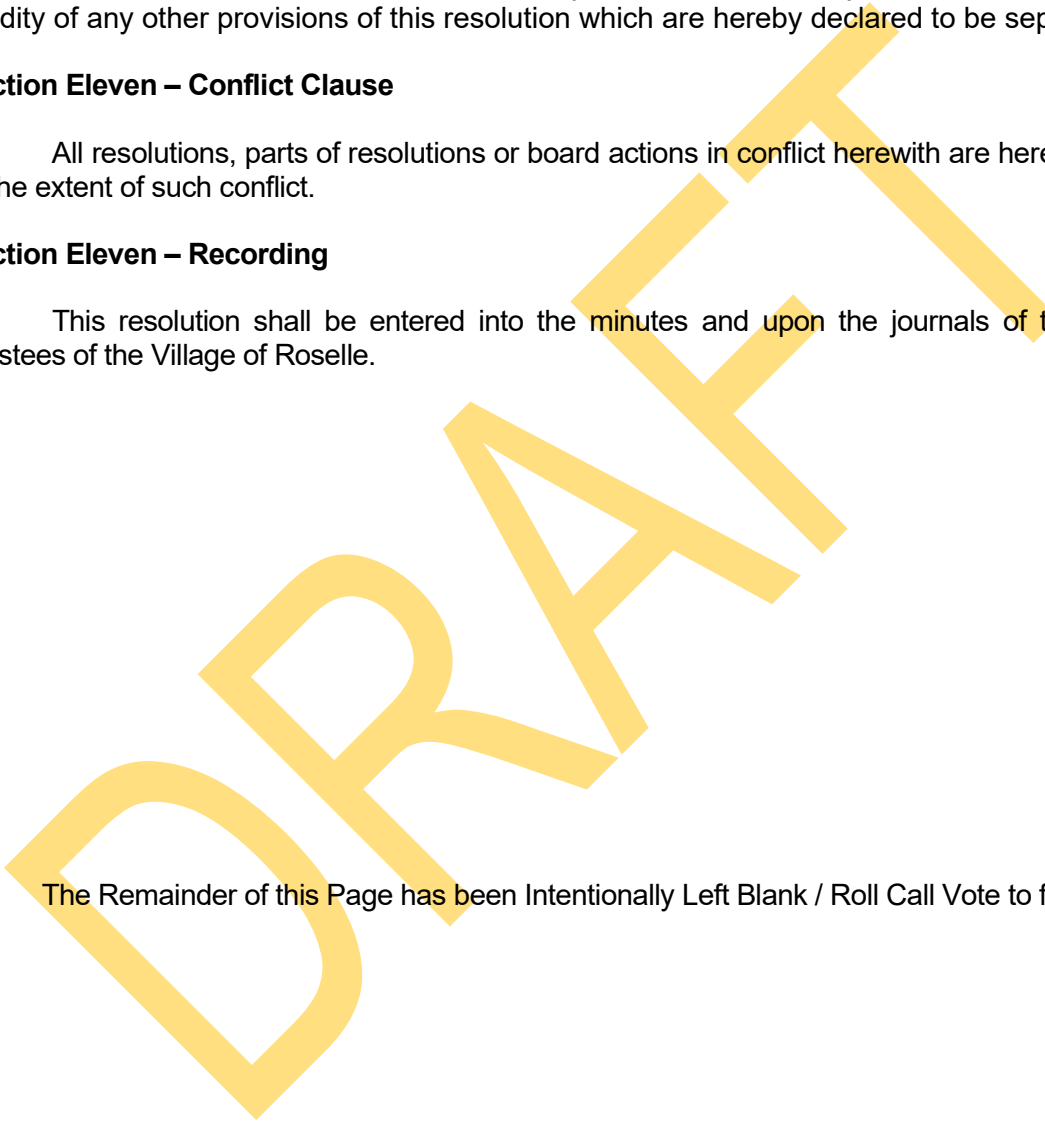
If any section, paragraph, clause or provision of this resolution is declared by a court of law to be invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity of any other provisions of this resolution which are hereby declared to be separable.

Section Eleven – Conflict Clause

All resolutions, parts of resolutions or board actions in conflict herewith are hereby repealed to the extent of such conflict.

Section Eleven – Recording

This resolution shall be entered into the minutes and upon the journals of the Board of Trustees of the Village of Roselle.



The Remainder of this Page has been Intentionally Left Blank / Roll Call Vote to follow:

DECIDED pursuant to a Roll Call Vote:

	YES	NO	ABSENT	PRESENT
Bruce Berkshire				
Wayne D. Domke				
Cheryl Lenisa				
Tom Della Penna				
Tom Piorkowski				
Lee Trejo				
David Pileski				
TOTAL				

PASSED AND APPROVED by the Village of Roselle Board of Trustees on the 9th day of January, 2023:

David Pileski
Mayor

ATTEST:

Amanda Hausman
Village Clerk

STATE OF ILLINOIS)
) SS
 COUNTIES OF DUPAGE AND COOK)

CLERK’S CERTIFICATION

I, Amanda Hausman hereby certify that I am the duly appointed and qualified Village Clerk in and for the Village of Roselle, DuPage and Cook Counties, Illinois; that I am the keeper of the files, records, and seal of said Village, and that the following is a true and correct copy of Resolution No. _____

**A RESOLUTION
 APPROVING AND AUTHORIZING
 THE EXECUTION OF AN AGREEMENT BY AND BETWEEN
 THE VILLAGE OF ROSELLE AND BURKE, LLC**

adopted and approved by the Mayor and the Board of Trustees at an official meeting held on January 9, 2023 and that the vote on the motion for adoption was as follows:

	YES	NO	ABSENT	PRESENT
Bruce Berkshire				
Wayne D. Domke				
Cheryl Lenisa				
Tom Della Penna				
Tom Piorkowski				
Lee Trejo				
David Pileski				
TOTAL				

I do further certify that the deliberations of the Board on the adoption of said resolution were conducted openly, that the vote on the adoption of said resolution was taken openly, that said meeting was called and held at a specified time and place convenient to the public, that notice of said meeting was duly given to all of the news media requesting such notice, that said meeting was called and held in strict compliance with the provisions of the Open Meetings Act of the State of Illinois, as amended, and with the provisions of the Village Code of the Village of Roselle, as amended, and that the Board has complied with all of the provisions of said Act and said Code and with all of the procedural rules of the Board.

I further state that this Certification is issued under my hand and the seal of the Village of Roselle as required in the Illinois Compiled Statues 65 ILCS 5/1-2-4.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Corporate Seal of said Village of Roselle, DuPage and Cook Counties, Illinois on the date set forth herein.

 Amanda Hausman, Village Clerk

(SEAL)

Exhibit A

Agreement

DRAFT



**STANDARD FORM OF AT-RISK CONSTRUCTION MANAGEMENT
CONTRACT FOR DESIGNER-LED DESIGN-BUILD PROJECT**

OWNER: Village of Roselle
474 Congress Circle North
Roselle, IL 60172

CONSTRUCTION MANAGER: Burke, LLC
9575 West Higgins Road
Suite 600
Rosemont, IL 60018-4920

PROJECT: **Chesapeake Lift Station Improvements**

CONTRACT DATE: December 1, 2022

CONSTRUCTION	\$	288,000.00
Adder for Flygt Pumps	\$	30,000.00
DESIGN & CONSTRUCTION MANAGEMENT	\$	40,000.00
GENERAL CONDITIONS (Insurance & Bonds)	\$	<u>5,000.00</u>
GUARANTEED MAXIMUM PRICE:	\$	363,000.00
Alternate (Natural Gas Standby Generator, Including installation, concrete pad, ATS)	\$	97,000.00

SUBSTANTIAL COMPLETION DATE: TBD based on NTP and lead times of equipment

Flygt Pumps are 12 – 14 weeks. Bypass pumping will occur March 2023 or as temperature allows to prevent freezing of above ground temporary bypass piping.

