**CITY OF CRYSTAL LAKE**

**CONTRACT FOR *[DESCRIPTION OF CONTRACT]***

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**CONTRACT AGREEMENT BETWEEN**

**THECITY OF CRYSTAL LAKE**

**AND**

***[ COMPANY NAME ]***

**FOR THE *[ DESCRIPTION OF CONTRACT ]***

Contract Number: ***[          ]***

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**THECITY OF CRYSTAL LAKE**

**AND**

***[ COMPANY NAME ]***

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**CONTRACT AGREEMENT BETWEEN**

**THECITY OF CRYSTAL LAKE**

**AND**

***[ COMPANY NAME ]***

**FOR THE *[ DESCRIPTION OF CONTRACT ]***

Contract Number: ***[          ]***

THIS CONTRACT AGREEMENT, made as of this ***[    ]*** day of  ***[MONTH]***, ***[20\_\_]***, by and between the City of Crystal Lake, 100 W Woodstock St, Crystal Lake, IL 60014, an Illinois home rule municipal corporation, and ***[NAME OF CONTRACTOR]***, a ***[FORM OF ORGANIZATION]***,

W I T N E S S E T H:

In consideration of the mutual promises contained in this Contract Agreement, it is agreed by and between Owner and Contractor as follows:

**ARTICLE I**

**THE WORK**

**1.1 Performance of the Work**

Contractor shall, at its sole cost and expense, provide, perform, and complete all of the following:

1. Labor, Equipment, Materials, and Supplies. Provide, perform, and complete, in the manner described and specified in this Contract, all necessary work, labor, services, transportation, equipment, materials, apparatus, machinery, tools, fuels, gas, electric, water, waste disposal, information, data, and other means and items necessary to accomplish the ***[ DESCRIBE THE PROJECT ].***
2. Permits. Unless otherwise stated in the Special Conditions of Contract, procure and furnish all permits, licenses, and other governmental approvals and authorizations necessary in connection therewith.
3. Bonds and Insurance. Procure and furnish all Bonds and all certificates and policies of insurance specified in this Contract.
4. Taxes. Pay all applicable federal, state, and local taxes.
5. Miscellaneous. Do all other things required of Contractor by this Contract, including, without limitation, arranging for utility and other services needed for the Work and for testing, including the installation of temporary utility lines, wiring, switches, fixtures, hoses, connections, and meters, and providing sufficient sanitary conveniences and shelters to accommodate all workers and all personnel of Owner engaged in the Work.
6. Quality. Provide, perform and complete all of the foregoing in a proper and workmanlike manner, consistent with the highest standards of professional and construction practices and in full compliance with, and as required by or pursuant to, this Contract, and with the greatest economy, efficiency, and expedition consistent therewith, with only new, undamaged and first quality equipment, materials, and supplies.

**1.2 Contract Documents**

The Contract Documents consist of the following component parts, all of which are attached to this Contract Agreement and are, by this reference, made a part of this Contract Agreement as though fully set forth herein:

1. Contractor's Certification;

2. Schedule of Prices;

3. General Conditions of Contract;

4. Special Conditions of Contract, if any;

5. Contract Drawings;

6. Specifications;

7. Form of Performance Bond;

8. Form of Labor and Material Payment Bond;

9. Addenda Nos. ***[COMPLETE]***; and

10. Other, as follows: ***[COMPLETE]***.

Engineer may furnish to Contractor such additional Contract Drawings and Specifications or such other explanations as Engineer may consider necessary to illustrate or explain the Work in further detail. Contractor shall comply with the requirements of all such additional Contract Drawings and Specifications or other explanations, all of which shall be considered part of the Contract Documents and shall not be considered as indicating additional Work.

* 1. **Interpretation of Contract Documents**

1. Definitions. Except for the terms specially defined below, all capitalized terms shall have the meanings given to them in Article VII of the General Conditions of Contract:
   1. Contractor. The Person first identified above with whom Owner has executed this Contract Agreement and its duly authorized officers, employees, agents, and representatives.
   2. Engineer. ***[ ENGINEER'S NAME AND ADDRESS ]*** or such additional or different Person as Owner may from time to time designate in writing to perform any or all of the functions of the Engineer under this Contract as well as the duly authorized officers, employees, agents, and representatives of any such Person.
   3. Owner. The City of Crystal Lake and its duly authorized officers, employees, agents, and representatives.
   4. Work. All matters described, exhibited, contemplated, implied, or embraced in this Article I of this Contract Agreement and in Article I of the General Conditions of Contract.
   5. Work Site. ***[ DESCRIBE ].***
2. Rules of Interpretation. This Contract shall be interpreted so that:
   1. Requirements Cumulative. Each requirement imposed on Contractor shall be cumulative of every other requirement imposed on Contractor, and any Work required to be performed by any one component part of this Contract shall be performed to the same extent as if required by all component parts of this Contract.
   2. Details to be Assumed. The Work shall be provided, performed, and completed in every detail whether or not every item of detail is particularly set forth in the Contract Documents.
   3. Priority of Contract Provisions. In the event of a discrepancy, error, omission, ambiguity, or conflict in the application or interpretation of any of the provisions of this Contract, the terms of this Contract Agreement and of the General Conditions of Contract shall govern over the terms and provisions of all other Contract Documents.
   4. Engineer's Interpretation. Subject to Paragraphs 1.3B1, B2, and B3 above, Engineer shall determine which provision or provisions of this Contract Agreement and the Contract Documents best promotes or promote the overall objectives, and best fulfill the intents and purposes, of this Contract, and such provision or provisions shall govern. Such determination of Engineer shall be final.
   5. Contractor's Duty to Report Discrepancies. Contractor shall carefully review this Contract Agreement and each of the Contract Documents before performing the Work, and each part thereof, and shall promptly call to the attention of Engineer any discrepancy, error, omission, ambiguity, or conflict that may exist among any of the component parts of this Contract or among any of the provisions of any one of such component parts before proceeding with any part of the Work affected by such discrepancy, error, omission, ambiguity, or conflict. If Contractor fails to give such notice of any discrepancy, error, omission, ambiguity, or conflict, the subsequent decision of Engineer as to which of such component parts or which of such provisions shall govern shall be final and conclusive and any corrective Work required shall be at Contractor's sole cost and expense and shall not entitle Contractor to any compensation in excess of the Contract Price. Contractor shall not be entitled to any compensation in excess of the Contract Price or to any extension of the Contract Time by reason of any discrepancy, error, omission, ambiguity, or conflict that could reasonably have been discovered by Contractor prior to the execution of this Contract or prior to the performance of any part of the Work affected by such discrepancy, error, omission, ambiguity, or conflict.

**ARTICLE II**

**CONTRACT TIME**

**2.1 Commencement Date**

Contractor shall commence the Work within ***[  ]*** Days following execution of this Contract Agreement by Owner.

**2.2 Completion Date**

Contractor shall diligently and continuously prosecute the Work from the Commencement Date at such a rate as will allow the Work to be fully provided, performed, and completed in full compliance with, and as required by or pursuant to, this Contract, and the Work shall be fully provided, performed, and completed in full compliance with this Contract, not later than ***[ ]*** Days following the Commencement Date.

**2.3 Time of the Essence**

The time of commencement, rate of progress, and time of completion are of the essence of this Contract.

**ARTICLE III**

**CONTRACTOR'S WARRANTIES AND REPRESENTATIONS**

**3.1 Warranties and Representations**

In order to induce Owner to enter into this Contract, Contractor hereby warrants and represents to Owner as follows:

1. Review of Contract. Contractor has carefully examined, reviewed, and accepted this Contract Agreement and all of the Contract Documents prior to submission of its Bidder's Proposal and execution of this Contract and there are no discrepancies, errors, omissions, ambiguities, or conflicts in this Contract that are material to Contractor's provision, performance, or completion of the Work, the Contract Price or the Contract Time that have not already been clarified in writing by Owner to the satisfaction of Contractor. Contractor shall hereafter have no claim for payment or compensation in excess of the Contract Price based upon discrepancies, errors, omissions, ambiguities, or conflicts in this Contract. Contractor shall be entitled only to an extension of the Contract Time as provided in this Contract for claims based upon discrepancies, errors, omissions, ambiguities, or conflicts in this Contract and then only in those cases where Contractor can show that such discrepancies, errors, omissions, ambiguities, or conflicts could not have been discovered by Contractor prior to execution of this Contract or prior to the performance of any of the Work affected by such discrepancy, error, omission, ambiguity, or conflict.
2. Investigation of Work Site. Contractor has had a sufficient opportunity to conduct a thorough inspection and investigation of the Work Site and the surrounding area and has completed such inspection and investigation to its satisfaction. Contractor hereby waives all claims for, and hereafter shall have no claim for, payment or compensation in excess of the Contract Price based upon conditions at the Work Site or in the surrounding area. Contractor shall be entitled only to an extension of the Contract Time as provided in this Contract for claims based upon conditions at the Work Site or in the surrounding area and then only in those cases where Contractor can show that such conditions could not have been discovered by Contractor prior to execution of this Contract or prior to the performance of any of the Work affected by such condition.
3. Authorization; Enforceable Obligations. This Contract constitutes the legal, valid, and binding obligation of Contractor, is fully enforceable against Contractor in accordance with its terms, will not violate any judgment, Law, or organizational or operating document and will not cause or constitute a default under any contractual obligation of Contractor or any lien, charge, encumbrance, or security interest upon any assets of Contractor.
4. Contractor's Certification. All the facts and information submitted by Contractor in connection with this Contract and its procurement are true and correct in all respects and, in particular, the statements contained in Contractor's Certification are true and correct.
5. Technical Ability to Perform. Contractor is sufficiently experienced and competent, and has the necessary capital, facilities, plant, organization, and staff, to provide, perform, and complete the Work in full compliance with, and as required by or pursuant to, this Contract.
6. Financial Ability to Perform. Contractor is financially solvent, and Contractor has the financial resources necessary to provide, perform, and complete the Work in full compliance with, and as required by or pursuant to, this Contract.
7. Time. Contractor is ready, willing, able, and prepared to begin the Work on the Commencement Date and the Contract Time is sufficient time to permit completion of the Work in full compliance with, and as required by or pursuant to, this Contract for the Contract Price, all with due regard to all natural and man-made conditions that may affect the Work or the Work Site and all difficulties, hindrances, and delays that may be incident to the Work.
8. No Collusion. The only Persons interested in this Contract as principals are those disclosed as such in the Bidder's Sworn Acknowledgement submitted to Owner by Contractor, and this Contract is made without collusion with any other Person.
9. No Default. Contractor is not in arrears to Owner upon any debt or contract and is not a defaulter as surety, contractor, or otherwise to any Person.
10. Not Barred. Contractor is not barred by law from contracting with Owner or with any unit of state or local government.
11. Taxes and Benefits. Contractor has excluded from the Contract Price all state and local sales, use, and excise taxes. Contractor has included in the Contract Price, and has or will pay or cause to be paid out of the Contract Price, all other applicable federal, state, and local taxes of every kind and nature applicable to the Work as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or other similar benefits for Contractor's and its Subcontractors' employees.
12. Patent Costs. Contractor has included in the Contract Price, and has or will pay or cause to be paid out of the Contract Price, all costs, royalties, and fees arising from the use on, or the incorporation into, the Work of patented equipment, materials, supplies, tools, appliances, devices, processes, or inventions.

**3.2 Affirmation of Other Warranties and Representations**

In addition to the foregoing warranties and representations, Contractor hereby acknowledges that Contractor has carefully read, reviewed, and understood, and hereby agrees to honor, the Warranty of the Work contained in Article III of the General Conditions of Contract as well as all other warranties and representations set forth in the Contract Documents.

**ARTICLE IV**

**FINANCIAL ASSURANCES**

**4.1 Bonds**

A. Bonds Required. Contemporaneous with Contractor's execution of this Contract Agreement, Contractor shall provide a Performance Bond and a Labor and Material Payment Bond, in the forms included in the Contract Documents, from a surety company licensed to do business in the State of Illinois with a general rating of A and a financial size category of Class X or better in Best's Insurance Guide, each in the penal sum of the Contract Price, and such other bonds as and when required by Owner. Contractor shall, at all times while providing, performing, or completing the Work, including, without limitation, at all times while repairing, correcting, or replacing all or any part of the Work that is defective, damaged, flawed, unsuitable, nonconforming, or that fails to meet warranty subject to correction by Contractor pursuant to Section 3.1 or Section 3.2 of the General Conditions of Contract, maintain and keep in force, at Contractor's expense, the Bonds required hereunder.

B. No Release of Bond Obligations. No changes, modifications, alterations, omissions, deletions, additions, extensions of time, or forbearances on the part of either Owner or Contractor to the other in or to the terms of this Contract, in or to the Contract Drawings or Specifications, in or to the schedules, methods, or manner of performance of the Work, in or to Owner-furnished facilities, equipment, materials, services, or sites, or in or to the mode or manner of payment therefor, shall operate in any way to release Contractor or any surety or affect the obligation of either of them under any Bond required to be provided by Contractor. All notice of any and all of the foregoing changes, modifications, alterations, omissions, deletions, additions, extensions of time, or forbearances, and all notice of any and all defaults by Contractor, and all notice of Owner's termination of Contractor shall be waived by every surety under every Bond provided pursuant to this Contract.

**4.2 Insurance**

A. Insurance Required. Contemporaneous with Contractor's execution of this Contract Agreement, Contractor shall provide certificates and policies of insurance evidencing the insurance coverages set forth in Article IV of the General Conditions of Contract. For good cause shown, Owner may extend the time for submission of the required policies of insurance upon such terms, and with such assurances of complete and prompt performance, as Owner may impose in the exercise of its sole discretion.

B. Additional Insureds. The Comprehensive General Liability insurance coverages required pursuant to this Contract shall name the following Persons as additional insured parties:

The City of Crystal Lake and its boards, commissions, committees, authorities, employees, agencies, officers, voluntary associations, and other units operating under the jurisdiction and within the appointment of its budget.

The coverage afforded the additional insureds shall be primary insurance for the additional insureds with respect to claims arising out of operations performed by or on behalf of Contractor. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurance companies' liability under the insurance policies Contractor maintains shall not be reduced by the existence of such other insurance.

1. Notice of Cancellation or Modifications. Each insurance policy required shall have Owner expressly endorsed onto the policy as a Cancellation Notice Recipient and shall provide that no cancellation or non-renewal of any insurance shall become effective until the expiration of 30 days after written notice thereof shall have been given by the insurance company to Owner. In the event of any such cancellation or non-renewal, Contractor shall provide, with the notice thereof, evidence of replacement insurance. In the event of any change or modification of coverage, Contractor shall notify Owner within thirty (30) days after Contractor receives such notice of such change.
2. No Waiver. Under no circumstances shall Owner be deemed to have waived any of the insurance requirements of this Agreement by any act or omission, including, but not limited to:
   1. Allowing work by Contractor or any subcontractor to start before receipt of Certificates of Insurance and Additional Insured Endorsements.
   2. Failure to examine, or to demand correction of any deficiency, of any Certificate of Insurance and Additional Insured Endorsement received.

**4.3 Indemnification**

Contractor shall indemnify, save harmless, and defend Owner and Engineer against any and all lawsuits, claims, demands, liabilities, losses, and expenses, including attorneys' fees and administrative expenses, that may arise, or be alleged to have arisen, out of or in connection with Contractor's, or its Subcontractors' or Suppliers', performance of, or failure to perform, the Work or any part thereof, whether or not due or claimed to be due in whole or in part to the active, passive, or concurrent negligence or fault of Contractor, except to the extent caused by the sole negligence of Owner, including without limitation lawsuits, claims, demands, liabilities, losses, and expenses for or on account of:

1. Any delays or interference or damage to other contractors; and
2. Labor, equipment, materials, or supplies furnished under this Contract, including all liens or notices of liens on account thereof or Contractor's failure to remove or discharge same; and
3. Contractor's failure to obtain any required permits, licenses, approvals, or authorizations; and
4. Bodily injury, sickness, disease, or death sustained by any Person or Persons or injury or damage to, or loss or destruction of, any property; and
5. Any act or omission of Contractor or any of its Subcontractors or Suppliers, including but not limited to any failure to fulfill the terms of, or comply with, any Laws or to pay any taxes, contributions, or premiums; and
6. Infringement, alleged infringement, or use of patent rights in connection with the Work and the use by Owner of any equipment, materials, supplies, processes, or inventions furnished under this Contract.

The indemnification obligations of Contractor under this Section 4.3 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any such Subcontractor or Supplier under workers' compensation acts, disability benefit acts or other employee benefit acts.

**4.4 Penalties**

Contractor shall be solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise, or be alleged to have arisen, out of or in connection with Contractor's, or its Subcontractors' or Suppliers', performance of, or failure to perform, the Work or any part thereof. Contractor may contest any such fines or penalties in administrative or court proceedings; provided, however, that Contractor shall pay such fines or civil penalties prior to such protest if payment is required prior to making such protest. Contractor shall be solely responsible for all costs, including attorneys' fees and administrative expenses, of protesting any such fines or civil penalties.

**ARTICLE V**

**CONTRACT PRICE AND PAYMENT**

**5.1 Contract Price**

Owner shall pay to Contractor, in full satisfaction for providing, performing, and completing the Work, subject to any additions or deductions provided for in this Contract, in current funds, the lump sum amount or amounts, if any, stated in the Schedule of Prices and, for each acceptable unit of each Unit Price Item, if any, installed and complete in place, measured on the basis provided in the Contract Drawings and Specifications, the Unit Price for such Unit Price Item stated in the Schedule of Prices.

**5.2 Acceptance as Full Payment and Satisfaction**

Contractor shall accept the Contract Price in full satisfaction and payment for well and faithfully providing, performing, and completing within the Contract Time all the Work in compliance with, and as required by or pursuant to, this Contract. The acceptance by Contractor of Final Payment shall operate as a full and complete release of Owner and Engineer of and from any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses of, by, or to Contractor for anything done, furnished for, arising out of, relating to, or in connection with the Work or for or on account of any act or neglect of Owner or Engineer arising out of, relating to, or in connection with the Work, except the claim against Owner for the unpaid balance, if any, of any amounts retained by Owner pursuant to the Special Conditions of Contract.

**5.3 Method of Payment**

Progress and Final Payments shall be made to Contractor in accordance with, and subject to the terms and conditions set forth in, Article V of the General Conditions of Contract.

**ARTICLE VI**

**LEGAL RELATIONSHIPS AND REQUIREMENTS**

**6.1 Binding Effect**

This Contract shall be binding upon Owner and Contractor and upon their respective heirs, executors, administrators, personal representatives, and permitted successors and assigns.

Contractor agrees that if Contractor is a joint venture, then each Person participating in such joint venture shall be individually, personally, severally, and jointly responsible and liable, financially, legally, and in all other respects, for the full and proper performance of each and every provision and requirement of this Contract, notwithstanding any arrangement, understanding, or agreement to the contrary, if any, whether disclosed to Owner or not, entered into by, between or among the Persons participating in such joint venture.

**6.2 Relationship of the Parties**

Contractor, and its Subcontractors and Suppliers, shall act as independent contractors in providing, performing, and completing the Work. No right of supervision, requirement of approval, or other provision of this Contract and no subsequent conduct of Owner or Contractor shall be construed (1) to create the relationship of principal and agent, partners, or joint venturers between Owner and Contractor, or (2) except as provided in Paragraph 6.6B6 of the General Conditions of Contract, to create any relationship between Owner and any Subcontractor or Supplier of Contractor. The rights of Owner under this Contract, either directly or through Engineer, in the control of the quality and completeness of the Work shall not make Contractor, or any Subcontractor or Supplier of Contractor, an agent of Owner, and the liability of Contractor, and of all Subcontractors and Suppliers of Contractor, for all damages to persons or to public or private property arising from the provision, performance, or completion of the Work by Contractor, or any Subcontractor or Supplier of Contractor, shall not be lessened because of the existence, exercise, or the nonexercise of such rights.

**6.3 Assignment**

A. Assignment by Contractor. Contractor shall not (1) assign this Contract in whole or in part, (2) assign any of Contractor's rights or obligations under this Contract, or (3) assign any payment due or to become due under this Contract, without the prior express written consent of Owner, which consent may be withheld in the sole and unfettered discretion of Owner; provided, however, that Owner's prior written consent shall not be required for assignments of accounts, as defined in the Illinois Commercial Code, if to do so would violate Section 9-318 of the Illinois Commercial Code, 810 ILCS 5/9-318. Any attempted or purported assignment made by Contractor without the written consent of Owner shall be void and of no force or effect and shall constitute a default under this Contract for which Owner shall have the right to invoke any of its remedies under Section 6.6 of the General Conditions of Contract. In no event shall Owner's consent to any assignment of this Contract or of any of Contractor's rights under this Contract, whether in whole or in part, operate as a release or satisfaction of Contractor's responsibility and liability for the provision, performance, and completion of the Work in full compliance with the requirements of this Contract on or before the Completion Date, or for the proper performance of all other obligations of Contractor under this Contract, or for Contractor's liability on all representations and warranties made in or pursuant to this Contract. Contractor shall remain as fully responsible and liable for the acts, omissions, and performance of Contractor's assignee as Contractor is for its own acts, omissions, and performance.

B. Assignment by Owner. Owner may assign this Contract, in whole or in part, or any or all of its rights or obligations under this Contract, without the consent of Contractor. In the event of an assignment by Owner of any or all of its rights or obligations under this Contract, Owner shall be released from all liability with respect to the rights or obligations so assigned.

**6.4 Confidential Information**

All information supplied by Owner or Engineer to Contractor for or in connection with this Contract or the Work shall be held confidential by Contractor and shall not, without the prior express written consent of Owner, be used for any purpose other than performance of the Work. Neither Contractor nor any Subcontractor or Supplier shall own or be entitled to claim a copyright in the Contract or other documents prepared by Owner or Engineer.

Contractor shall identify any information supplied by it in providing, performing, and completing the Work that is considered by it to be confidential or proprietary. Owner and Engineer shall not disclose any such designated confidential or proprietary information, unless such disclosure will not cause competitive harm, or such information was actually known to Owner or Engineer prior to its submission by Contractor, or such information was properly obtained or developed independently by Owner or Engineer, or Contractor consents to such disclosure. Notwithstanding the foregoing, Contractor acknowledges that Owner is subject to the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., and that no disclosure made in good faith by Owner pursuant to such Act shall be deemed to violate this Section.

**6.5 Publicity**

Owner's name or insignia, photographs of the Work or the Work Site, or any other publicity pertaining to the Work shall not be used in any magazine, trade paper, newspaper, or other medium without the express written consent of Owner.

**6.6 No Waivers**

No examination, inspection, investigation, test, measurement, review, determination, decision, certificate or approval by Owner or Engineer, nor any order by Owner for the payment of money, nor any payment for, or use, occupancy, possession, or acceptance of, the whole or any part of the Work by Owner, nor any extension of time granted by Owner, nor any delay by Owner in exercising any right under this Contract, nor any other act or omission of Owner or Engineer shall constitute or be deemed to be an acceptance of any defective, damaged, flawed, unsuitable, nonconforming or incomplete Work, equipment, materials, or supplies, nor operate to waive or otherwise diminish the effect of any warranty or representation made by Contractor; or of any requirement or provision of this Contract; or of any remedy, power, or right of Owner.

No notices required to be given to Owner under this Contract are intended to be waived by Owner, and no action or inaction by Owner or Engineer shall be construed as waiving any such notice.

**6.7 No Third Party Beneficiaries**

No claim as a third party beneficiary under this Contract by any Person other than Contractor shall be made or be valid against Owner and Owner shall not be liable for or be held to pay any money to any such Person.

**6.8 Notices**

All notices required or permitted to be given under this Contract shall be in writing and shall be deemed received by the addressee thereof when delivered in person on a business day at the address set forth below or on the third business day after being deposited in any main or branch United States post office, for delivery at the address set forth below by properly addressed, postage prepaid, certified or registered mail, return receipt requested.

Notices and communications to Owner shall be addressed to, and delivered at, the following address:

City of Crystal Lake

100 W Woodstock St,

Crystal Lake, IL 60014

Attention: City Manager

with a copy to:

Victor P. Filippini, Jr.

Filippini Law Firm

990 Grove Street

Suite 2201

Evanston, IL 60201

Email: victor.filippini@filippinilawfirm.com

Notices and communications to Contractor shall be addressed to, and delivered at, the following address:

***[ COMPLETE ]***

By notice complying with the requirements of this Section, Owner and Contractor each shall have the right to change the address or addressee or both for all future notices to it, but no notice of a change of address shall be effective until actually received.

**6.9 Governing Laws**

This Contract and the rights of Owner and Contractor under this Contract shall be governed by and interpreted according to the Laws, but not the conflict of Laws rules, of the State of Illinois.

**6.10 Changes in Laws**

Unless otherwise explicitly provided in this Contract, any reference to Laws shall include such Laws as they may be amended or modified from time to time.

**6.11 Compliance with Laws**

1. Compliance with Laws. Contractor shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the Work is provided, performed, and completed in accordance with all required governmental permits, licenses or other approvals and authorizations that may be required in connection with providing, performing, and completing the Work, and with all applicable statutes, ordinances, rules, and regulations, including without limitation the Prevailing Wage Act, 820 ILCS 130/0.01 et seq.; any other prevailing wage laws; the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes requiring preference to laborers of specified classes; the Illinois Steel Products Procurement Act, 30 ILCS 565/1 et seq.; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex, or other prohibited classification, including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., the Illinois Human Rights Act, 775 ILCS 5/1‑101 et seq., and the Public Works Discrimination Act, 775 ILCS 10/1 et seq.; and any statutes regarding safety or the performance of the Work, including the Illinois Underground Utility Facilities Damage Prevention Act and the Occupational Safety and Health Act. Contractor shall also comply with all conditions of any federal, state, or local grant received by Owner or Contractor with respect to this Contract or the Work. To the extent that the Prevailing Wage Act, 820 ILCS 130/0.01 et seq., applies to the Work, it is Contractor's obligation to pay(and require every subcontractor to pay) prevailing wages for each craft or type of work needed to execute the Work in accordance with the Act. The prevailing rates of hourly wages are revised from time to time by the Illinois Department of Labor and are available on the Department’s official website at: https://www.illinois.gov/idol/Laws-Rules/CONMED/Pages/Rates.aspx. If the Illinois Department of Labor revises the prevailing rate of hourly wages to be paid, the revised rate shall apply to the Work.

Contractor shall be solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise, or be alleged to have arisen, out of or in connection with Contractor's, or its subcontractors' or suppliers', performance of, or failure to perform, the Work or any part thereof.

Every provision of law required by law to be inserted into this Contract shall be deemed to be inserted herein.

1. Compliance by Subcontractors and Suppliers. Contractor shall, at all times, cause all of its Subcontractors and Suppliers to observe and comply with all such Laws.
2. Noncompliance of Contract Documents. Contractor shall promptly examine the Contract Drawings and Specifications and other Contract Documents and report to Owner any respects in which it appears that any of them may fail to conform to any applicable Laws.
3. Verification of Compliance. At or before the time of Owner's Final Acceptance of the Work, Contractor shall deliver to Owner all certificates, receipts, or other evidences of approval, acceptance, or payment of fees that may be required to establish the compliance of the Work with all applicable Laws, permits, licenses, approvals, authorizations, or other requirements.
4. Provisions Deemed Inserted. Each and every provision required by Law to be inserted in this Contract shall be deemed to be inserted herein, and this Contract shall be read and enforced as though all such provisions were set out in full in this Contract. If through mistake or otherwise any such provision is not set out in this Contract, or is not correctly set out in this Contract, then upon the application of either Owner or Contractor, this Contract shall forthwith be physically amended to correctly set out such provision.

**6.12 Compliance with Patents**

1. Patent Rights. Contractor shall do all things necessary to obtain such rights and licenses as may be necessary in connection with all costs, royalties, and fees arising from the use on, or the incorporation into, the Work of patented equipment, materials, supplies, tools, appliances, devices, processes, or inventions.
2. Effect of Contractor Being Enjoined. Should Contractor be enjoined from furnishing or using any equipment, materials, supplies, tools, appliances, devices, processes, or inventions supplied or required to be supplied or used under this Contract, Contractor shall promptly offer substitute equipment, materials, supplies, tools, appliances, devices, processes, or inventions in lieu thereof, of equal efficiency, quality, suitability, and market value, for review by Owner. If Owner should disapprove the offered substitutes and should elect, in lieu of a substitution, to have supplied, and to retain and use, any such equipment, materials, supplies, tools, appliances, devices, processes, or inventions as may by this Contract be required to be supplied, Contractor shall pay such royalties and secure such valid licenses as may be requisite and necessary for Owner to use such equipment, materials, supplies, tools, appliances, devices, processes, or inventions without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof. Should Contractor neglect or refuse to make any approved substitution promptly, or to pay such royalties and secure such licenses as may be necessary, then Owner shall have the right to make such substitution, or Owner may pay such royalties and secure such licenses and charge the cost thereof against any money due Contractor from Owner or recover the amount thereof from Contractor and its surety or sureties notwithstanding that Final Payment may have been made.