ARTICLE 1 - RELATIONSHIP OF THE PARTIES

- 1.1 Relationship. The Relationship between the Owner and the Construction Manager with regard to the Project shall be one of good faith and fair dealing. The Construction Manager agrees to provide the design, construction, management and administration services as set forth in greater detail below.
- 1.2 Engineer. The Engineer for the Project is Christopher B. Burke Engineering, Ltd., a separate company and legal entity closely affiliated with the Construction Manager.

ARTICLE 2 - DEFINITIONS

- 2.1 Contract Documents. The Contract Documents consist of:
- .1 Change Orders and written amendments to this Contract signed by both the Owner and Construction Manager;
 - .2 This Contract;
 - .3 Surveys, geo-technical information and other information provided by the Owner pursuant to this Contract;
 - .4 The Plans and Specifications, including any Addenda thereto.

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the Documents shall govern in the order in which they are listed above.

- 2.2 Day. A "Day" shall mean one calendar day.
- 2.3 Hazardous Material. A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal, remediation and/or cleanup.
- 2.4 Owner. The Owner for the purposes of this Contract is the Village of Lombard, Illinois, an Illinois municipal corporation.
- 2.5 Subcontractor. A Subcontractor is a person or entity who has an agreement with the Construction Manager to perform any portion of the Work, and includes vendors or material suppliers but does not include the Engineer, any separate contractor employed by the Owner, or any separate contractor's subcontractor.
- 2.5 Substantial Completion. Substantial Completion of the Work, or of a designated portion of the Work, occurs on the date when construction is sufficiently complete in accordance with the Contract Documents so that the Owner can begin to occupy or utilize the Project, or the designated portion, for the use for which it is intended.

- 2.6 Subsubcontractor. A Subsubcontractor is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's work.
- 2.7 The Work. The Work consists of all of the construction, procurement and administration services to be performed by the Construction Manager and the Subcontractors under this Contract, as well as any other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

ARTICLE 3 - CONSTRUCTION MANAGER'S RESPONSIBILITIES

- 3.1 Commencement. The Construction Manager may commence the Work upon execution of this Contract. The parties contemplate that by mutual agreement, the Construction Manager may commence certain portions of the Work, such as procurement of long lead-time items and site preparation, prior to execution of this Contract in reliance on the Price/Schedule Guarantee.
- 3.2 General Requirements. The Construction Manager shall perform those portions of the Work that the Construction Manager customarily performs with its own personnel. All other portions of the Work shall be performed by Subcontractors or under other appropriate agreements with the Construction Manager. The Subcontractor selection process shall be as set forth in Article 4. The Construction Manager shall exercise reasonable skill and judgment in the performance of the Work. The Construction Manager shall give all notices and comply with all laws and ordinances legally enacted at the date of execution of this Contract which govern performance of the Work.
- 3.3 Schedule. The Construction Manager shall maintain in written form a schedule of the Work. The schedule shall indicate the dates for the start and completion of various stages of the construction and shall be revised as required by the conditions of the Work. The schedule may contain dates when information, decisions and approvals are required from the Owner; and both the Owner and the Construction Manager agree to use their best efforts to comply with the time requirements of the schedule.
- 3.4 Meetings. The Construction Manager shall schedule and conduct meetings at which the appropriate parties can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.
- 3.5 Reports. The Construction Manager shall provide monthly written reports to the Owner on the progress of the Work which shall include the current status of the Work in relation to the construction schedule as well as adjustments to the construction schedule necessary to meet the Substantial Completion date. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner upon reasonable advance notice.
- 3.6 Cost Control. The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities and progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner in the monthly written reports.

- 3.7 Permits. The Construction Manager shall provide reasonable assistance to the Owner relative to the Owner's obligation to secure the permits necessary for construction of the Project, as set forth in Art. 6.1.3, below.
- 3.8 Safety. The Construction Manager shall take necessary precautions for the safety of its employees on the Project and shall comply with all applicable provisions of federal, state and local safety laws and regulations to prevent accidents or injuries to persons on or adjacent to the Project site. The Construction Manager, directly or through its Subcontractors, shall erect and properly maintain necessary safeguards for the protection of workers and the public. However, the Construction Manager shall not be responsible for the elimination or abatement of safety hazards created or otherwise resulting from any work at the Project site being performed by someone other than the Construction Manager, a Subcontractor or Subsubcontractor. The Engineer shall have no responsibility for safety programs or precautions in connection with the Work and shall not be in charge of or have any control over any construction means, methods, techniques, sequences or procedures.
- 3.9 Cleanup. The Construction Manager shall keep the site of the Work free from debris and waste materials resulting from the Work. At the completion of the Work, the Construction Manager or its Subcontractors shall remove from the site of the Work all construction equipment, tools, surplus materials, waste materials and debris.
- 3.10 Hazardous Materials. The Construction Manager shall not be obligated to commence or continue Work, until any known or suspected Hazardous Material discovered at the Project site has been removed or rendered or determined to be harmless by the Owner as certified by an independent testing laboratory and approved by the appropriate government agency. The Construction Manager shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material. The Construction Manager shall not be required to perform any Work relating to or in the area of known or suspected Hazardous Material without written mutual agreement and shall resume Work in the area affected by any Hazardous Material only upon written agreement between the parties after the Hazardous Material has been removed or rendered harmless. If the Construction Manager incurs additional costs and/or is delayed due to the presence of known or suspected Hazardous Material, the Construction Manager shall be entitled to a Change Order equitably adjusting the Guaranteed Maximum Price and/or the date of Substantial Completion. To the fullest extent permitted by law, the Owner shall indemnify and hold harmless, regardless of fault, negligence or other liability, the Construction Manager, Engineer, all Subcontractors and Subsubcontractors, and the agents, officers, directors and employees of each of them from and against any and all claims, damages, losses, costs and expenses, whether direct, indirect or consequential, including but not limited to attorney's fees, arising out of or relating to the performance of the Work in any area affected by Hazardous Material. The terms of this indemnification shall survive completion or termination of this Contract.
- 3.11 Intellectual Property. The Construction Manager shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Construction Manager and incorporated in the Work. The Construction Manager shall defend, indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to defend, indemnify and hold the Construction Manager harmless from any suits or claims of infringement of any patent rights arising out of any patented materials, methods or systems selected, required or specified by the Owner.

3.12 Completion. At or promptly after the date of Substantial Completion, the Construction Manager shall secure required certificates of inspection, testing or approval and deliver them to the Owner; collect all written warranties and equipment manuals and deliver them to the Owner; with the assistance of the Owner's maintenance personnel, direct the checkout of utilities and operations of systems and equipment for readiness, and assist in their initial start-up and testing; provide the Owner with a set of record drawings which the Construction Manager shall have maintained throughout the Project; and prepare and forward to the Owner a punch list of items of Work yet to be completed.