**6.13 Severability**

The provisions of this Contract shall be interpreted when possible to sustain their legality and enforceability as a whole. In the event any provision of this Contract shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, in whole or in part, neither the validity of the remaining part of such provision, nor the validity of any other provisions of this Contract, shall be in any way affected thereby. The unenforceability of any provision of this Contract in a specific situation shall not affect the enforceability of that provision in any other situation.

**6.14 Entire Agreement**

This Contract sets forth the entire agreement of Owner and Contractor with respect to the accomplishment of the Work and the payment of the Contract Price therefor, and there are no other understandings or agreements, oral or written, between Owner and Contractor with respect to the Work and the compensation therefor, nor was the making and execution of this Contract induced by any representation, statement, warranty, agreement, or action other than those expressed or explicitly referenced herein.

**6.15 Amendments**

No modification, addition, deletion, revision, alteration or other change to this Contract shall be effective unless and until such change is agreed to by Owner and Contractor, reduced to writing, and executed and delivered by Owner and Contractor.

**6.16 Counterparts**

This Contract is being executed in \_\_\_\_\_\_ original counterparts, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, Owner and Contractor have caused this Contract Agreement to be executed as of the day and year first written above.

Attest/Witness: **CITY OF CRYSTAL LAKE**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attest/Witness: **[*CONTRACTOR*]**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SEE GENERAL INSTRUCTIONS TO BIDDERS, SECTION 8,**

**FOR SIGNATURE REQUIREMENTS**

STATE OF ILLINOIS )

) SS

COUNTY OF \_\_\_\_\_\_\_\_\_ )

CONTRACTOR'S CERTIFICATION

***[CONTRACTOR'S EXECUTING OFFICER]***, being first duly sworn on oath, deposes and states that all statements made herein are made on behalf of Contractor, that this deponent is authorized to make them, and that the statements contained herein are true and correct.

Contractor deposes, states, and certifies that Contractor is not barred from contracting with a unit of state or local government as a result of a violation of either Section 33E-3 or Section 33E-4 of Article 33 of the Criminal Code of 1961, 720 ILCS 5/33E-1 et seq.

DATED this ***[    ]*** day of ***[MONTH]***, ***[20\_\_]***.

Attest/Witness: **[*CONTRACTOR*]**

By: By:

***[NAME OF CONTRACTOR'S***

***EXECUTING OFFICER]***

Title: Title: ***[TITLE OF CONTRACTOR'S***

***EXECUTING OFFICER]***

Subscribed and Sworn to My Commission Expires:

before me this \_\_\_\_ day

of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [SEAL]

Notary Public

**SEE GENERAL INSTRUCTIONS TO BIDDERS, SECTION 8,**

**FOR SIGNATURE REQUIREMENTS**

**CITY OF CRYSTAL LAKE**

**CONTRACT FOR THE CONSTRUCTION OF**

***[NAME OF PROJECT]***

**SCHEDULE OF PRICES**

Contractor's Guaranteed Maximum Price for the Work, including the cost of serving as the Construction Manager (as described in Article 12), is \_\_\_\_\_\_\_\_\_\_ Dollars ($ ). This price is for the performance of the Work in accordance with this Contract Agreement and Exhibits \_\_ through \_\_ attached to and made a part of this Schedule of Prices as set forth below:

**Exhibit A:** Drawings, Specifications, addenda and General, Supplementary and other Conditions of the Contract on \_\_\_\_\_\_\_\_\_\_\_which the Maximum \_\_\_\_\_\_\_\_\_\_\_\_ Guaranteed Price is based, pages \_\_\_\_\_\_\_ through \_\_\_\_\_\_\_\_\_\_ dated \_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

**Exhibit B:** Allowance items, pages through dated , 20\_\_.

**Exhibit C:** Assumptions and clarifications made in preparing the Guaranteed Maximum Price, pages through dated , 20\_\_.

**Exhibit D:**  Completion schedule, pages through dated , 20\_\_.

**Exhibit E:** Alternate prices, pages through dated , 20\_\_.

**Exhibit F:** Unit Prices, pages through dated , 20\_\_.

**CITY OF CRYSTAL LAKE**

**CONTRACT FOR THE CONSTRUCTION OF**

***[ NAME OF PROJECT ]***

**GENERAL CONDITIONS OF CONTRACT**

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**CITY OF CRYSTAL LAKE**

**CONTRACT FOR THE CONSTRUCTION OF**

***[ NAME OF PROJECT ]***

**GENERAL CONDITIONS OF CONTRACT**

**ARTICLE I**

**PERFORMANCE OF THE WORK**

**1.1 Performance Standards and Obligations**

A. Quality of Work.

1. General Standard. All Work shall be provided, performed, and completed in a proper and workmanlike manner, consistent with the highest standards of professional and construction practices and in full compliance with, and as required by or pursuant to, this Contract, and with the greatest economy, efficiency, and expedition consistent therewith. All equipment, materials, and supplies incorporated into the Work shall be new and undamaged and shall be the best of their respective kinds for their intended use.

2. Referenced Standards. References to standards, specifications, manuals, or codes of any technical society, organization, or association, or to codes of local, state or federal authorities, shall mean the latest standard, specification, manual or code adopted and published at the date of the Bidder's Proposal, unless specifically stated otherwise. However, no provision of any referenced standard, specification, manual or code shall change the duties and responsibilities of Owner, Engineer, or Contractor from those set forth in this Contract.

3. Proprietary Standards and Equivalency. Whenever any equipment, materials, or supplies are specified or described in this Contract by using the name or other identifying feature of a proprietary product or the name or other identifying feature of a particular manufacturer or vendor, the specific item mentioned shall be understood as establishing the type, function and quality desired. Other manufacturers' or vendors' products may be accepted, provided sufficient information is submitted to allow Engineer to determine that the products proposed are equivalent in substance and function to those named. The equivalency of any product proposed shall be determined by Engineer, in its sole and absolute discretion, and no such product shall be purchased, fabricated or installed until equivalency shall have been determined, in writing, by Engineer. Engineer's written decision with respect to equivalency shall be final.

B. Timeliness of Work.

1. Time is of the Essence. The time of beginning, rate of progress, and time of completion of the Work is of the essence of this Contract. Contractor shall be solely responsible for completing the Work in a timely fashion. Contractor shall promptly, continuously, diligently, vigorously, and systematically provide and perform the Work, and all component parts of the Work, within such time or times as may be set forth in this Contract or in the Approved Schedule and to the ends that, and at a rate that assures that, all Work, and all component parts of the Work, will be completed and ready for inspection and testing when required pursuant to this Contract and that all Work will be completed in full compliance with, and as required by or pursuant to, this Contract within the Contract Time. Contractor shall cooperate with Owner and Engineer to assure maximum coordination and efficiency in the progress of the Work.

2. Approved Schedule. Unless otherwise provided in the Special Conditions of Contract, Contractor shall submit to Engineer, within 10 Days after the execution of this Contract, a detailed schedule of the Work showing the time of beginning and completion for at least every major component of the Work. Such schedule shall logically and realistically relate the performance of each component of the Work to each other component of the Work and to the whole of the Work so as to demonstrate that sufficient time has been allowed for the completion of each component without interference or delay from or to any other component. The schedule shall demonstrate Contractor's ability to comply with the requirements of Paragraph 1.1B1 above. If the schedule so submitted is not in all respects satisfactory and in full compliance with the requirements of this Contract, Engineer shall return a copy of the schedule to Contractor with such exceptions noted as Engineer may deem appropriate and Contractor shall submit a revised schedule to Engineer within two business days. If, and when, the schedule so submitted or resubmitted is in all respects satisfactory and in full compliance with the requirements of this Contract, Engineer shall return a copy of the schedule to Contractor with no exceptions noted (“Approved Schedule”). Engineer may require the Approved Schedule to be revised or updated as frequently as Engineer may deem necessary prior to Final Acceptance of the Work.

3. Acceleration. If, at any time, the Work, or any component part of the Work, is behind the Approved Schedule, Contractor shall initiate immediate and definite procedures for accelerating the Work as required to bring the Work, and all component parts of the Work, into compliance with the Approved Schedule. Owner shall not be subject to any claims, demands, or liability for Contractor's acceleration damages or costs incurred to keep the Work in compliance with the Approved Schedule, including, but not limited to, damages or costs resulting from, arising out of, or in any way related to increases in time- related costs; increases in costs of labor, equipment, materials, or supplies; costs of additional personnel; costs of additional equipment; costs of additional premium time for personnel or equipment; increase in costs for Bond or insurance premiums; lower labor productivity; lost profits or alternative income; effects on other contracts; and costs of demobilization and remobilization.

4. Owner's Right to Perform Work. Any failure of Contractor to comply with this Subsection 1.1B shall entitle Owner to perform or have performed all Work necessary for compliance with this Subsection and to withhold or recover from Contractor the cost of such Work.

C. Completeness of Work. Except for such items as are expressly and specifically required by this Contract to be furnished by Owner, Contractor shall provide at the Work Site, and at no charge to Owner other than the Contract Price, all personnel, equipment, materials, supplies, and other things required to provide, perform and complete the Work described, shown, or reasonably implied, or inferred from prevailing custom or trade usage as being required to produce the results intended, in this Contract. If any personnel, equipment, materials, or supplies that are not directly or indirectly set forth in this Contract are nevertheless necessary to the proper provision, performance, and completion of the whole of the Work in accordance with the intent of this Contract, Contractor shall understand such personnel, equipment, materials, or supplies to be implied and shall provide such personnel, equipment, materials, or supplies as fully as if it were particularly described. Without limiting the foregoing, Contractor, at its sole cost and expense, shall: (1) arrange for a supply of water, heat, light, power, telecommunications, and other services needed for the Work and for testing, including the installation of temporary utility lines, wiring, switches, fixtures, hoses, connections, and meters; (2) provide and maintain sanitary conveniences of sufficient number to accommodate all workers and all personnel of Owner and Engineer engaged in or about the Work; and (3) provide and maintain a clean, weather-tight office, temporary in character, at a central location at the Work Site, with telephone facilities and service, for use as a field office by both Engineer and Contractor, for storage of Contract Drawings and Specifications, for storage of Required Submittals reviewed with no exception noted, and for shelter of workers and Engineer.

D. Conformity of Work. Contractor shall, at no increase in the Contract Price, provide workmanship, equipment, materials, and supplies that fully conform to this Contract, notwithstanding the fact that Contractor may have based its Bidder's Proposal on workmanship, equipment, materials, or supplies that do not so conform. When the equipment, materials, or supplies furnished by Contractor cannot be installed as specified in the Contract Drawings or Specifications, Contractor shall, without any increase in the Contract Price, make all modifications required to properly install the equipment, materials, or supplies. Any such modification shall be subject to the prior review and consent of Engineer.

**1.2 Engineer's Authority**

Engineer has been employed as an independent contractor to represent Owner during the term of this Contract and to observe the Work in progress on behalf of Owner. To prevent delays and disputes and to discourage litigation, it is agreed by Owner and Contractor that Engineer shall, in all cases, determine the amount, quality, acceptability, and fitness of the several kinds of Work that are to be paid for under this Contract; determine all disputes in relation to the true construction, meaning, and intent of the Contract Drawings and Specifications; determine all disputes in relation to the execution of the Work, the classifications and measurements of quantities and materials, the suitability of equipment, materials, and supplies, and the fulfillment of this Contract. In interpreting this Contract, Engineer shall be subject to Section 1.3 of the Contract Agreement.

Engineer shall have the power to reject or condemn all Work that is defective, flawed, unsuitable, or nonconforming to the terms of this Contract.

Engineer's determination in all matters shall be a condition precedent to an appeal by Contractor to Owner, to the right of Contractor to receive, demand, or claim any money or other compensation under this Contract, and to any liability on the part of Owner to Contractor on account of this Contract.

**1.3 Required Submittals**

A. Submittals Required. Contractor shall submit to Engineer all documents, data, and information specifically required to be submitted by Contractor under this Contract and shall, in addition, submit to Engineer all such drawings, specifications, descriptive information, and engineering documents, data, and information as may be required, or as may be requested by Engineer, to show the details of the Work, including a complete description of all equipment, materials, and supplies to be provided under this Contract (“Required Submittals”). Such details shall include, but shall not be limited to, the kind, size, arrangement and operations of component materials and devices; the external connections, anchorages, and supports required; performance characteristics; test data; concrete reinforcement; structural details; dimensions needed for installation and correlation with other equipment, materials, and supplies; principal dimensions, weight, structural and operating features; space required; clearances; utility connections; wiring and control diagrams; type and/or brand of finish or shop coat; adequate operation and maintenance information for all equipment requiring maintenance or other attention; and all similar matters, for all components of the Work. When so specified or if considered by Engineer to be acceptable, manufacturer's specifications, catalog data, descriptive matter, illustrations, or like materials may be submitted in place of drawings and descriptive information. When it is customary to do so, when the dimensions are of particular importance, or when so specified, the Required Submittals shall be certified by the manufacturer or fabricator as correct for this Contract.

B. Number and Format. Contractor shall provide three complete sets for each Required Submittal with suitable identification. All Required Submittals, except drawings, shall be prepared on white 8-1/2 inch by 11-inch paper. Two blueline prints and one sepia transparency of each drawing shall be provided. All prints of drawings shall be folded to 8-1/2 inches by 11 inches, or less. All drawings shall be clearly marked in the lower right-hand corner with the names of Owner, Engineer, and Contractor.

C. Verification by Contractor. Contractor shall be responsible for obtaining Required Submittals complying with the foregoing from its Subcontractors and Suppliers and returning reviewed documents to them. Contractor shall check all Required Submittals before submitting them to Engineer for review. Contractor shall check and verify, or resubmit for correction, all Required Submittals prepared by a Subcontractor or Supplier, before submitting them to Engineer. Verification and submission of Required Submittals by Contractor shall be deemed to mean that Contractor has, in fact, reviewed and coordinated the information in the Required Submittals with the requirements of the Work and this Contract. Any Required Submittals submitted to Engineer which have not been checked, reviewed, and stamped “Verified by Contractor,” will be returned unprocessed.