3.13 Indemnification. To the fullest extent permitted by law, the Construction Manager shall be responsible for any and all injuries to persons or damages to property due to the negligent or willful act or omission of the Construction Manager arising out of the performance of the Work by the Construction Manager. The Construction Manager hereby agrees to indemnify and hold harmless the Owner, its officials, agents and employees, against all injuries, deaths, loss, damages, claims, patent claims, suits, liabilities, judgments, cost and expenses, which may in any way accrue against the Village, its officials, agents and employees, due to the negligent or willful act or omission of the Construction Manager arising in or in consequence of the performance of this work by the Construction Manager. The Construction Manager shall, at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefor or incurred in connection therewith; and, if any judgment shall be rendered against the Owner, its officials, agents and employees, in any such action, the Construction Manager shall, at its own expense, satisfy and discharge the same. Notwithstanding any of the foregoing, nothing contained in this paragraph shall require the Construction Manager to indemnify the Owner, its officials, agents and employees for their own negligent acts or omissions.

In the event any such claim, lawsuit, or action is asserted, any such money due the Construction Manager under and by virtue of the contract as shall be deemed necessary by the Owner for the payment thereof, may be retained by the Owner for said purpose, or in case no money or insufficient money is due to satisfy such claim, lawsuit, or action, the Construction Manager's Surety shall remain liable for any payment therefor until any such lawsuit, action or claim has been settled or has been fully judicially determined and satisfied.

No inspection by the Owner, its employees or agents shall be deemed a waiver by the Owner of full compliance with the requirements of the contract. This indemnification shall not be limited by the required minimum insurance coverages provided in the contract.

3.14 Overtime Work. Except in connection with the safety or protection of persons, or the work, or property at the site or adjacent thereto, and subject to Art. 7.5.2 hereof, all work at the site shall be performed during regular working hours; and the Construction Manager will not permit overtime work or the performance of work on Saturday, Sunday or any legal holiday without the Owner's written consent, which shall not be unreasonably withheld, given after prior written notice. Regular working hours shall be a consecutive eight-hour period between the hours of seven o'clock (7:00) A.M. and five o'clock (5:00) P.M., Monday through Friday. No loading, unloading, opening, closing or other handling of crates, containers, building materials or the performance of construction work shall be performed before the hour of seven o'clock (7:00) A.M. and after the hour of nine o'clock (9:00) P.M. without the Owner's written consent, which shall not be unreasonably withheld, given after prior written notice.

3.15 Selection of Labor. The Construction Manager shall comply with all Illinois statues pertaining to the selection of labor.

3.16 Employment of Illinois Workers During Periods of Excessive Unemployment. Whenever there is a period of excessive unemployment in Illinois, which is defined herein as any month immediately following two consecutive calendar months during which the level of unemployment in the State of Illinois has exceeded five percent as measured by the United States Bureau of Labor Statistics in its monthly publication of employment and unemployment figures, the Construction Manager shall employ only Illinois laborers. "Illinois laborer" means any person who has resided in Illinois for at least 30 days and intends to become or remain an Illinois resident.

Other laborers may be used when Illinois laborers as defined herein are not available, or are incapable of performing the particular type of work involved, if so certified by the Construction Manager and approved by the Owner. The Construction Manager may place no more than three of his regularly employed non-resident executive and technical experts, who do not qualify as Illinois laborers, to do work encompassed by this Contract during a period of excessive unemployment.

This provision applies to all labor, whether skilled, semi-skilled or unskilled, whether manual or non-manual.

3.17 Equal Employment Opportunity. During the performance of this Contract, the Construction Manager agrees as follows:

- .1 That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental handicap or unfavorable discharge from military service, and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- .2 That, if it hires additional employees in order to perform this Contract or any portion hereof, it will determine the availability of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- .3 That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental handicap or unfavorable discharge from military service.
- .4 That it will send to each labor organization or representative of workers with which it has or is bound by collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Construction Manager's obligations under the Illinois Human Rights Act and the Owner's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Construction Manager in its efforts to comply with such Act and Rules and Regulations, the Construction Manager will promptly notify the Illinois Department of Human Rights

and the Owner and will recruit employees from other sources when necessary to fulfill its obligations thereunder.

- .5 That it will submit reports as required by the Owner of Human Rights Rules and Regulations, furnish all relevant information as may from time to time be requested by the Owner or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Owner's Rules and Regulations.
- .6 That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency Illinois Department of Human Rights for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.
- .7 That it will include verbatim or by reference the provisions of this clause in every subcontract so that such provisions will be binding upon every such subcontractor. In the same manner as with other provisions of this Contract, the Construction Manager will be liable for compliance with applicable provisions of this clause by all its subcontractors; and further it will promptly notify the Owner and the Illinois Department of Human Rights in the event any subcontractor fails or refuses to comply therewith. In addition, the Construction Manager will not utilize any subcontractor declared by the Owner to have failed to comply with this Equal Employment Opportunity provision.

3.18 Sexual Harassment Policy. The Construction Manager shall have in place and shall enforce a written sexual harassment policy in compliance with 775 ILCS 5/2-105(A)(4).

3.19 Veterans Preference Act. The Construction Manager shall comply with all laws relating to the employment preference to veterans in accordance with the Veterans Preference Act (330 ILCS 55/0.01 *et seq.*).

3.20 Wages of Employees on Public Works. This Contract is subject to "An act regulating wages of laborers, mechanics and other workers employed in any public works by the State, County, City or any public body or any political subdivision or by anyone under contract for public works," approved June 26, 1941, as amended, except that where a prevailing wage violates a Federal law, order, or ruling, the rate conforming to the Federal law, order, or ruling shall govern.

Not less than the prevailing rate of wages as found by the Owner or the Illinois Department of Labor or determined by a court on review shall be paid to all laborers, workers and mechanics performing work under this contract. These prevailing rates of wages are included in this Contract.

The Construction Manager and each subcontractor shall keep an accurate record showing the names and occupations of all laborers, workers and mechanics employed by them on this contract, and also showing the actual hourly wages paid to each of such persons.

The submission by the Construction Manager and each subcontractor of payrolls, or copies thereof, is not required. However, the Construction Manager and each subcontractor shall preserve their weekly payroll records for a period of three years from the date of completion of this Contract.

3.21 Confidentiality of Information. Any documents, data, records, or other information relating to the project and all information secured by the Construction Manager from the Owner in connection with the performance of services, unless in the public domain, shall be kept confidential by the Construction Manager and shall not be made available to third parties without written consent of the Owner, unless so required by court order.

3.22 Certifications.

.1 Illinois Taxes. The Construction Manager shall certify that its members holding more than five percent (5%) of the outstanding membership interest of the limited liability company, its officers and managers are, not delinquent in the payment of taxes to the Illinois Department of Revenue in accordance with 65 ILCS 5/11-42.1-1.

.2 Bid Rigging. The Construction Manager shall certify that its members holding more than five percent (5%) of the outstanding membership interest of the limited liability company, its officers and managers have not been barred from contracting with a unit of state or local government as a result of a violation of Section 33E-3 or 33E-4 of the Criminal Code of 1961.