D. Time of Submission. All Required Submittals shall be provided to Engineer no later than the time, if any, specified in this Contract for their submission or, if no time for submission is specified, in sufficient time, in Engineer's sole opinion, to permit Engineer to review the same prior to the commencement of the part of the Work to which they relate and prior to the purchase of any equipment, materials, or supplies that they describe.

E. Engineer's Review. Engineer shall review all Required Submittals as soon as reasonably possible after their submission and shall have the right to require resubmittal of, and such corrections in and additions to, any or all Required Submittals as may be necessary to make the Required Submittals conform to this Contract.

F. Responsibility for Delay and Costs of Additional Review. Contractor shall be responsible for any delay in the Work due to delay in providing Required Submittals conforming to this Contract. In the event more than two re-submittals of any Required Submittal is necessary to make such Required Submittal conform to this Contract, Contractor shall be charged the total cost incurred by Engineer for all subsequent reviews of Required Submittals. If the amount due Contractor is not sufficient to cover such costs, Contractor shall reimburse Owner for such costs upon demand.

G. Condition Precedent to Performance of Work. No Work with respect to which any Required Submittal is required or has been requested, and no Work dependent on any such Work, shall be provided or performed unless and until the Required Submittal for such Work has been reviewed and stamped by Engineer with no exception noted. No equipment, materials, or supplies shall be purchased, fabricated, or installed until all Required Submittals pertaining thereto have been reviewed and stamped by Engineer with no exception noted. Where samples are required, the samples reviewed and stamped by Engineer with no exception noted shall be kept at the Work Site for comparison with, and to establish the standards of acceptance for, equipment, materials or supplies proposed for incorporation into the Work.

H. Incorporation After Review With No Exception Noted. Every Required Submittal that is reviewed and stamped by Engineer with no exception noted shall immediately thereupon become a part of the Contract Documents, and the Work shown or described thereby shall be performed in conformity therewith unless otherwise required by Engineer.

I. No Liability. Review and stamping of any Required Submittal by Engineer shall be for the sole purpose of examining the general arrangement, design, and details of the proposed Work, and no review by Engineer, no noting of an exception by Engineer, and no failure to note an exception by Engineer shall relieve Contractor of the entire responsibility for the performance of the Work in full compliance with the requirements of this Contract. Engineer's review and stamping, with or without exceptions noted, of any Required Submittal shall not constitute an approval of any part of the Work shown in such Required Submittal and shall not be regarded as any assumption of risk or liability by Owner or Engineer. Contractor shall have no claim under this Contract on account of any error, omission or defect in, or revealed by, any Required Submittal so reviewed and stamped. Engineer's stamping of any Required Submittal with no exception noted shall be considered to mean merely that Engineer has no objection to Contractor proceeding, upon its own full responsibility and liability, with the Work as shown on such Required Submittal.

**1.4 Administration of the Work**

A. Contractor's Duty to Administer the Work. Contractor shall have full and sole responsibility for administration of the Work. Contractor's field organization shall include fully qualified and adequate management, supervisory and technical personnel to insure competent and expeditious handling of all matters related to the Work. Contractor shall have full and sole responsibility for keeping all personnel, equipment, materials, supplies, and other things required to provide, perform, and complete the Work within the designated construction area limits of the Work Site and out of areas not designated for Contractor's use. On all other lands, Contractor shall have no rights unless it obtains them from the proper parties.

Owner shall have the authority to order Contractor to remove from the Work Site any of Contractor's employees or any Subcontractors' employees who fail to discharge responsibilities, refuse to obey instructions, or who are incompetent, unfaithful, abusive, threatening or disorderly in their conduct. Any such Person so removed shall not be employed again on the Work. No adjustment in the Contract Price or Contract Time shall be made as a result of such removal.

All Subcontractors and Suppliers shall be directly responsible to Contractor and shall be subject to Contractor's supervision and control. Contractor shall have the duty to coordinate all Subcontractors and Suppliers to avoid hindrance or interference among them and to ensure that the Work will be completed in full compliance with, and as required by or pursuant to, this Contract and within the Contract Time.

Contractor shall attend, and shall cause any Subcontractor or Suppliers whose attendance is requested to attend, any pre-construction meetings or construction progress meetings as may be necessary for the orderly performance of the Work, as determined by Owner or Engineer.

B. Contractor's Superintendent. Contractor shall appoint and employ throughout the performance of the Work a competent superintendent who shall have complete charge of the Work on behalf of Contractor. Contractor shall, before beginning the Work, and at all times during the performance of the Work, keep Owner advised in writing of such superintendent's name and address, and of telephone numbers where such superintendent may be reached at all times. Owner shall have the right to approve such superintendent. Such superintendent shall not be changed without the consent of Owner unless the individual serving in that capacity leaves Contractor's employ or becomes unable to serve due to circumstances beyond the control of Contractor, which shall in no event be construed to include the necessity of employing such Person on any other contract or work. Owner shall have the right to approve any substitute superintendent proposed by Contractor. In any case where Owner determines the performance of Contractor's superintendent is unsatisfactory or unacceptable to Owner, Owner shall have the right to require Contractor to remove such superintendent and to replace such superintendent with a new superintendent satisfactory to Owner.

**1.5 Conditions at the Work Site; Record Drawings**

Contractor shall be fully responsible for conditions found at, and in the vicinity of, the Work Site. Contractor shall have no claim for damages, for compensation in excess of the Contract Price, or for a delay or extension of the Contract Time based upon conditions found at, or in the vicinity of, the Work Site. When information pertaining to subsurface, underground or other concealed conditions, soils analysis, borings, test pits, utility locations or conditions, buried structures, condition of existing structures and other investigations is or has been provided by Owner or Engineer, or is or has been otherwise made available to Contractor by Owner or Engineer, such information is or has been provided or made available solely for the convenience of Contractor and is not part of this Contract. Owner assumes no responsibility whatever in respect to the sufficiency or accuracy of such information, and there is no guaranty or warranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the Work or the Work Site, or that the conditions indicated are representative of those existing at any particular location, or that contractors working on other projects may not change the conditions indicated at, and in the vicinity of, the Work Site, or that unanticipated conditions may not be present.

Contractor shall be solely responsible for locating all existing underground installations by prospecting no later than two workdays prior to any scheduled excavation or trenching or 200 lineal feet in advance of such excavation or trenching, whichever is earlier. Contractor shall notify the Joint Utility Locating Information for Excavators (J.U.L.I.E.) prior to any excavation and shall otherwise fully comply with the Illinois Underground Utility Facilities Damage Prevention Act, 220 ILCS 50/1 et seq. Contractor shall check all dimensions, elevations, and quantities shown on the Contract Drawings and Specifications within the same time period as set forth above for prospecting underground installations. Contractor shall lay out the Work in accordance with the Contract Drawings and Specifications and shall establish and maintain such locations, lines and levels. Wherever pre-existing work is encountered, Contractor shall verify and be responsible for dimensions and locations of such pre-existing work. Contractor shall notify Engineer of any discrepancy between the dimensions, elevations and quantities shown on the Contract Drawings and Specifications and the conditions of the Work Site or any other errors, omissions or discrepancies which Contractor may discover during such inspections. Full instructions will be furnished by Engineer should such error, omission, or discrepancy be discovered, and Contractor shall carry out such instructions as if originally specified and without any increase in the Contract Price.

Contractor shall maintain, during the progress of the Work, up-to-date copies of all Contract Drawings and Specifications and a continuous record of all field deviations from the Contract Drawings. Before Final Acceptance of the Work, Contractor shall submit to Engineer two sets of Drawings of Record, unless a greater number is specified elsewhere in this Contract, indicating all necessary additions and corrections to the Contract Drawings to show record conditions.

**1.6 Safety of the Work Site**

A. Contractor's Responsibility. Contractor shall be solely and completely responsible for providing and maintaining safe conditions at the Work Site, including the safety of all Persons and property during performance of the Work. This requirement shall apply continuously and shall not be limited to normal working hours. Contractor shall take all safety precautions as shall be necessary to comply with all applicable Laws and to prevent injury to Persons and damage to property.

B. Traffic. Contractor shall conduct all of its operations without interruption of or interference with vehicular and pedestrian traffic on public and private rights-of-way, unless it has obtained permits therefor from the proper authorities. All public and private rights-of-way not closed by permission of the proper authorities shall be maintained passable and safe by Contractor, who shall assume and have full responsibility for the adequacy and safety or provisions made therefor. If any public or private right-of-way shall be rendered unsafe by Contractor's operations, Contractor shall make such repairs or provide such temporary ways or guards as shall be acceptable to the proper authorities.

Contractor shall, at least 48 hours in advance, notify the proper authorities in writing, with a copy to Engineer, if the closure of any public or private right-of-way is necessary. Contractor shall cooperate with the proper authorities in the establishment of alternate routes and shall provide adequate detour signs, plainly marked and well lighted, in order to minimize confusion.

C. Fire Protection. Access to sources of water for fire protection shall be identified and be available at all times. Fire hydrants and stop valves adjacent to the Work shall be kept clear and readily accessible to fire apparatus and no materials or other obstruction shall be placed, parked, or stored within 15 feet of any hydrant or stop valve except by special permission of the proper authorities.

Only construction procedures that minimize fire hazards to the extent practicable shall be used. Combustible debris and waste materials shall be collected or removed from the Work Site each workday. Fuels, solvents, and other volatile or flammable materials shall be stored away from construction and storage areas in well-marked, safe containers. Good housekeeping, essential to fire prevention, shall be practiced by Contractor throughout the Work.

D. Accident Records. Contractor shall maintain an accurate record of all accidents and other incidents resulting in death, injury, or occupational disease to any Person or in damage to, or loss of, any property and shall promptly report any such accident or incident to Owner and Engineer.

**1.7 Cleanliness of the Work Site and Environs**

Contractor shall keep the Work Site and adjacent areas clean at all times during performance of the Work and shall remove and properly dispose of all waste and surplus materials from the Work Site at such times and in such a manner as may be required by Engineer and as may be necessary to conform to Law. Upon completion of the Work, Contractor shall do all such cleaning, and shall remove and properly dispose of all waste and surplus materials, as may be necessary to leave the Work Site and adjacent areas in a clean and orderly condition. If Contractor fails to comply with its obligations under this Section, Owner shall have the right to perform, or to have performed, such obligations and to withhold or recover the cost thereof from Contractor.

**1.8 Damage to the Work, the Work Site, and Other Property**

The Work and everything pertaining thereto shall be provided, performed, completed, and maintained at the sole risk and cost of Contractor from the Commencement Date until Final Payment. Contractor shall be responsible and liable for any damages, losses, and injuries resulting from its operations. Contractor shall be fully responsible for the protection of all public and private property and all Persons. Without limiting the foregoing, Contractor shall, at its own cost and expense, (1) provide temporary heating, covering and enclosures, to the satisfaction of Engineer, as necessary to protect the Work against damage by dampness and cold, to dry out the Work, and to facilitate the completion of the Work; (2) provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work, in order to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing is not explicitly specified; and (3) support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbs, sidewalks, fixtures and landscaping of all kinds and all other public or private property that may be encountered or endangered in providing, performing and completing the Work.

Contractor shall have no claim against Owner because of any damage or loss to the Work or to Contractor's equipment, materials, or supplies from any cause whatever, including damage or loss due to simultaneous work by others.

Contractor shall, promptly and without charge to Owner, repair or replace, to the satisfaction of Owner, any damage done to, and any loss suffered by, the Work and any damage done to, and any loss suffered by, the Work Site or other property as a result of the Work.

No specific provision of this Contract to the effect that Contractor shall be responsible and liable at its sole risk and cost for the Work or any part thereof or for damage, loss, or injury caused by Contractor shall be construed to be an exclusive listing of the circumstances in which Contractor bears such responsibility and liability, but, rather, all such provisions shall be construed to be exemplary only.

Notwithstanding any other provision of this Contract, Contractor's obligations under this Section shall exist without regard to, and shall not be construed to be waived by, the availability or unavailability of any insurance, either of Owner or Contractor, to indemnify, hold harmless, or reimburse Contractor for the cost of any repair or replacement work required by this Section.

**1.9 Subcontractors and Suppliers**

A. Approval and Use of Subcontractors and Suppliers. Contractor shall perform the Work with its own personnel and under the management, supervision, and control of its own organization unless otherwise approved by Owner in writing, which approval Owner may exercise and revoke in its sole discretion. All Subcontractors, Suppliers, and Subcontracts used by Contractor shall be acceptable to, and approved in advance by, Owner. All Persons engaged in the Work, whether or not as approved Subcontractors, shall be deemed to be employees of Contractor for all purposes and Contractor hereby assumes, in addition to any liability imposed by law upon Contractor for its Subcontractors, full responsibility and liability for such Subcontractors as if they were the employees of Contractor. Nothing in this Contract shall be construed to create any contractual relationship between Owner and any Subcontractor or Supplier. All relations with approved Subcontractors and Suppliers shall be the responsibility of Contractor, and Owner shall not be responsible or obligated to deal directly with any Subcontractor or Supplier.

Contractor is responsible for providing, performing, and completing all Work that meets or exceeds specified requirements notwithstanding specific references in the Contract Drawings or Specifications to duties and obligations of other contractors, Subcontractors, Suppliers, manufacturers, trades, etc., all at no extra cost to Owner other than the Contract Price. All such duties and obligations specifically imposed upon such other contractors, Subcontractors, Suppliers, manufacturers, trades, etc., shall be deemed to be imposed upon Contractor.

Owner's approval of any Subcontractor, Supplier, or Subcontract shall not relieve Contractor of full responsibility and liability for the provision, performance, and completion of the Work in full compliance with, and as required by or pursuant to, this Contract on or before the Completion Date or for the proper performance of all other requirements of this Contract, or for Contractor's liability on all representations and warranties made in or pursuant to this Contract. Contractor shall remain as fully responsible and liable for the acts, omissions, and performance of all Subcontractors and Suppliers as Contractor is for its own acts, omissions, and performance.

If Owner refuses to approve any Subcontractor or Supplier, or, having once approved a Subcontractor or Supplier, thereafter advises Contractor that such Subcontractor or Supplier is no longer acceptable to Owner, then Contractor shall undertake the Work itself or propose another Subcontractor or Supplier for Owner's approval. No adjustment of the Contract Price or Contract Time shall be made as a result of Owner's refusal to approve, or Owner's revocation of any approval of, any Subcontractor or Supplier.