.3 Drug-free Workplace. The Construction Manager shall certify that it will provide a drug-free workplace by:

.1 Publishing a statement:

.1 Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in the Construction Manager's workplace;

.2 Specifying the actions that will be taken against employees for violations of such prohibition;

.3 Notifying the employee that, as a condition of employment on such contract, the employee will:

.1 abide by the terms of the statement; and

.2 notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

.2 Establishing a drug-free awareness program to inform employees about:

.1 the dangers of drug abuse in the workplace;

.2 the Construction Manager's policy of maintaining a drug-free workplace;

.3 any available drug counseling, rehabilitation, and employee assistance program; and

.4 the penalties that may be imposed upon employees for drug violations;

- .3 Making it a requirement to give a copy of the statement required by subparagraph 3.23.3.1 to each employee engaged in the performance of the Contract and to post the statement in a prominent place in the workplace;
 - .4 Notifying the Owner within ten (10) days after receiving notice under subparagraph 3.23.3.1.3.2 from an employee or otherwise receiving actual notice of such conviction;
 - .5 Imposing a sanction on or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted, as required by 30 ILCS 580/5;
 - .6 Assisting employees in selecting a course of action in the event drug counseling treatment and rehabilitation is required and indicating that a trained referral team is in place;
 - .7 Making a good faith effort to continue to maintain a drug-free workplace through implementation of this section.
- .4 Educational Loan. The Construction Manager shall certify that its members holding more than five percent (5%) of the outstanding membership interest of the limited liability company, its officers and managers are, not in default, as defined in 5ILCS 385/2, on an educational loan, as defined in 5 ILCS 385/1.
 - .5 Human Rights Number. The Construction Manger shall certify that at the time the Construction Manager was awarded this Contract, the Construction Manager had an Illinois Department of Human Rights pre-qualification number or had a properly completed application for same on file with the Illinois Department of Human Rights, as provided for in 44 Illinois Administrative Code 750.210.
 - .6 Conflict of Interest. At the time the Construction Manager was awarded this Contract, the Construction Manager shall certify that no Owner's officer, spouse or dependent child of an Owner's officer, agent on behalf of any Owner's officer or trust in which an Owner's officer, the spouse or dependent child of an Owner's officer or a beneficiary is a holder of any interest in the Construction Manager; or, if the Construction Manager's stock is traded on a nationally recognized securities market, that no Owner's officer, spouse or dependent child of an Owner's officer, agent on behalf of any Owner's officer or trust in which an Owner's officer, the spouse or dependent child of an Owner's officer or a beneficiary is a holder of more than one percent (1%) of the Construction Manager, but if any Owner's officer, spouse or dependent child of an Owner's officer, agent on behalf of any Owner's officer or trust in which an Owner's officer, the spouse or dependent child of an Owner's officer or a beneficiary is a holder of less than one percent (1%) of such Construction Manager, the Construction Manager has disclosed to the Owner in writing the name(s) of the holder of such interest.
 - .7 Gift Ban.
 - .1 At the time the Construction Manager was awarded this Contract, the Construction Manager shall certify that no officer or employee of the Owner has solicited any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and

honoraria for speaking engagements related to or attributable to the government employment or the official position of the employee or officer from the Construction Manager in violation of Section 15.02 of Chapter 15 of the Elmhurst Municipal Code; and

- .2 At the time the Construction Manager was awarded this Contract, the Construction Manager shall certify that it has not given to any officer or employee of the Owner any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to the government employment or the official position of the employee or officer in violation of Section 15.02 of Chapter 15 of the Elmhurst Municipal Code.
- .8 Substance Abuse Prevention. At the time the Construction Manager was awarded this Contract, the Construction Manager shall certify that in compliance with the Substance Abuse Prevention on Public Works Projects Act (Public Act 95-0635), the Construction Manager is a party to a collective bargaining agreement dealing with the subject matter of the Substance Abuse Prevention on Public Works Projects Act or has in place and is enforcing a written program which meets or exceeds the program requirements of the Substance Abuse Prevention on Public Works Projects Act.
- .9 Presidential Executive Order 13224. At the time the Construction Manager was awarded this Contract, the Construction Manager shall certify that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person and that the Construction Manager and its principals, shareholders, members, partners, or affiliates, as applicable, are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person.
- .10 Freedom of Information Act. At the time the Construction Manager was awarded this Contract, the Construction Manager acknowledges that, pursuant to the provisions of the Illinois Freedom of Information Act, (5 ILCS 140/1 *et seq.*), documents or records prepared or used in relation to work performed under this agreement are considered a public record of the Owner; and therefore, within thirty (30) days of completion of the work required of the Construction Manager under this agreement, the Construction Manager shall produce to the Owner, in electronic format, all records that directly relate to the governmental function performed by the Construction Manager under this agreement at no additional cost to the Owner; and furthermore, the Construction Manager shall review its records and promptly produce to the Owner any additional records in the Construction Manager's possession which the Owner requires in order to properly respond to a request made pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*), and the Construction Manager shall produce to the Owner such records within three (3) business days of a request for such records from the Owner at no additional cost to the Owner.

ARTICLE 4 - SUBCONTRACTS

- 4.1 General. Work subject to this Contract not performed by the Construction Manager with its own forces shall be performed by Subcontractors or Subsubcontractors. The

Construction Manager shall be responsible for management of the Subcontractors in the performance of their Work.

- 4.2 Selection. The Construction Manager shall subcontract with Subcontractors and with suppliers of materials or equipment fabricated to a special design for the Work, and shall manage the delivery of the work to the Owner. The Owner may designate specific persons or entities from whom the Construction Manager shall subcontract. However, the Owner may not prohibit the Construction Manager from subcontracting with other qualified bidders.
- .1 If the Construction Manager recommends to the Owner the acceptance of a particular subcontractor who is qualified to perform that portion of the Work and has submitted a price which conforms to the requirements of the Contract Documents without reservations or exceptions, and the Owner requires that a different price be accepted, then a Change Order shall be issued adjusting the Substantial Completion Date and the Guaranteed Maximum Price by the difference between the price of the subcontract recommended by the Construction Manager and the subcontract that the Owner has required be accepted.
- .2 The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has a reasonable objection, or with anyone who is otherwise unqualified to perform the Work.
- 4.3 Assignment. The Construction Manager shall provide for assignment of Subcontract Agreements in the event that the Owner terminates this Contract for cause. Following such termination, the Owner shall notify in writing those Subcontractors whose assignments will be accepted, subject to the rights of sureties, if any.
- 4.4.1 Subcontracts. The Construction Manager shall prepare all Subcontracts and shall have full discretion to negotiate their terms, subject to the Owner's reasonable requirements or objections as to form and content.
- 4.5 Foreign Corporation. Foreign (non-Illinois) corporations shall procure from the Illinois Secretary of State a certificate of authority to transact business in Illinois in accordance with 805 ILCS 5/13.

ARTICLE 5 - CONSTRUCTION MANAGER'S WARRANTIES

- 5.1 One-Year Warranty. The Construction Manager warrants that all materials and equipment furnished under this Contract will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials; and the Construction Manager agrees to correct all construction performed under this Contract which proves to be defective in workmanship or materials. These warranties shall commence on the date of Substantial Completion of the Work or of a designated portion thereof and shall continue for a period of one year therefrom or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents.