This Section shall not be construed to prohibit Owner, if and when it exercises any of its rights under Section 6.6 of these General Conditions of Contract, from entering into an independent contractual relation with any Subcontractor or Supplier employed by Contractor, and no such relation shall be construed as interfering with any Subcontract or other relation Contractor may have with such Subcontractors and Suppliers.

B. Subcontractor and Supplier Requirements. In addition to any and all conditions and other requirements that may be imposed by Owner in its approval of any Subcontractor or Supplier, all Work performed under any Subcontract shall be subject to the same provisions set forth in this Contract for the Work performed by Contractor. Furthermore, every Subcontract shall include at least the following provisions:

1. Flow-down. A statement that this Contract has been reviewed by the Subcontractor or Supplier; that Subcontractor or Supplier agrees to be bound by the terms, provisions and conditions of this Contract so far as they are applicable to the Work under its Subcontract; that Subcontractor or Supplier agrees to assume all obligations and responsibilities of Contractor under this Contract; and that Subcontractor or Supplier agrees to be bound by and governed by any change or alteration in this Contract.

2. Discrimination. The provisions of the Public Works Employment Discrimination Act, 775 ILCS 10/1 et seq., shall be printed or otherwise inscribed on the face of the Subcontract.

3. Laws. A statement substantially identical to Section 6.11 of the Contract Agreement requiring Subcontractor or Supplier to comply with all Laws.

4. Application of Payments. A statement that Subcontractor or Supplier agrees that all funds received directly or indirectly from Owner shall be applied to the payment or reimbursement of the costs for which they were paid and not to any preexisting or unrelated debt between Contractor and Subcontractor or Supplier.

5. No Compensation for Delay. A statement substantially identical to Subsection 2.3D of these General Conditions of Contract to the effect that there shall be no payment, compensation, damages, or adjustment of any kind, other than an extension of time, because of hindrances or delays, whether avoidable or unavoidable, from any cause in the commencement, provision, performance, or completion of the Work under the Subcontract.

6. Termination for Convenience of Contractor. A statement that the Subcontract may be terminated for the convenience of Contractor, if this Contract is terminated for any reason by Owner or if Owner exercises its right to require termination of the Subcontract; provided, however, that no such termination shall defeat Owner's rights under Paragraph 1.9B7 below.

7. Conditional Assignment. A statement that Subcontractor or Supplier agrees to the assignment of the Subcontract to Owner, at Owner's option exercised by written notice to Subcontractor or Supplier and without further action, if this Contract is terminated by Owner and that no such assignment shall be construed as interfering with Subcontractor's or Supplier's Subcontract with Contractor.

8. Dispute Resolution. A statement that in case of any dispute or claim between Subcontractor or Supplier and Contractor involving Owner, or between Contractor and Owner involving Subcontractor or Supplier, Subcontractor or Supplier agrees to be bound by the provisions in this Contract pertaining to the resolution of disputes to the same extent that Contractor is bound to Owner by the terms of this Contract; and that Subcontractor or Supplier agrees to be bound by any and all decisions or determinations made thereunder as authorized in this Contract; and that Subcontractor or Supplier agrees to join in, or consolidate any claim it may have with, any related pending dispute resolution proceeding or to allow such joinder or consolidation of other related claims with its claim; and that Subcontractor or Supplier agrees that, pending the final disposition of any dispute or claim under or in any way relating to the Subcontract, Subcontractor or Supplier shall proceed diligently with all Work to be performed by it under its Subcontract.

9. Representations and Warranties. A statement of representations and warranties substantially identical to Article III of the Contract Agreement.

**1.10 Simultaneous Work By Others**

A. By Owner. Owner shall have the right to perform or have performed such other work as Owner may desire in, about, or near the Work Site during the performance of the Work by Contractor.

B. Coordination. Contractor shall make every reasonable effort to perform the Work in such manner as to enable both the Work and such other work to be completed without hindrance or interference from each other. Contractor shall keep itself informed of the progress and the detail of such other work; shall afford Owner and other contractors reasonable opportunity for the execution of such other work; shall properly connect and coordinate the Work with such other work; and shall notify Engineer immediately of lack of progress or defective workmanship in the provision, performance, or completion of such other work in any case where such lack of progress or defective workmanship will or may interfere with the Work or the operations of Contractor or its Subcontractors. Whenever there is a conflict between the Work and such other work, Engineer shall, upon request of Contractor or the Person performing such other work, determine the manner in which such conflict shall be resolved or accommodated. Contractor shall proceed at its own risk in the event Contractor fails to request such determination from Engineer.

C. Claims. If the Work or any of Contractor's operations or property is damaged by any other Person, Contractor shall make its claim directly against such Person. If a dispute develops between Contractor and any such other Person concerning the responsibility for any such damage, the dispute shall be resolved with such other Person by whatever method may be available and appropriate, but such dispute shall not be cause for delay in the restoration of the damaged Work, and Contractor shall restore the Work immediately. Failure of Contractor to comply with this Subsection shall entitle Owner to perform, or to have performed, all Work necessary for compliance with this Subsection and to withhold or recover from Contractor the cost of such Work.

**1.11 Occupancy Prior to Final Payment**

Owner shall have the right, at its election, to occupy, use, or place in service any part of the Work prior to Final Payment. Such occupancy, use, or placement in service shall be conducted in such manner as not to damage any of the Work or to unreasonably interfere with the progress of the Work. No such occupancy, use, or placement in service shall be construed as an acceptance of any of the Work or a release or satisfaction of Contractor's duty to insure and protect the Work, nor shall it, unless conducted in an unreasonable manner, be considered as an interference with Contractor's provision, performance, or completion of the Work.

**1.12 Suspension or Termination of Work for Convenience**

A. Suspension for Convenience. Owner shall have the right at any time, by Change Order, for its convenience, to suspend, for such period of time as may be determined by Owner to be necessary or desirable for the convenience of Owner, and thereafter to require resumption of, the whole or any part of the Work, without invalidating the provisions of this Contract.

B. Termination for Convenience. Owner shall have the right at any time, by Change Order, for its convenience, to terminate the Work in whole or in part.

C. Owner's and Contractor's Obligations. Every Change Order issued pursuant to Subsection 1.12A or Subsection 1.12B shall state the extent and effective date of such termination or suspension. On such effective date, Contractor shall, as and to the extent directed, stop Work under this Contract, cease all placement of further orders or Subcontracts, terminate or suspend Work under existing orders and Subcontracts, cancel any outstanding orders or Subcontracts that can be cancelled, and take any action necessary to protect any property in its possession in which Owner has or may acquire any interest and to dispose of such property in such manner as may be directed by Owner.

D. Payments for Completed Work. In the event of any termination pursuant to Subsection 1.12B above, Owner shall pay Contractor (1) such direct costs, determined in accordance with generally accepted accounting practices in the construction industry, consistently applied, and excluding overhead, as Contractor shall have paid or incurred for all Work done in compliance with, or as required by or pursuant to, this Contract up to the effective date of termination, together with ten percent of such costs for overhead and profit; and (2) such other costs pertaining to the Work, exclusive of overhead and profit, as Contractor may have reasonably and necessarily incurred as the result of any such termination. The total payment to be made to Contractor by reason of such termination shall not in any event exceed a percentage of this Contract equal to the proportion that the Work completed prior to the effective date of termination bears to the total Work required by this Contract. Any such payment shall be offset by any prior payment or payments and shall be subject to Owner's rights to withhold or deduct as provided in this Contract.

**1.13 Charge for Overtime Engineering**

Owner shall have the right to charge Contractor for engineering and inspection services in connection with any Overtime Work. Such charge shall be three times the hourly rate of Engineer's personnel for each hour of Overtime Work multiplied by the number of Engineer's personnel reasonably required to be present during such Overtime Work. If the amount due Contractor is not sufficient to cover such charge, Contractor shall reimburse Owner upon demand. For purposes of this provision, Overtime Work shall mean any Work conducted beyond the regular eight-hour workday, or at any time on Saturdays, Sundays, or federal, state or local holidays.

* 1. **Use of the Work Site**

Contractor shall use the Work Site solely to complete the Work and such related activities as may be authorized or directed by the Owner. Except as provided herein, Contractor shall not (nor shall Contractor cause or permit any employee or person under Contractor’s control) to display or broadcast commercial, political, or religious messages or advertisements of any nature at the Work Site or in connection with the Work. The foregoing shall not be construed to prohibit the following at the Work Site or in connection with the Work: (a) the use of equipment, materials, or other items (*e.g.* personnel uniforms and clothing) that identify the Contractor (such as by displaying the Contractor’s name, logo, slogan, contact information, or similar messages) or that identify the maker or supplier of such equipment, material, or item; or (b) the use or display of signs, flags, cones, traffic control devices, markers, or other similar devices that reasonably relate to the Work, Work Site safety, public safety, or regulatory compliance; or (c) personal speech, religious practice, or expression by any individual performing Work or at the Work Site; or (d) upon written approval or direction of the Owner, the display of information regarding the sponsor of the Work or funding sources for the Work.

In addition, Contractor shall not (nor shall Contractor require or permit its personnel, subcontractors, or subcontractors’ personnel to) conduct any prohibited political activity at the Work Site or while performing the Work. Contractor and its personnel or subcontractors (including any subcontractor’s personnel) shall not intentionally or knowingly use the Work Site or any other property or resources of Owner in connection with any prohibited political activity. For purposes of this section, the term “prohibited political activity” shall have the meaning set forth in Section 5 of the State Officials and Employees Ethics Act, 5 ILCS 430/1-5.

**ARTICLE II**

**CHANGES AND DELAYS**

**2.1 Change Orders**

Owner shall have the right to issue Change Orders to Contractor within the general scope of the Work without the consent of Contractor and without notice to any surety of Contractor. Contractor shall promptly comply with every Change Order, notwithstanding any disputes or objections concerning such Change Order. No Change Order shall be construed to invalidate this Contract.

**2.2 Equitable Adjustments**

If any Change Order causes an increase or decrease in the amount of the Work, an equitable adjustment in the Contract Price or Contract Time may, upon the request of either Owner or Contractor, be made pursuant to Section 2.3 or Section 2.4 of these General Conditions of Contract.

Any Change Order issued that does not include an equitable adjustment in the Contract Price or Contract Time shall be construed to be a determination by Owner that Contractor is not entitled to any equitable adjustment by reason of such Change Order. All claims by Contractor for an equitable adjustment in either the Contract Price or the Contract Time based on a Change Order shall be made, whenever feasible, before Contractor proceeds with any Work pursuant to such Change Order and shall, in all events, be made no later than two business days after receipt of such Change Order. All such claims shall, if not made prior to such time, be conclusively deemed to have been waived.

Notwithstanding the foregoing, no equitable adjustment shall be made in the Contract Price based on any Change Order that, either singly or in combination with other Change Orders, increases the quantity of any Unit Price Item by 25 percent or less of the approximate quantity set forth in the Schedule of Prices for such Item. On good cause shown, an equitable adjustment may be made in the Contract Price on the basis of a Change Order that, either singly or in combination with other Change Orders, increases the quantity of any Unit Price Item by more than 25 percent of the approximate quantity set forth in the Schedule of Prices for such Item, but only for that portion of Work that exceeds 125 percent of said approximate quantity.

No equitable adjustment shall be made in the Contract Price or Contract Time on the basis that the Work is, or has become, more difficult than Contractor's Price Proposal would reflect or on the basis of any discrepancy, error, omission, ambiguity, or conflict in or among the provisions of this Contract that Contractor could have discovered prior to the execution of this Contract or prior to the performance of any of the Work affected by such discrepancy, error, omission, ambiguity or conflict.

**2.3 Contract Price Adjustments**

A. Increased Work. If any Change Order causes an increase in the amount of the Work (“Increased Work”), then Engineer shall determine, and include in such Change Order, the amount of the equitable adjustment in Contract Price, if any, to be allowed. Such determination shall be made as follows:

1. Unit Prices--25 Percent or Less. If the Schedule of Prices provides Unit Prices and if the Increased Work or any part thereof is of a type and character that can be properly and fairly classified under one or more of the Unit Price Items set forth in the Schedule of Prices and such Increased Work or any part thereof, when taken in combination with all other Increased Work under prior Change Orders, does not exceed the applicable approximate quantity listed in the Schedule of Prices for a particular Unit Price Item by more than 25 percent, then such Increased Work or part thereof classified under such Unit Price Item shall be paid for at the applicable Unit Price listed in the Schedule of Prices for such Unit Price Item.

2. Unit Prices--More Than 25 Percent. If the Schedule of Prices provides Unit Prices and if the Increased Work or any part thereof is of a type and character that can be properly and fairly classified under one or more of the Unit Price Items set forth in the Schedule of Prices and such Increased Work or any part thereof, when taken in combination with all other Increased Work under prior Change Orders, exceeds the applicable approximate quantity listed in the Schedule of Prices for any Unit Price Item by more than 25 percent, then such Increased Work or part thereof classified under such Unit Price Item shall, to the extent it exceeds 25 percent of the approximate quantity listed in the Schedule of Prices, be paid for at the Unit Price listed in the Schedule of Prices for such Unit Price Item unless, for good cause shown, Contractor and Owner agree upon either a greater or lesser Unit Price for such Increased Work or part thereof or unless Owner, in its sole discretion, elects not to pay for the Increased Work or part thereof on the basis of Unit Prices, in which event, such Increased Work shall be paid for as set forth in either Paragraph 2.3A3 or Paragraph 2.3A4 below.

3. Agreed Prices. If the Schedule of Prices does not provide Unit Prices or if the Increased Work or any part thereof is not of a type and character that can be properly and fairly classified under one or more of the Unit Price Items set forth in the Schedule of Prices or if Owner elects, pursuant to Paragraph 2.3A2 above, not to pay for the Increased Work or part thereof on the basis of Unit Prices, then such Increased Work or part thereof shall be paid for on the basis of such lump sum price or such time and material prices as Owner and Contractor may agree prior to the commencement of such Increased Work unless Owner elects, in its sole discretion, to pay for such Increased Work or part thereof as set forth in Paragraph 2.3A4 below.

4. Reasonable Cost Plus. Any Increased Work or part thereof not paid for pursuant to Paragraphs 2.3A1, A2 or A3 above shall, to the extent entitled to be paid for pursuant to this Contract, be paid for at the reasonable cost of such Increased Work or part thereof, as determined by Engineer, in the manner provided in this Paragraph.

Except as hereinafter limited, the reasonable cost of Increased Work shall include the reasonable cost, as determined by Engineer, to Contractor of all personnel employed and all equipment, materials, and supplies used, on the Increased Work for the period of such employment or use.

The reasonable cost of Increased Work shall not include the cost of any purchase or rental of any buildings or small tools.

The reasonable cost of Increased Work shall not include the cost of any personnel above the level of foreman or the cost of Contractor's office and engineering staff.

The reasonable cost of all equipment used on the Increased Work shall be based upon the monthly rental rates set forth in the most recent edition of “RENTAL RATE BLUEBOOK FOR CONSTRUCTION EQUIPMENT” published by Nielson/DATAQUEST or a similar publication approved by Engineer (the “Approved Rate”). The reasonable hourly cost of equipment shall be calculated by multiplying the Approved Rate (without consideration of overtime charges or charges for fuel and oil) by 12 and dividing the product by 2,080. If the Increased Work requires the use of equipment not already on the Work Site, or not already required to be provided at the Work Site under the terms of this Contract, the cost of transportation, not exceeding a distance of 100 miles, of such equipment to and from the Work Site shall be considered part of the reasonable cost of the Increased Work.

Contractor may add a maximum of ten percent of the reasonable costs set forth above to cover the costs of overhead and profit, including premiums on any Bonds or insurance on account of the Increased Work, of Contractor and any and all Subcontractors and Suppliers performing all or any part of the Increased Work.

Contractor shall keep a daily record of all Increased Work provided, performed, or completed by Contractor or any Subcontractor or Supplier. The daily record shall include the nature of the Increased Work performed, the names of all personnel employed and the hours worked by each, the equipment, materials and supplies used, including, where appropriate, the quantities used and the hours of use. To constitute verification that Increased Work was provided, performed, or completed, the daily record for each Day must be signed by both Contractor and Engineer not later than the end of the following business day. Contractor's failure to so keep and so verify such a daily record shall constitute a waiver of any claim for compensation for Increased Work.

In the event of any dispute as to the reasonableness of the method or manner of performing any Increased Work, including, but not limited to, personnel or equipment requirements to perform the Increased Work, Contractor shall provide all supporting documentation, including any relevant union requirements or regulations. In the absence of such supporting documentation, Engineer's determination of the reasonableness of the chosen method or manner of performing the Increased Work and, if unreasonable, of the reasonable cost of providing, performing, and completing the Increased Work if a reasonable method or manner had been chosen, shall be conclusive and binding on Contractor.

5. Except as set forth above, no claim for compensation in excess of the Contract Price shall be made or allowed on account of Increased Work.

B. Decreased Work. If any Change Order causes a decrease in the amount of the Work (“Decreased Work”), then Engineer shall determine, and include in such Change Order, (1) the amount of the equitable adjustment in the Contract Price to be required based on the value of the Decreased Work determined in accordance with Subsection 5.1C of these General Conditions of Contract and (2) the allowance, if any, due Contractor for any actual loss incurred in connection with the purchase, delivery, and subsequent disposal of equipment, materials, or supplies that would have been used on the Work but for the Change Order and that could not be returned to their source for credit or used in any part of the Work as actually provided, performed and completed. In no event shall any Decreased Work entitle Contractor to make a claim for damages, anticipated profits, or any other compensation except the aforesaid allowance for actual loss.

C. Netting of Price Adjustments. When both Increased Work and Decreased Work result from a single Change Order, the allowance for overhead and profit pursuant to the reasonable cost method of Paragraph 2.3A4 above, if utilized, shall be figured on the basis of the net increase, if any, in the Work.

D. No Compensation for Delays. Contractor shall not claim or be entitled to any payment, compensation, damages, or adjustment of any kind, other than the extension of the Contract Time provided for in Subsection 2.4B below, because of hindrances or delays, whether avoidable or unavoidable, from any cause in the commencement, provision, performance, or completion of the Work, including but not limited to:

1. Any act, error, omission or interference of Owner, Engineer, or any other Person, including, without limitation, late, changed, or erroneous Bidding Documents or Contract Documents; changes in sequence, suspensions, accelerations, or de-accelerations of the Work; lack of access, rights-of-way, or easements for the Work; lack of approvals, decisions, or payments; issuance of Change Orders; or occupancy, use, or placement into service of the Work prior to Final Acceptance;

2. Differing or unanticipated conditions at, or in the vicinity of, the Work Site;

3. The simultaneous presence and operations of other contractors;

4. Strikes, lockouts, or labor or material shortages;

5. Fires or other casualties;

6. Delays in transportation; and

7. Acts of God or natural phenomena, whether or not such phenomena are unusual or unusually severe considering the time of year and the particular locality involved.

Contractor expressly agrees that it will accept in full satisfaction for all such delays and hindrances an extension of the Contract Time as provided in Subsection 2.4B below and that it will make no claim for, nor be entitled to, equitable adjustment of the Contract Price; or any compensatory, acceleration, or disruption damages; or any other damages or costs of any kind or nature for any such delays or hindrances, including, but not limited to, damages or costs resulting from, arising out of, or in any way related to increases in time-related costs; increases in costs of labor, equipment, materials, or supplies; costs of additional personnel; costs of additional equipment; costs of additional premium time for personnel or equipment; increase in costs for Bond or insurance premiums; lower labor productivity; lost profits or alternative income; effects on other contracts; and costs of demobilization and remobilization.

**2.4 Extensions of Contract Time**

A. Extensions for Increased Work. When a Change Order causes an increase in the time required to complete the Work, an extension of the Contract Time shall be granted as part of such Change Order for a period of time equal to the additional time required to complete the Work.

B. Extensions for Unavoidable Delays. For any delay or hindrance in completing the Work that may result from causes that could not be avoided or controlled by Contractor, as determined by Owner, Contractor shall upon timely written application, be entitled to issuance of a Change Order providing for an extension of the Contract Time for a period of time equal to the delay resulting from such unavoidable cause.

C. Extensions for Suspensions. If Owner orders Contractor to suspend the whole of the Work or to suspend a part of the Work that increases the time required to complete the Work, Owner shall, unless such suspension was due to Contractor's failure to perform in accordance with the requirements of this Contract, extend the Contract Time for a period of time equal to the delay caused by such suspension.

**2.5 No Constructive Change Orders**

Sections 2.2 through 2.4 set forth the sole means by which an equitable adjustment in the Contract Price or Contract Time shall be allowed. If Contractor believes that any requirement, direction, instruction, interpretation, determination, or decision of Owner or Engineer changes the Work or otherwise entitles Contractor to an equitable adjustment in the Contract Price or Contract Time that has not been included, or fully included, in a Change Order, then Contractor shall submit to Engineer, with a copy to Owner, a written request for the issuance of, or revision of, a Change Order. Such request shall, whenever feasible, be submitted before Contractor proceeds with any Work for which Contractor claims an equitable adjustment is due and shall, in all events, be submitted no later than two business days after receipt of notice of such requirement, direction, instruction, interpretation, determination, or decision. Upon receipt by Engineer of any such request, the parties shall proceed as provided in Article VI of these General Conditions of Contract pertaining to disputes and remedies. Notwithstanding the submission of any such request, Contractor shall proceed without delay to perform the Work as required, directed, instructed, interpreted, or decided by Owner or Engineer and shall, pending a final resolution of the issue, keep a daily record of such Work in the manner provided in Paragraph 2.3A4 above. Unless Contractor submits such a request within two business days after receipt of notice of such requirement, direction, instruction, interpretation, determination, or decision, Contractor shall be conclusively deemed (1) to have agreed that such requirement, direction, instruction, interpretation, determination, or decision does not constitute a change in the Work and does not otherwise entitle Contractor to an equitable adjustment in the Contract Price or Contract Time and (2) to have waived all claims based on such requirement, direction, instruction, interpretation, determination, or decision.

**2.6 No Waiver and Release**

Except to the extent embodied in a Change Order, neither the provisions of this Article II nor any communication between or among Owner, Engineer, and Contractor shall operate to relieve Contractor of its duty to perform the Work in full compliance with, and as required by or pursuant to, this Contract, within the Contract Time, and for the Contract Price, or to release or discharge Contractor from any duty arising under this Contract.

**2.7 Specific References Exemplary**

No specific provision of this Contract to the effect that there shall be no change or adjustment in the Contract Price or Contract Time shall be construed to be an exclusive listing of the circumstances in which there shall be no adjustment in Contract Price or Contract Time, but, rather, all such provisions shall be construed to be exemplary only.

**ARTICLE III**

**CONTRACTOR'S RESPONSIBILITY FOR DEFECTIVE WORK**

**3.1 Inspection; Testing; Correction of Defects**

A. Inspection. Until Final Payment, all parts of the Work shall be subject to inspection and testing by Owner, by Engineer, by any public authority having jurisdiction, and by any other Person designated by Owner. Contractor shall furnish, at its own expense, all reasonable access, assistance, and facilities required by such Persons for such inspection and testing. Contractor shall notify Owner and Engineer of the readiness of any part of the Work for any inspection or test that may be required by or pursuant to this Contract or applicable Laws. Owner and Engineer shall perform all of their inspections and tests so as not to delay the Work unduly, but Contractor shall schedule the Work in light of the need for time to perform such inspections and tests. No part of the Work as to which any specific inspection or test is required shall be covered or closed until such inspection or test has been completed. If such Work is covered or closed, then it shall be uncovered or opened and, after the inspection or test, recovered or reclosed, by Contractor, all at Contractor's expense.

B. Additional Inspections. If any Work for which an inspection or test is not required by this Contract has been covered or closed so as to prevent inspection or testing, Owner shall nevertheless have the right to order such Work to be inspected or tested and, if so ordered, such Work shall be uncovered or opened by Contractor. If the Work thus uncovered or opened is found to be free from defects, damage, and flaws and to be suitable for its intended purpose and to be otherwise in conformity with this Contract, then Owner shall pay the cost of uncovering, opening, re-inspecting, re-testing, covering, or closing, as the case may be. If the Work uncovered or opened is not free from defects, damage, and flaws or is not suitable for its intended purpose or is otherwise not in conformity with this Contract, then Contractor shall pay all such costs.

C. Re-Inspections. Re-inspection and re-testing of any Work may be ordered by Owner at any time, and, if so ordered, any covered or closed Work shall be uncovered or opened by Contractor. If the Work thus uncovered or opened is found to be free from defects, damage, and flaws and to be suitable for its intended purpose and to be otherwise in conformity with this Contract, then Owner shall pay the cost of uncovering, opening, re-inspecting, re-testing, covering, or closing, as the case may be. If the Work uncovered or opened is not free from defects, damage, and flaws or is not suitable for its intended purpose or is otherwise not in conformity with this Contract, then Contractor shall pay all such costs.

D. Correction. Until Final Payment, Contractor shall, promptly and without charge, repair, correct, or replace all or any part of the Work that is defective, damaged, flawed, or unsuitable or that in any way fails to conform strictly to the requirements of this Contract and shall pay to Owner all resulting costs, expenses, losses, or damages suffered by Owner as a result of any such defect, damage, flaw, unsuitability or nonconformity.

E. No Waiver. No inspection or test, failure to inspect or test, or waiver of inspection or testing by Owner or Engineer shall relieve Contractor of its duty to complete the Work in full compliance with, and as required by or pursuant to, this Contract. Failure or neglect on the part of Engineer to condemn Work that is defective, damaged, flawed, unsuitable, or nonconforming shall not be construed as acceptance of such Work nor as a waiver of compliance with the requirements of this Contract.

**3.2 Warranty of Work**

A. Scope of Warranty. Contractor warrants that the Work and all of its components shall be free from defects and flaws in design, workmanship, and materials; shall strictly conform to the requirements of this Contract; and shall be fit, sufficient, and suitable for the purposes expressed in, or reasonably inferred from, this Contract. Contractor further warrants that the strength of all parts of all equipment, materials, and supplies incorporated into the Work shall be adequate and as specified and sufficient to meet the performance requirements of this Contract. The warranty herein expressed shall not be the sole and exclusive warranty but, rather, shall be in addition to any other warranties expressed in this Contract, or expressed or implied by Law, which are hereby reserved unto Owner.

B. Repairs; Extension of Warranty. Contractor shall, promptly and without charge, correct any failure to fulfill the above warranty that may be discovered or develop at any time within one year after Final Payment or such longer period as may be prescribed in the Contract Drawings and Specifications, in the Special Conditions of Contract, or by Law. The above warranty shall be extended automatically to cover all repaired and replacement parts and labor provided or performed under such warranty and Contractor's obligation to correct Work shall be extended for a period of one year from the date of such repair or replacement. Nothing contained in this Subsection 3.2B shall be construed to establish a period of limitation with respect to other obligations that Contractor has under this Contract. The time period established in this Subsection 3.2B relates only to the specific obligation of Contractor to correct Work and has no relationship to the time within which the obligations to comply with this Contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

**3.3 Contractor Duty to Correct Without Delay**

In the event of any claim by Owner pursuant to Section 3.1 or Section 3.2 above that the Work is defective, damaged, flawed, unsuitable, nonconforming, or that the Work fails to fulfill the above warranty, Contractor shall be given a reasonable opportunity to confirm the validity of such claim, but Contractor shall not, unless authorized in writing by Owner, delay correction of the claimed defect, damage, flaw, unsuitability, nonconformity, or failure while making such determination. In the event any such claim is shown to be invalid following such correction by Contractor, Owner shall pay the cost of such correction.

**3.4 Owner's Right to Correct**

If, within two business days after Owner gives Contractor notice of any defect, damage, flaw, unsuitability, nonconformity, or failure to meet warranty subject to correction by Contractor pursuant to Section 3.1 or Section 3.2 above, Contractor fails, refuses, or neglects to make, or to undertake with due diligence to make, the necessary corrections, then Owner shall be entitled to make, either with its own forces or with contract forces, the corrections and to recover from Contractor all resulting costs, expenses, losses, or damages, including attorneys' fees and administrative expenses.

If in the judgment of Owner, the delay required to give Contractor the aforesaid two business days notice would cause serious damage or loss that could be avoided by immediate action, Owner shall have the right, without giving prior notice to Contractor, to perform, or to have performed, all work necessary to make the corrections and to recover from Contractor the cost of such corrections. In such event, Contractor shall be notified as promptly as possible and shall assist, whenever possible, in making the necessary corrections.