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- 5.2 Materials Specified By Owner. The products, equipment, systems or materials incorporated in the Work at the direction or upon the specific request of the Owner shall be covered exclusively by the warranty of the manufacturer and are not otherwise warranted under this Contract.
- 5.3 Other Warranties. **ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED.**

ARTICLE 6 - OWNER'S RESPONSIBILITIES

- 6.1 Information and Services. The Owner shall provide:
- .1 All necessary information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations;
 - .2 Inspection and testing services during construction as required by the law or as mutually agreed;
 - .3 Any necessary approvals, rezoning, easements and assessments, permits, fees and charges required for the construction, use, occupancy or renovation of permanent structures, including any legal and other required services; and
 - .4 any other information or services stated in the Contract Documents as being provided by the Owner.
- 6.2 Reliance. The Construction Manager shall be entitled to rely on the completeness and accuracy of the information and services required by paragraph 6.1 above, and the Owner agrees to provide such information and services in a timely manner so as not to delay the Work.
- 6.3 Notice of Defect. If the Owner becomes aware of any error, omission or other inadequacy in the Contract Documents or of the Construction Manager's failure to meet any of the requirements of the Contract Documents, or of any other fault or defect in the Work, the Owner shall give prompt written notice to the Construction Manager; however, the Owner's failure to provide notice shall not relieve the Construction Manager of its obligations under this Contract.
- 6.4 Communications. The Owner shall communicate with the Subcontractors and Subsubcontractors only through the Construction Manager. The Owner shall have no contractual obligations to any Subcontractors or Subsubcontractors.
- 6.5 Owner's Representative. The Owner's Representative for this Project is Public Works Director, who shall be fully acquainted with the Project; shall be the conduit by which the Owner furnishes the information and services required of the Owner; and shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization or written notice, provided, however, that the Owner's Representative shall not have

authority to increase the Contract Price by more than \$10,000.00 nor to extend the Substantial Completion Date. Authority to increase the Contract Price by more than \$10,000.00 or to extend the Substantial Completion Date may only be exercised by written Change Order signed by the Public Works Director and authorized by a due and proper vote of the City Council. If the Owner changes its representative, the Owner shall notify the Construction Manager in advance in writing.

ARTICLE 7 - CONTRACT TIME

- 7.1 Execution Date. The parties contemplate that this Contract will be fully executed on or before the contract date identified on the first page of this contract. A delay in the Owner's execution of this Contract which postpones the commencement of the Work shall require a Change Order equitably adjusting the Substantial Completion Date.
- 7.2 Substantial Completion. The date of Substantial Completion of the Work shall be the Substantial Completion Date identified on the first page of this Contract, as adjusted in accordance with the provisions of this Contract. Time shall be of the essence of this Contract. "Contract Time" means the measurement of time between the Execution Date, as defined in Art. 7.1 hereof, and the Substantial Completion Date, as defined in Art. 7.2 hereof
- 7.3 Delays. If causes beyond the Construction Manager's control delay the progress of the Work, then the Contract Price and/or the Substantial Completion Date shall be modified by Change Order as appropriate. Such causes shall include but not be limited to: changes ordered in the Work, acts or omissions of the Owner or separate contractors employed by the Owner, the Owner's preventing the Construction Manager from performing the Work pending dispute resolution, the discovery of Hazardous Materials or differing site conditions, adverse weather conditions not reasonably anticipated, fire, unusual transportation delays, labor disputes, or unavoidable accidents or circumstances. In the event that delays to the Project are encountered for any reason, the Owner and the Construction Manager both agree to undertake reasonable steps to mitigate the effect of such delays.
- 7.4 Inclement Weather. The Substantial Completion Date shall not be extended due to normal inclement weather. Unless the Construction Manager can substantiate to the satisfaction of the Owner that there was greater than normal inclement weather considering the full term of the Contract Time and using the most recent ten-year average of accumulated record mean values from climatological data compiled by the United States Department of Commerce National Oceanic and Atmospheric Administration for the locale of the project and that such alleged greater than normal inclement weather actually delayed the Work or portions thereof which had an adverse material effect on the Substantial Completion Date, the Construction Manager shall not be entitled to an extension of the Substantial Completion Date. If the total accumulated number of calendar days lost due to inclement weather from the start of work until substantial completion exceeds the total accumulated number to be expected for the same time period from the aforesaid data and the Owner grants the Construction Manager an extension of time, the Substantial Completion Date shall be extended by the appropriate number of calendar days.

7.5 Responsibility for Completion. The Construction Manager, through its Subcontracts, shall furnish such employees, materials and equipment as may be necessary to ensure the prosecution and completion of the Work in accordance with the construction schedule. Subject to paragraphs 7.3 and 7.4 hereof, if the Work is not being performed in accordance with the construction schedule and it becomes apparent from the schedule that the Work will not be completed within the Contract Time, the Construction Manager shall, as necessary to improve the progress of the Work, take some or all of the following actions, at no additional cost to the Owner:

- .1 Increase the number of workers in such crafts as necessary to regain the lost progress;
- .2 Increase the number of working hours per shift, shifts per working day, working days per week, the amount of equipment or any combination of the foregoing to regain the lost progress.

In addition, the Owner may require the Construction Manager to prepare and submit a recovery schedule demonstrating the Construction Manager's plan to regain the lost progress and to ensure completion within the Contract Time. If the Owner finds the proposed recovery plan is not satisfactory, the Owner may require the Construction Manager to undertake any of the actions set forth in this paragraph 7.5, without additional cost to the Owner.

7.6 Failure to Prosecute the Work. The failure of the Construction Manager to substantially comply with the requirements of paragraph 7.5 may be considered grounds for a determination by the Owner that the Construction Manager has failed to prosecute the Work with such diligence to ensure completion of the Work within the Contract Time and that, pursuant to paragraph 11.2, the Construction Manager has materially breached this Contract.

ARTICLE 8 - PAYMENT

8.1 Guaranteed Maximum Price. The sum of the Cost of Work and the Construction Manager's Fee including professional services is guaranteed by the Construction Manager not to exceed the price listed on page 1, subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. . The Construction Manager's Fee shall be increased proportionally with the Cost of Work for any Change Orders in accordance with this Contract. The Contractor's Fee will not be reduced as the result of a Change Order. In the event the Cost of Work plus the Construction Manager's Fee including professional services shall total less than the Guaranteed Maximum Price as adjusted by Change Orders, the resulting savings (with the exception of the Owners Allowance balance) shall be shared equally between the Owner and the Construction Manager, and the Owner shall make payment of the Construction Manager's portion upon Final Completion of the Work. In the event that the Cost of Work plus the Construction Manager's Fee including professional services exceeds the Guaranteed Maximum Price as adjusted by Change Orders, then the Owner shall pay no more than the Guaranteed Maximum Price as adjusted by Change Orders. Costs

which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

8.2 Compensation. For the Construction Manager's performance of the Work, the Owner shall pay the Construction Manager in current funds the sum of the Cost of the Work as defined in this Article plus the Construction Manager's Fee.

8.3 Progress Payments. Prior to submitting the first Application for Payment, the Construction Manager shall provide a Schedule of Values reasonably satisfactory to the Owner consisting of a breakdown of the Contract Price by trade or appropriate category. On or before the fifteenth day of each month after the Work has been commenced, the Construction Manager shall submit to the Owner an Application for Payment in accordance with the Schedule of Values based upon the Work completed and materials stored on the site or at other locations approved by the Owner. Within thirty (30) days after receipt of each monthly Application for Payment, the Owner shall approve or disapprove the Application for Payment. When safety or quality assurance testing is necessary before consideration of the Application for Payment, and such testing cannot be completed within thirty (30) days after receipt of the Application for Payment, approval or disapproval of the Application for Payment shall be made upon completion of the testing or within sixty (60) days after receipt of the Application for Payment, whichever occurs first. If an Application for Payment is disapproved, the Owner shall notify the Construction Manager in writing. If an Application for Payment is approved, the Owner shall pay directly to the Construction Manager the appropriate amount for which Application for Payment was made, less amounts previously paid by the Owner within thirty (30) days after approval. The Owner's progress payment, occupancy or use of the Project, whether in whole or in part, shall not be deemed to be an acceptance of any Work not conforming to the requirements of the Contract Documents.

.1 With each Application for Payment the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence reasonably required by the Owner to demonstrate that cash disbursements or obligations already made or incurred by the Construction Manager on account of the Work equal or exceed (1) progress payments already received by the Construction Manager less (2) that portion of those payments attributable to the Construction Manager's Fee plus (3) payrolls and other costs for the period covered by the present Application for Payment.

.2 Each Application for Payment shall be based upon the most recent Schedule of Values submitted by the Construction Manager in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may reasonably require and shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

.3 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment.

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The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

- .4 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
 - .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.
 - .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.
 - .3 Add the Construction Manager's Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in paragraph 8.2 or, if the Construction Manager's Fee is stated as a fixed sum in that paragraph, shall be an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion.
 - .4 Subtract the aggregate of previous payments made by the Owner.
 - .5 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.
 - .6 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.
- 8.4 Progress Payment Documentation. The Construction Manager shall supply and each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner:
 - (A) a duly executed and acknowledged sworn statement showing all Subcontractors with whom the Construction Manager has entered into subcontracts, the amount

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of each such subcontract, the amount requested for any Subcontractor in the requested progress payment and the amount to be paid to the Construction Manager from such progress payment, together with similar sworn statements from all Subcontractors and, where appropriate, from sub-Subcontractors;

- (B) duly executed waivers of mechanics' and materialmen's liens of the money due or to become due herein, establishing payment to the Subcontractor or material supplier of all such obligations to cover the full amount of the Application for Payment from each and every Subcontractor and suppliers of material or labor to release the Owner of any claim to a mechanic's lien, which they or any of them may have under the mechanic's lien laws of Illinois. Any payments made by the Owner without requiring strict compliance to the terms of this paragraph shall not be construed as a waiver by the Owner of the right to insist upon strict compliance with the terms of this approach as a condition of later payments. The Construction Manager shall indemnify and save the Owner harmless from all claims of Subcontractors, laborers, workmen, mechanics, material men and furnishers of machinery and parts thereof, equipment, tools and all supplies incurred in the furtherance of the performance of the Work;
- (C) sworn statements or lien waivers supporting the Application for Payment submitted late by the Construction Manager to the Owner will result in the Application for Payment not being processed until the following month.

8.5 Late Payments. Payments shall be made in accordance with the Local Government Prompt Payment Act (50 ILCS 505/1 *et. seq.*)

8.6 Title. The Construction Manager warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the Owner free and clear of all liens, claims, security interests or encumbrances upon receipt of such payment by the Construction Manager.

8.7 Final Payment. Final Payment shall be due and payable when the Work is fully completed. Before issuance of any final payment, the Owner may request satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Work have been or will be paid or otherwise satisfied. In accepting final payment, the Construction Manager waives all claims except those previously made in writing and which remain unsettled. In making final payment, the Owner waives all claims except for outstanding liens, improper workmanship or defective materials appearing within one year after the date of Substantial Completion, and terms of any special warranties required by the Contract Documents.

.1 The amount of the final payment shall be calculated as follows:

.1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.

.2 Subtract the aggregate of previous payments made by the Owner. If the aggregate of previous payments made by the Owner exceeds the amount

due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

- .2 The Owner's accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Owner by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, the Owner will, within seven (7) days after receipt of the written report of the Owner's accountants, either make final payment as requested to the Construction Manager, or notify the Construction Manager in writing of the Owner's reasons for withholding part or all of the requested final payment.
- .3 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Paragraph 8.7 and not excluded by Paragraph 8.8 (1) to correct nonconforming Work, or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

8.8 Cost of the Work. The term "Cost of the Work" shall mean costs incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall be the sum of the Construction Manager's subcontracts identified in the Schedule of Values. The Cost of the Work shall include the items set forth below.

.1 Labor costs.

- .1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's agreement, at off-site locations.
- .2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when engaged in performance of the Work.
- .3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work.
- .4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work.

- .2 Subcontract costs. Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.
- .3 Costs of materials and equipment incorporated in the completed construction.
 - .1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
 - .2 Costs of materials described above in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager, with the amounts realized, if any, from such sales credited to the Owner as a deduction from the Cost of the Work.
- .4 Costs of other materials and equipment, temporary facilities and related items.
 - .1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work, and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager.
 - .2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof.
 - .3 Costs of removal of debris from the site.
 - .4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.
 - .5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.
- .5 Miscellaneous costs.
 - .1 That portion directly attributable to this Contract of premiums for insurance and bonds.

- .2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.
 - .3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager has paid or is required by the Contract Documents to pay.
 - .4 Fees of testing laboratories for tests required by the Contract Documents or advisable in the Construction Manager's discretion.
 - .5 Expenses and time incurred investigating potential changes in the Work.
 - .6 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent.
 - .7 Data processing costs related to the Work.
 - .8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.
 - .9 Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work.
 - .10 Expenses incurred in accordance with the Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.
- .6 Other costs. Other costs incurred in the performance of the Work.
 - .7 Emergencies and repairs to damaged or nonconforming work.
 - .1 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.
 - .2 Costs incurred in repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers.
 - .8 Professional Service Fees. Fees shall be Lump Sum as identified in Schedule of Values and shall be attached as "Cost of Work".

8.9 Non-Reimbursable Costs. The Cost of the Work shall not include any of the following.

- .1 The Cost of the Work shall not include:
 - .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in paragraph 8.7.1, unless such personnel are directly engaged in the performance of the Work.
 - .2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Paragraph 8.7.
 - .3 Overhead and general expenses, except as may be expressly included in Paragraph 8.7.
 - .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
 - .5 The Construction Manager's Fee.
 - .6 The payment of Retailers' Occupation Tax, the Service Occupation Tax (both state and local), the Use Tax and the Service Use Tax in Illinois from which the Owner as a unit of local government is exempt.
 - .7 Costs which would cause the Guaranteed Maximum Price to be exceeded, except as otherwise provided for in this Contract.
- .2 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured. Amounts which accrue to the Owner shall be credited to the Owner as a deduction from the Cost of the Work.

8.10 Accounting Records. The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract. The accounting and control systems shall be reasonably satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access, upon advance written notice, to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

8.11 Payment Approval. The Owner may disapprove a payment, in whole or in part, or because of subsequent observations, nullify any progress payment previously made, to such extent as may be necessary, in its opinion, to protect its interests due to:

- .1 Defective work not remedied;
- .2 Third party claims or reasonable evidence indicating the probable filing of such claims;
- .3 Failure to make payments to subcontractors for labor, materials or equipment;
- .4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price;
- .5 Failure to prosecute the Work with sufficient workers, materials, and/or equipment;
- .6 Failure to perform the Work in accordance with the Contract Documents.