**3.5 Subcontractor and Supplier Warranties**

Whenever the Special Conditions of Contract or the Specifications require a Subcontractor or Supplier to provide a guaranty or warranty, Contractor shall be solely responsible for obtaining said guaranty or warranty in form satisfactory to Owner and assigning said warranty or guaranty to Owner. Acceptance of any assigned warranties or guaranties by Owner shall be a precondition to Final Payment and shall not relieve Contractor of any of its guaranty or warranty obligations under this Contract.

Whenever the Special Conditions of Contract or the Specifications require a Subcontractor or Supplier to provide a guaranty or warranty, Contractor shall be solely responsible to obtain from the guarantying or warranting Person a written certification, in form satisfactory to Owner, that (1) all things required for the successful operation of the warranted item in accordance with the Specifications have been designed, manufactured and installed in accordance with all requirements of the guarantying or warranting Person; (2) all requirements and conditions necessary to validate the guaranty or warranty, whether specified in this Contract or not, have been complied with; and (3) all procedures necessary to maintain the guaranty or warranty in full force and effect during the applicable guaranty or warranty period, including but not limited to maintenance obligations and storage conditions, have been provided to Owner in writing and written acknowledgements of all such disclosed procedures have been provided by Owner to the warranting or guarantying Person. Acceptance of any such certification by Owner shall be a precondition to Final Payment and shall not relieve Contractor of any of its obligations under this Contract to provide additional or other certifications.

**ARTICLE IV**

**INSURANCE**

**4.1 Required Coverages**

Contractor shall, prior to and at all times while providing, performing, or completing the Work, including, without limitation, at all times while repairing, correcting, or replacing all or any part of the Work that is defective, damaged, flawed, unsuitable, nonconforming, or that fails to meet warranty subject to correction by Contractor pursuant to Section 3.1 or Section 3.2 of these General Conditions of Contract, procure, maintain, and keep in force, at Contractor's expense, all insurance necessary to protect and save harmless Owner, the Work, the Work Site, and all property located at or about the Work Site, including but not limited to the insurance coverages specified in Section 4.3 below (“Required Coverages”).

**4.2 Insurance Companies and Policies**

All Required Coverages shall be provided by insurance companies rated A or better in Best's Insurance Guide and otherwise acceptable to, and approved by, Owner. Required Coverages may be in any combination of primary, excess, and umbrella policies. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss. No policy may have a deductible or self-insured retention of more than one percent of the policy limit. Contractor shall furnish to Owner two copies of a certificate of insurance and one copy of an insurance policy for each Required Coverage. Each such certificate and policy shall be in a form satisfactory to Owner and shall provide that no change, modification in, or cancellation of the insurance represented by it shall become effective until the expiration of 30 Days after written notice thereof shall have been given by the insurance company to Owner.

**4.3 Minimum Coverages**

Unless otherwise provided in the Special Conditions of Contract, Contractor shall, prior to and at all times while, providing, performing, or completing the Work, procure, maintain, and keep in force, at Contractor's expense, at least the following minimum insurance coverages:

1. Workers' Compensation and Employer's Liability with limits not less than:
   * 1. Workers' Compensation: Statutory;
     2. Employer's Liability:
        1. ***[$1,000,000]*** injury-per occurrence
        2. ***[$500,000]*** disease-per employee
        3. ***[$500,000]*** disease-policy limit

Such insurance shall evidence that coverage applies to the State of Illinois and provide a waiver of subrogation in favor of Owner.

1. Comprehensive Motor Vehicle Liability with a combined single limit of liability for bodily injury and property damage of not less than ***[$1,000,000]*** for vehicles owned, non-owned, or rented. All employees must be included as insureds.
2. Comprehensive General Liability with coverage written on an “occurrence” basis and with limits no less than:
   * 1. General Aggregate: ***[$10,000,000]***
     2. Bodily Injury:
        1. ***[$500,000]*** per person
        2. ***[$1,000,000]*** per occurrence
     3. Property Damage:
        1. ***[$500,000]*** per occurrence
        2. ***[$1,000,000]*** aggregate
     4. Other Coverages: ***[$500,000]*** or as otherwise approved or required by Owner

Coverages shall include:

- Premises Operations

- Products/Completed Operations (to be maintained for two years following Final Payment)

- Independent Contractors

- Personal Injury (with Employment Exclusion deleted)

- Broad Form Property Damage Endorsement

- Blanket Contractual Liability (must expressly cover the indemnity provisions contained in the Contract Agreement)

- Bodily injury and property damage

- “X”, “C”, and “U” exclusions shall be deleted.

- Railroad exclusions shall be deleted if Work Site is within 50 feet of any railroad track.

- All employees shall be included as insureds.

1. Umbrella Liability

Limits shall not be less than:

***[$20,000,000]*** Bodily Injury and Property Damage Combined Single Limit.

This Coverage shall apply in excess of the limits stated above.

Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss.

1. Builders Risk Insurance. This insurance shall be written in completed value form, shall protect Contractor and Owner against “all risks” of direct physical loss to buildings, structures, equipment, and materials to be used in providing, performing, and completing the Work, including without limitation fire extended coverage, vandalism and malicious mischief, sprinkler leakage, flood, earth movement and collapse, and shall be designed for the circumstances that may affect the Work.

This insurance shall be written with limits not less than the insurable value of the Work at completion. The insurable value shall include the aggregate value of Owner-furnished equipment and materials to be constructed or installed by Contractor.

This insurance shall include coverage while equipment or materials are in warehouses, during installation, during testing, and after the Work is completed, but prior to Final Payment. This insurance shall include coverage while Owner is occupying all or any part of the Work prior to Final Payment without the need for the insurance company's consent.

1. Environmental Impairment/Pollution Liability Coverage. Environmental Impairment/Pollution Liability Coverage for pollution incidents as a result of a claim for bodily injury, property damage or remediation costs from an incident at, on or migrating beyond the contracted work site. Coverage shall be extended to Non-Owned Disposal sites resulting from a pollution incident at, on or mitigating beyond the site; and provide coverage for incidents occurring during transportation of pollutants. This insurance shall have a ***[$1,000,000]*** combined single limit per occurrence for bodily injury, property damage and remediation costs.
2. Cyber Liability/Response Coverage. Cyber Liability/Response Coverage to respond to the duties and obligations as is undertaken by Contractor/Service Provider shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. with limits not less than ***[$1,000,000]*** per occurrence and breach response services of not less than ***[$250,000].***
3. Owner's and Contractor's Protective Liability Insurance. Contractor, at its sole cost and expense, shall purchase this Insurance in the names of Owner and Engineer for the period between the Commencement Date and Final Payment, with a combined single limit of liability for bodily injury and property damage of ***[$5,000,000.]***

**4.4 Additional Coverages**

The insurance coverages and limits required by Section 4.3 above shall be deemed to be minimum coverages and limits and shall not be construed in any way as a limitation on Contractor's duty to carry adequate insurance as required by Section 4.1 above or on Contractor's liability for losses and damages under this Contract. Contractor shall at all times carry such additional coverages and limits as may be necessary to fully comply with this Contract.

**4.5 Subcontractor Insurance**

Unless otherwise provided in the Special Conditions of Contract or unless otherwise approved by Owner in a Change Order, Contractor shall not allow any Subcontractor to commence or continue any part of the Work until and unless such Subcontractor provides and has in force Comprehensive General Liability insurance coverage equal to $2,000,000 or the amount of its Subcontract, whichever is greater, and Worker's Compensation and Employer's Liability and Comprehensive Motor Vehicle Liability insurance coverages equal to those required of Contractor by this Article.

**ARTICLE V**

**PAYMENT**

**5.1 Progress Payments**

A. General. Owner shall pay to Contractor in monthly installments, subject to any additions, deductions, or withholdings provided for in this Contract, 90 percent of the Value of the Work, determined in the manner set forth in Subsection 5.1C below, installed and complete up to the Day before the Pay Request, less the aggregate of all previous Progress Payments. The total amount of Progress Payments made prior to Final Acceptance by Owner shall not exceed 90 percent of the Contract Price.

B. Pay Requests. Contractor shall, as a condition precedent to its right to receive each Progress Payment, submit to Engineer four originally executed copies of a request for payment in the form provided by Owner and accompanied by such supporting data and documentation as may be required by this Contract or by Owner or Engineer (“Pay Request”). The first Pay Request shall be submitted not sooner than 30 Days following the Commencement of the Work. Owner may, by written notice to Contractor, designate a specific Day of each month on or before which Pay Requests must be submitted.

Pay Requests shall include the following minimum data and documentation, all of which shall be on forms supplied by, or otherwise acceptable to, Owner:

(i) Contractor's certification of the Value of the Work for which payment is then requested. If such certification is accepted by Engineer, it shall constitute the Value of the Work for the purpose of determining the amount of the current Progress Payment. If such certification is not accepted by Engineer, and if Engineer and Contractor are unable to agree as to the Value of the Work in question, such value shall, for the purpose of determining the amount of the current Progress Payment, be determined by Engineer in accordance with Subsection 5.1C below.

(ii) Contractor's certification that all prior Progress Payments have been properly applied to the payment or reimbursement of the costs with respect to which they were paid.

(iii) Contractor's Sworn Statement.

(iv) Contractor's partial or final waiver of lien.

(v) Subcontractors' and Suppliers' Sworn Statements.

(vi) Subcontractors' and Suppliers' partial or final waivers of lien.

(vii) Such other receipts, releases, affidavits, certificates, and other evidence as may be necessary to establish, to Owner's satisfaction, Contractor's, and its Subcontractors' and Suppliers', entitlement to the Progress Payment being requested, prior payment for all labor, equipment, materials, supplies, and other things covered by the Pay Request; and the absence of any interest, whether in the nature of a Lien or otherwise, of any Person in the Work, the Work Site, or any other property belonging to, or being held by, Owner.

C. Value of Work. The Value of the Work shall be determined as follows:

1. Lump Sum Items. For all Work to be paid on a lump sum basis, Contractor shall, not later than 10 days after execution of the Contract Agreement and before submitting its first Pay Request, submit to Engineer a schedule showing the value of each component part of such Work in form and with substantiating data and documentation acceptable to Engineer (“Breakdown Schedule”). If Contractor intends to request one single Progress Payment for lump sum Work, Contractor shall submit a written statement so stating in lieu of the Breakdown Schedule. The sum of the items listed in the Breakdown Schedule shall equal the amount or amounts set forth in the Schedule of Prices for Lump Sum Work. Overhead and profit shall not be listed as separate items in the Breakdown Schedule. An unbalanced Breakdown Schedule providing for overpayment of Contractor on component parts of the Work to be performed first will not be accepted. The Breakdown Schedule shall be revised and resubmitted until acceptable to Engineer. No payment shall be made for any Lump Sum Work until Contractor has submitted, and Engineer has approved, an acceptable Breakdown Schedule.

Engineer may require that the approved Breakdown Schedule be revised based on developments occurring during the provision and performance of the Work. If Contractor fails to submit a revised Breakdown Schedule that is acceptable to Engineer, Owner shall have the right either to suspend Progress and Final Payments for Lump Sum Work or to make such Payments based on Engineer's determination of the value of the Work completed.

1. Unit Price Items. For all Work to be paid on a unit price basis, the value of such Work shall be determined by Engineer on the basis of the actual number of acceptable units of Unit Price Items installed and complete in place, multiplied by the applicable unit price set forth in the Schedule of Prices. The actual number of acceptable units installed and complete in place shall be measured on the basis defined in the Contract Drawings and Specifications or, in the absence of such definition, on the basis determined by Engineer.

The number of units of Unit Price Items stated in the Schedule of Prices are Engineer's estimate only and shall not be used in establishing the Progress and Final Payments due Contractor. The Contract Price shall be adjusted to reflect the actual number of acceptable units of Unit Price Items installed and complete in place upon Final Acceptance.

D. Date of Payment. Contractor shall be paid no later than 30 Days following Owner's approval of each Pay Request, and the amount of the Progress Payment requested, at a meeting of Owner's governing body. Owner shall have no obligation to approve any Pay Request that is not in full compliance with the requirements of this Contract.

**5.2 Final Acceptance and Final Payment**

A. Notice of Completion. When the Work has been completed and is ready in all respects for acceptance by Owner, Contractor shall notify Engineer, with a copy to Owner, and request a final inspection (“Notice of Completion”). Contractor's Notice of Completion shall be given sufficiently in advance of the Completion Date to allow for scheduling of the final inspection and for completion or correction before the Completion Date of any items identified by such inspection as being defective, damaged, flawed, unsuitable, nonconforming, incomplete, or otherwise not in full compliance with the requirements of this Contract (“Punch List Work”). Before giving its Notice of Completion, Contractor shall satisfy itself that the whole Work, and every part thereof, has been completed in full compliance with, and as required by or pursuant to, this Contract, that all defects, damage, flaws, and nonconformities have been corrected, and that the Work Site and adjacent areas are fully restored, clean, and in good order.

B. Punch List and Final Acceptance. The Work shall be finally accepted when, and only when, the whole and all parts thereof shall have been completed to the satisfaction of Owner in full compliance with, and as required by or pursuant to, this Contract and the Work Site and adjacent areas shall have been fully restored, cleaned, and placed in good order. Upon receipt of Contractor's Notice of Completion and at a time mutually agreeable to Owner, Engineer, and Contractor, Engineer shall make a review of the Work and shall either notify Contractor in writing of all Punch List Work, if any, to be completed or corrected (“Punch List”) and of the time, not later than the Completion Date, by which Contractor shall complete or correct all Punch List Work or, if the Work is complete in full compliance with, and as required by or pursuant to, this Contract and the Work Site and adjacent areas are fully restored, clean, and in good order, prepare and deliver to Owner a written recommendation that the Work be finally accepted. Following Contractor's completion or correction of all Punch List Work, Engineer shall make another review of the Work and shall either prepare and deliver to Contractor another Punch List or, if the Work is complete in full compliance with, and as required by or pursuant to, this Contract and the Work Site and adjacent areas are fully restored, clean, and in good order, prepare and deliver to Owner a written recommendation that the Work be finally accepted.

The failure of Engineer to list any item on a Punch List shall not relieve Contractor of its obligation to provide, perform and complete the Work in full compliance with, and as required by or pursuant to, this Contract.

In the event more than two inspections and Punch Lists are required before Engineer is prepared to deliver to Owner its written recommendation that the Work be finally accepted, Contractor shall be charged the total cost incurred by Engineer for all subsequent inspections and the preparation of such additional Punch Lists. If the amount due Contractor is not sufficient to cover such costs, Contractor shall reimburse Owner for such costs upon demand.