ARTICLE 9 - CHANGES

9.1 Change Orders. Changes in the Work which are within the general scope of this Contract may be accomplished by Change Order without invalidating this Contract. A Change Order is a written instrument, issued after execution of this Contract and signed by the Owner and Construction Manager, stating their agreement upon a change and any adjustment in the Guaranteed Maximum Price and/or the date of Substantial Completion. The Construction Manager shall not be obligated to perform changed Work until the Change Order has been executed by the Owner and Construction Manager.

9.2 Costs. An increase or decrease in the Guaranteed Maximum Price resulting from a change in the Work shall be determined by one or more of the following methods:

- .1 Unit prices as set forth in this Contract or as subsequently agreed (but if the original quantities are altered to a degree that application of previously agreed unit prices would be inequitable to either the Owner or the Construction Manager, the Unit Prices shall be equitably adjusted);
- .2 A mutually accepted, itemized lump sum;
- .3 Time and materials.

Construction Manager's fee, as set forth in Art. 8.2 hereof, shall be proportionately increased in all Change Orders that increase the Guaranteed Maximum Price, but shall not be proportionately decreased by a Change Order that decreases the Guaranteed Maximum Price. If the parties cannot agree on the price term of a Change Order, then the Change Order will be calculated on the basis of actual time and materials costs incurred. If at the Owner's request the Construction Manager incurs substantial costs or

time investigating a proposed change which is never ultimately made, the Guaranteed Maximum Cost and Substantial Completion Date shall be equitably adjusted.

- 9.3 Unknown Conditions. If in the performance of the Work, the Construction Manager finds latent, concealed or subsurface physical conditions which differ from the conditions the Construction Manager reasonably anticipated, or if physical conditions are materially different from those normally encountered and generally recognized as inherent in the kind of work provided for in this Contract, then the Guaranteed Maximum Price and/or the Substantial Completion Date shall be equitably adjusted by Change Order within a reasonable time after the conditions are first observed.
- 9.4 Claims. For any claim for an increase in the Guaranteed Maximum Price and/or an extension in the date of Substantial Completion, the Construction Manager shall give the Owner written notice of the claim within twenty-one (21) days after the Construction Manager first recognizes the condition giving rise to the claim. Except in an emergency, notice shall be given before proceeding with the Work. In any emergency affecting the safety of persons and/or property, the Construction Manager shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in Guaranteed Maximum Price and/or Date of Substantial Completion resulting from such claim shall be effectuated by Change Order.

ARTICLE 10 - INSURANCE AND BONDING

- 10.1 The Construction Manager's Insurance. The Construction Manager shall obtain and maintain insurance coverage for the following claims which may arise out of the performance of this Contract, whether resulting from the Construction Manager's operations or by the operations of any Subcontractor, anyone in the employ of any of them, or by an individual or entity for whose acts they may be liable:
- .1 workers' compensation, disability benefit and other employee benefit claims under acts applicable to the Work;
 - .2 under applicable employer's liability law, bodily injury, occupational sickness, disease or death claims of the Construction Manager's employees;
 - .3 bodily injury, sickness, disease or death claims for damages to persons not employed by the Construction Manager;
 - .4 usual personal injury liability claims for damages directly or indirectly related to the person's employment by the Construction Manager or for damages to any other person;
 - .5 damage to or destruction of tangible property, including resulting loss of use, claims for property other than the work itself and other property insured by the Owner;
 - .6 bodily injury, death or property damage claims resulting from motor vehicle liability in the use, maintenance or ownership of any motor vehicle;
 - .7 contractual liability claims involving the Construction Manager's indemnity obligations; and

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.8 loss due to errors or omission with respect to provision of professional services under this Agreement, including engineering services.

10.2 The Construction Manager's liability insurance shall be written for not less than the following limits of liability:

Commercial General Liability Insurance

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operations Agg.	\$2,000,000
Personal & Advertising Injury Limit	\$1,000,000
Fire Damage (any one fire)	\$ 100,000
Medical Expenses, each person	\$ 10,000

Comprehensive Automobile Liability Insurance

Combined Single Limit, each accident	\$1,000,000
or	
Bodily Injury (per person)	\$1,000,000
Bodily Injury (per accident)	\$1,000,000
Property Damage (per accident)	\$1,000,000

Worker's Compensation & Employer's Liability

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

Commercial Umbrella/Excess Liability

Each Occurrence	\$4,000,000
Aggregate	\$4,000,000

Professional Liability

Each Occurrence	\$2,000,000
Aggregate	\$2,000,000

10.3 Liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies and an Excess or Umbrella Liability policy. The policies shall contain a provision that coverage will not be canceled or not renewed until at least thirty (30) days' prior written notice has been given to the Owner. Certificates of insurance showing required coverage to be in force shall be provided to the Owner prior to commencement of the Work.

Products and Completed Operations insurance shall be maintained for a minimum period of at least one year after the date of Substantial Completion or final payment, whichever is earlier.

- 10.4 Primary Insurance. The Construction Manager's insurance shall be primary insurance as respects the Owner and Engineer. Any insurance or self-insurance maintained by the Owner and Engineer shall be excess of Construction Manager's insurance and shall not contribute with it. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Owner and Engineer.
- 10.5 Acceptability of Insurers. The insurance carrier(s) used by the Construction Manger shall have a minimum insurance rating of A:VII according to the AM Best Insurance Rating Schedule.
- 10.6 The Owner's Insurance. The Owner shall obtain and maintain property insurance in a form reasonably acceptable to the Construction Manager upon the entire Project for the full cost of replacement at the time of any loss. This insurance shall include as named insureds the Owner and Construction Manager, Engineer, Subcontractors and Subsubcontractors. This insurance shall insure against loss from the perils of fire and extended coverage, and shall include "all risk" insurance for physical loss or damage including without duplication of coverage, at least: theft, vandalism, malicious mischief, transit, collapse, falsework, temporary buildings, debris removal, flood, earthquake, testing, and damage resulting from defective design, workmanship or material. The Owner shall increase limits of coverage, if necessary, to reflect estimated replacement cost. The Owner shall be responsible for any co-insurance penalties or deductibles. If the Owner occupies or uses a portion of the Project prior to its Substantial Completion, such occupancy or use shall not commence prior to a time mutually agreed to by the Owner and the Construction Manager and to which the insurance company or companies providing the property insurance have consented by endorsing the policy or policies. This insurance shall not be canceled or lapsed on account of partial occupancy. Consent of the Construction Manager to such early occupancy or use shall not be unreasonably withheld. Upon the Construction Manager's request, the Owner shall provide the Construction Manager with a copy of all policies before an exposure to loss may occur. Copies of any subsequent endorsements shall be furnished to the Construction Manager. The Construction Manager shall be given thirty (30) days' notice of cancellation, non-renewal, or any endorsements restricting or reducing coverage. The Owner shall give written notice to the Construction Manager before commencement of the Work if the Owner will not be obtaining property insurance. In that case, the Construction Manager may obtain insurance in order to protect its interest in the Work as well as the interest of the Engineer, Subcontractors and Subsubcontractors in the Work. The Guaranteed Maximum Price shall be increased by the cost of this insurance through Change Order. If the Construction Manager is damaged by failure of the Owner to purchase or maintain property insurance or to so notify the Construction Manager, the Owner shall bear all reasonable costs incurred by the Construction Manager arising from the damage.
- 10.7 Property Insurance Loss Adjustment. Any insured loss shall be adjusted with the Owner and the Construction Manager and made payable to the Owner and Construction Manager as trustees for the insureds, as their interests may appear, subject to any applicable mortgagee clause. Upon the occurrence of an insured loss, monies received

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will be deposited in a separate account; and the trustees shall make distribution in accordance with the agreement of the parties in interest, or in the absence of such agreement, in accordance with the dispute resolution provisions of this Contract. If the trustees are unable to agree between themselves on the settlement of the loss, such dispute shall also be submitted for resolution pursuant to the dispute resolution provisions of this Contract.

- 10.8 Waiver of Subrogation. The Owner and Construction Manager waive all rights against each other, the Engineer, and any of their respective employees, agents, consultants, Subcontractors and Subsubcontractors, for damages caused by risks covered by insurance provided in Paragraph 10.2 to the extent they are covered by that insurance, except such rights as they may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all Subcontractors, and shall require each of them to include similar waivers in their subsubcontracts and consulting agreements. The Owner waives subrogation against the Construction Manager, Engineer, Subcontractors and Subsubcontractors on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion. If the policies of insurance referred to in this Paragraph require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.
- 10.9 Bonds. The Construction Manager shall furnish bonds covering faithful performance of the Contract, exclusive of the aggregate of the Construction Manager's Fee and the Engineer's Fee, and payment of the obligations arising thereunder. Bonds may be obtained through the Construction Manager's, or subcontractor's usual source and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to 100% of the Guaranteed Maximum Price, less the aggregate of the Construction Manager's Fee and the Engineer's Fee. The Construction Manager shall deliver the required bonds to the Owner at least three days before commencement of any Work at the Project site.

ARTICLE 11 - TERMINATION

- 11.1 By the Construction Manager. Upon seven (7) days' written notice to the Owner, the Construction Manager may terminate this Contract for any of the following reasons:
- .1 if the Work has been stopped for a sixty (60) day period;
 - a. under court order or order of other governmental authorities having jurisdiction;
 - b. because of the Owner's failure to pay the Construction Manager in accordance with this Agreement;
 - .2 if the Work is suspended by the Owner for sixty (60) days;
 - .3 if the Owner otherwise materially breaches this Contract.

Upon termination by the Construction Manager in accordance with this paragraph, the Construction Manager shall be entitled to recover from the Owner payment for all Work completed and for Work partially completed.

11.2 By the Owner.

- .1 This Agreement may be terminated by the Owner upon seven (7) days' written notice to the Construction Manager, at its last known post office address, provided that, should this Agreement be terminated by the Owner, the Construction Manager shall be paid for any services completed and any services partially completed. All field notes, test records, drawings, and reports completed or partially completed at the time of termination shall become the property of, and made available to, the Owner. Within five (5) days after notification and request, the Construction Manager shall deliver to the City Engineer all property, books and effects of every description in its possession belonging to the Owner.
2. This Agreement may additionally be terminated by the Owner upon seven (7) days' written notice to the Construction Manager upon the occurrence of any one or more of the following events, without cause and without prejudice to any other right or remedy:
 - a. If the Construction Manager violates or breaches the terms of this Agreement.
 - b. If the Construction Manager commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereinafter in effect, or if the Construction Manager takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to bankruptcy or insolvency;
 - c. If a petition is filed against the Construction Manager under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against the Construction Manager under any other federal or state law in effect at the time relating to bankruptcy or insolvency;
 - d. If the Construction Manager makes a general assignment for the benefit of creditors;
 - e. If a trustee, receiver, custodian or agent of the Construction Manager is appointed under applicable law or under contract, whose appointment or authority to take charge of property of the Construction Manager is for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of the Construction Manager's creditors;
 - f. If the Construction Manager admits in writing an inability to pay its debts generally as they become due.
- .3 Delivery of Documents. Upon termination, the Construction Manager shall deliver to the Owner copies of partially completed drawings, specifications, partial and completed estimates, and data, if any, from investigations and observations, with the understanding that all such material becomes the property of the Owner.

In such case, the Construction Manager shall be paid for all services and any expense sustained, less all costs incurred by the Owner to have the services performed which were to have been performed by the Construction Manager.

- .4 Suspension by Owner. The Owner may, at any time, by written order to the Construction Manager (Suspension of Services Order) require the Construction Manager to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, the Construction Manager shall immediately comply with its terms and take all reasonable steps to minimize the costs associated with the services affected by such order. The Owner, however, shall pay all costs incurred by the suspension, including all costs necessary to maintain continuity and for the resumptions of the services upon expiration of the Suspension of Services Order.

ARTICLE 12 - DISPUTE RESOLUTION

This Agreement shall be construed under and governed by the laws of the state of Illinois; and all actions brought to enforce the dispute resolution provisions of this Agreement shall be so brought in the Circuit Court of DuPage County, State of Illinois.

ARTICLE 13 - LIQUIDATION AND LIMITATION OF LIABILITY

- 13.1 Late Completion. In the event that the Work is not Substantially Complete by the date set forth in this Contract, then promptly after receiving Final Payment, the Construction Manager shall pay to the Owner as liquidated damages a sum equal to Two Hundred Dollars (\$200.00) for each day that the Work is late in reaching Substantial Completion.
- 13.2 Limitation of Liability. The Owner acknowledges that the Construction Manager is a limited liability company and agrees that any claim made by the Owner arising out of or pertaining to this Contract shall be made against only the Construction Manager and not against any member, manager, director, officer, employee or agent of the Construction Manager or any other company affiliated with the Construction Manager.
- 13.4 Consequential Damages. Notwithstanding anything to the contrary in this Contract, in no event shall the Construction Manager or any of its Subcontractors be liable for consequential loss or damage, including but not limited to loss of use or profits, and the Owner hereby releases the Construction Manager and its Subcontractors from any such liability.

ARTICLE 14 - MISCELLANEOUS

- 14.1 Project Sign. The Owner agrees that the Construction Manager and Engineer will be properly identified and will be given appropriate credit on all signs, press releases and other forms of publicity for the Project. Owner will permit the Construction Manager and Engineer to photograph and make other reasonable use of the Project for promotional purposes.

- 14.2 Notices. Notices to the parties shall be given at the addresses shown on the cover page of this Contract by mail, fax or any other reasonable means.
- 14.3 Integration. This Contract is solely for the benefit of the parties, and no one is intended to be a third party beneficiary hereto. This Contract represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral.
- 14.4 Governing Law. This Contract shall be construed in accordance with and governed by the laws of the State of Illinois, without application of its conflicts-of-laws provisions.
- 14.5 Severability. The partial or complete invalidity of any one or more provisions of this Contract shall not affect the validity or continuing force and effect of any other provision.
- 14.6 Assignment. Neither party to this Contract shall assign the Contract as a whole without written consent of the other, except that the Owner may collaterally assign this Contract to a lender if required to secure financing for this Project.
- 14.7 Existing Contract Documents. A list of the Plans, Project Manual, Specifications and Addenda in existence at the time of execution of this Contract is attached as an exhibit to this Contract.

Owner:

Village of Roselle
 474 Congress Circle North
 Roselle, IL 60172

Contractor:

Burke, LLC
 9575 W. Higgins Road, Suite 600
 Rosemont, IL 60018

By: _____ Date: _____

By: _____ Date: _____
 Principal

Attest: _____ Date: _____

By: _____ Date: _____
 Principal