Upon being satisfied that the Work and Work Site are ready for final acceptance pursuant to the requirements of this Contract, Owner shall issue its written notice of final acceptance of the Work to Contractor (“Final Acceptance”).

C. Final Payment. As soon as practicable, but not more than 60 Days, after Final Acceptance, Contractor shall submit to Engineer four originally executed copies of a Pay Request requesting Final Payment (“Final Pay Request”) for Engineer's review and recommendation of appropriate payment. Owner shall pay to Contractor the balance of the Contract Price, as determined by Engineer, after deducting therefrom all charges against Contractor as provided for in this Contract and all amounts, if any, to be retained under the Special Conditions of Contract (“Final Payment”). Final Payment shall be made not later than 15 Days after the expiration of the time within which claims for labor performed or equipment, materials, or supplies provided must be filed under any applicable Law pertaining to Liens, or the expiration of 30 Days after Owner approves the Final Pay Request, whichever is later; provided, however, that Owner shall not be obligated to make Final Payment unless and until Contractor has submitted and has caused its Subcontractors and Suppliers to submit all required data and documentation to Owner and all such data and documentation is complete and in proper form.

**5.3 Title to Work and Liens**

A. Title. Nothing in this Contract shall be construed as vesting in Contractor any right of property in any equipment, materials, supplies and other items provided under this Contract after they have been installed in, incorporated into, attached to, or affixed to, the Work or the Work Site. All such equipment, materials, supplies and other items shall, upon being so installed, incorporated, attached or affixed, become the property of Owner, but such title shall not release Contractor from its duty to insure and protect the Work in accordance with the requirements of this Contract.

B. Waivers of Lien. Contractor shall, from time to time, at Owner's request and in any event prior to Final Payment, furnish to Owner such receipts, releases, affidavits, certificates, and other evidence as may be necessary to establish, to the reasonable satisfaction of Owner, that no liens against the Work or the public funds held by Owner exist in favor of any Person whatsoever for or by reason of any equipment, material, supplies, or other item furnished, labor performed, or other thing done in connection with the Work or this Contract (“Lien”) and that no right to file any Lien exists in favor of any Person whatsoever.

C. Removal of Liens. If at any time any notice of any Lien is filed for or by reason of any equipment, materials, supplies, or other item furnished, labor performed, or other thing done in connection with the Work or this Contract, then Contractor shall, promptly and without charge, discharge, remove, or otherwise dispose of such Lien, or, if permitted by Owner, furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against such Lien. Until such discharge, removal or disposition, or furnishing of any permitted Bond or other collateral, Owner shall have the right to retain from any money payable under this Contract an amount that Owner, in its sole judgment, deems necessary to satisfy such Lien and to pay the costs and expenses, including attorneys' fees and administrative expenses, of any actions brought in connection therewith or by reason thereof.

D. Protection of Owner Only. This Section shall not operate to relieve Contractor's surety or sureties from any of their obligations under the Bonds, nor shall it be deemed to vest any right, interest or entitlement in any Subcontractor or Supplier. Owner's retention of funds pursuant to this Section shall be deemed solely for the protection of its own interests pending removal of such Liens by Contractor, and Owner shall have no obligation to apply such funds to such removal but may, nevertheless, do so where Owner's interests would thereby be served.

**5.4 Deductions**

A. Owner's Right to Withhold. Notwithstanding any other provision of this Contract and without prejudice to any of Owner's other rights or remedies, Owner shall have the right at any time or times, whether before or after approval of any Pay Request, to deduct and withhold from any Progress or Final Payment that may be or become due under this Contract such amount as may reasonably appear necessary to compensate Owner for any actual or prospective loss due to: (1) Work that is defective, damaged, flawed, unsuitable, nonconforming, or incomplete; (2) damage for which Contractor is liable under this Contract; (3) state or local sales, use, or excise taxes from which Owner is exempt; (4) Liens or claims of Lien regardless of merit; (5) claims of Subcontractors, Suppliers, or other Persons regardless of merit; (6) delay in the progress or completion of the Work; (7) inability of Contractor to complete the Work; (8) reasonable doubt that this Contract can be completed for the balance of the Contract Price then unpaid; (9) reasonable doubt that the balance of the Contract Price then unpaid is not adequate to cover actual or liquidated damages, if any; (10) failure of Contractor to properly complete or document any Pay Request; (11) any other failure of Contractor to perform any of its obligations under this Contract; (12) the cost to Owner, including attorneys' fees and administrative expenses, of correcting any of the aforesaid matters or exercising any one or more of Owner's remedies set forth in Section 6.6 of these General Conditions of Contract; or (13) engineering and inspection charges imposed pursuant to Subsection 1.3F, Section 1.13, or Subsection 5.2B of these General Conditions of Contract.

B. Use of Withheld Funds. Owner shall be entitled to retain any and all amounts withheld pursuant to Subsection 5.4A above until Contractor shall have either performed the obligation or obligations in question or furnished security for such performance satisfactory to Owner. Owner shall be entitled to apply any money withheld or any other money due Contractor under this Contract to reimburse itself for any and all costs, expenses, losses, damages, liabilities, suits, judgments, awards, attorneys' fees, and administrative expenses incurred, suffered, or sustained by Owner and chargeable to Contractor under this Contract.

**5.5 Application of Payments**

All Progress and Final Payments made by Owner to Contractor shall be applied to the payment or reimbursement of the costs with respect to which they were paid and not to any preexisting or unrelated debt between Contractor and Owner or between Contractor and any other Person.

**5.6 Work Entire**

This Contract and the Work are entire and the Work as a whole is of the essence of this Contract. Notwithstanding any other provision of this Contract, each and every part of this Contract and of the Work are interdependent and common to one another and to Owner's obligation to pay all or any part of the Contract Price or any other consideration for the Work. Any and all Progress Payments made pursuant to this Article are provided merely for the convenience of Contractor and for no other purpose.

**ARTICLE VI**

**DISPUTES AND REMEDIES**

**6.1 Notice of Dispute**

If Contractor disputes or objects to any requirement, direction, instruction, interpretation, determination, or decision of Owner or Engineer (“Disputed Decision”), Contractor may, immediately upon receiving any such Disputed Decision, notify Engineer in writing, with a copy to Owner, of its dispute or objection and of the amount of any equitable adjustment to the Contract Price or Contract Time to which Contractor claims it will be entitled as a result thereof (“Notice of Dispute”); provided, however, that Contractor shall, nevertheless proceed without delay to perform the Work as required, directed, instructed, interpreted, determined, or decided by Owner or Engineer without regard to such dispute or objection and such Notice of Dispute. Unless Contractor so notifies Engineer not later than two business days after receipt of such Disputed Decision, and, whenever feasible, prior to taking any action based upon such Disputed Decision, Contractor shall be conclusively deemed (1) to have agreed to and accepted such Disputed Decision as being fair, reasonable, and finally determinative of Contractor's obligations and rights under this Contract; (2) to have waived all grounds for dispute of or objection to such Disputed Decision; and (3) to have waived all claims for damages and equitable adjustments to the Contract Price and Contract Time based on such Disputed Decision.

**6.2 Negotiation of Disputed Decisions**

To avoid and settle without litigation any Disputed Decision, Owner and Contractor agree to engage in good faith negotiations as provided in this Section. Within three business days after Engineer's receipt of any Notice of Dispute, Engineer shall deliver to Contractor, with a copy to Owner, Engineer's preliminary written response either rejecting Contractor's claim, recommending to Owner approval of Contractor's claim, suggesting a compromise of Contractor's claim, or requesting additional information. Within three business days after Contractor's receipt of Engineer's preliminary written response, Contractor shall deliver to Engineer any additional information requested and notify Engineer whether Contractor is withdrawing, modifying or reaffirming its Notice of Dispute. Within three business days after Engineer's receipt of Contractor's reply, a conference among Owner, Engineer, and Contractor shall be held to resolve the dispute.

**6.3 Owner's Final Decision**

Within three business days after the end of the conference required pursuant to Section 6.2 above, Engineer shall deliver to Contractor Owner's final written decision.

**6.4 Contractor's Final Demand**

If Contractor objects to Owner's final decision, Contractor shall, within three business days of the receipt thereof, give Owner written notice of such objection and shall, in such notice, state its final demand for settlement of the Disputed Decision. Unless Contractor so notifies Owner, Contractor shall be conclusively deemed (1) to have agreed to and accepted Owner's final decision and (2) to have waived all claims based on such final decision.

**6.5 Contractor's Remedies**

If Owner fails or refuses to satisfy a final demand made by Contractor pursuant to Section 6.4 above, or to otherwise resolve the Disputed Decision which is the subject of such demand to the satisfaction of Contractor, within 15 Days following receipt of such demand, Contractor shall be entitled to pursue such remedies, not inconsistent with the provisions of this Contract, as it may have in law or equity; provided, however, that Contractor agrees that its compliance with the dispute resolution procedures set out in Sections 6.1 through 6.4 above shall be a condition precedent to the initiation of any legal action concerning any matter subject to the provisions of said Sections.

**6.6 Owner's Remedies**

A. Events of Default. Each of the following acts or omissions of Contractor shall be a default by Contractor of its obligations under this Contract (“Event of Default”) and the occurrence or existence of any such Event of Default shall entitle Owner to invoke any or all of the remedies set forth in Subsection 6.6B below:

1. Contractor's initiation of, acquiescence in, or failure to have withdrawn any voluntary or involuntary petition in bankruptcy or for reorganization or for relief from its creditors or for any similar relief.

2. Contractor's initiation of, acquiescence in, or failure to have withdrawn any action or agreement for the appointment of a receiver for its business or any of its property.

3. Contractor being or becoming insolvent, making a general assignment for the benefit of creditors, or assigning its right to any or all payments due under this Contract or to any part of the Work.

4. Contractor's failure or refusal to pay any of its debts as they come due, including failure to pay when due any money owed to any Subcontractor or Supplier.

5. Contractor's failure, refusal, or delay to prosecute the Work, or any part thereof, diligently at a rate that assures completion of the Work in full compliance with, and as required by or pursuant to, this Contract on or before the Completion Date.

6. Contractor's failure, refusal, or delay to provide, perform, and complete the Work, or any part thereof, free from defects, damage, and flaws; in strict conformity to the requirements of this Contract; and in a manner suitable for its intended purposes.

7. Contractor falsely making, or being found to have falsely made, any representation or warranty in any Bidding Document or in or pursuant to this Contract.

8. Contractor executing the Work in bad faith.

9. Contractor's failure, refusal, or delay to perform, to satisfy, or to be in full compliance with, any other requirement of this Contract.

B. Owner's Remedies for Contractor's Default. If it should appear at any time prior to Final Payment, whether as a result of any inspection or test or otherwise, that an Event of Default has occurred or is in existence, and if Contractor should fail to cure and eliminate such Event of Default within five business days after Contractor's receipt of Owner's written notice of such Event of Default, then Owner shall have the right, at its election and without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

1. Owner may require Contractor, within such reasonable time as may be fixed by Owner, to complete or correct all or any part of the Work that is defective, damaged, flawed, unsuitable, nonconforming, or incomplete; to remove from the Work Site any such Work; to accelerate all or any part of the Work; and to take any or all other action necessary to bring Contractor and the Work into strict compliance with this Contract.
2. Owner may perform or have performed all Work necessary for the accomplishment of the results stated in Paragraph 6.6B1 above and withhold or recover from Contractor all the cost and expense, including attorneys' fees and administrative costs, incurred by Owner in connection therewith.
3. Owner may accept the defective, damaged, flawed, unsuitable, nonconforming, incomplete, or dilatory Work or part thereof and make an equitable reduction in the Contract Price.
4. Owner may terminate this Contract without liability for further payment of amounts due or to become due under this Contract.
5. Owner may, without terminating this Contract, terminate Contractor's rights under this Contract and, for the purpose of completing or correcting the Work, evict Contractor and take possession of all equipment, materials, supplies, tools, appliances, plans, specifications, schedules, manuals, drawings, and other papers relating to the Work, whether at the Work Site or elsewhere, and either complete or correct the Work with its own forces or contracted forces, all at Contractor's expense.
6. Upon any termination of this Contract or of Contractor's rights under this Contract, and at Owner's option exercised in writing, any or all Subcontracts of Contractor shall be deemed to be assigned to Owner without any further action being required, but Owner shall not thereby assume any obligation for payments due under such Subcontracts for any Work provided or performed prior to such assignment.
7. Owner may withhold from any Progress Payment or Final Payment, whether or not previously approved, or may recover from Contractor, any and all costs, including attorneys' fees and administrative expenses, incurred by Owner as the result of any Event of Default or as a result of actions taken by Owner in response to any Event of Default.
8. Owner may recover any damages suffered by Owner.

C. Owner's Special Remedy for Delay. If the Work is not completed by Contractor, in full compliance with, and as required by or pursuant to, this Contract, within the Contract Time as such time may be extended by Change Order, then Owner may invoke its remedies under Subsection 6.6B above or may, in the exercise of its sole and absolute discretion, permit Contractor to complete the Work but charge to Contractor, and deduct from any Progress or Final Payments, whether or not previously approved, administrative expenses and costs for each Day completion of the Work is delayed beyond the Completion Date computed on the basis of a per diem charge of ***[one-tenth of one percent of the Contract Price]*** per Day, as well as any additional damages caused by such delay or any liquidated damages provided for in the Special Conditions of Contract. Notwithstanding an election made pursuant to this Subsection, Owner may thereafter exercise any of its remedies under Subsection 6.6B above if Owner at any time is not, in Owner's opinion, adequately assured of prompt completion of the Work.

D. Remedies Cumulative. Each of the remedies listed in this Section shall be deemed to be cumulative of all other remedies listed in this Section and to exist in addition to every other such remedy and in addition to all other remedies provided by law or equity.

E. Provisions Exemplary. Any reference in this Contract to Owner's right to invoke the remedies of this Section are not intended to be, nor shall they be construed to be, an exclusive listing of the circumstances under which these remedies may be exercised, but rather they are intended to be only exemplary.

F. Termination or Suspension Deemed for Convenience. Any termination or suspension of Contractor's rights under this Section 6.6 for an alleged Event of Default that is ultimately held unjustified shall be deemed a termination or suspension for the convenience of Owner under Section 1.12 of these General Conditions of Contract.

**ARTICLE VII**

**DEFINITIONS**

**7.1 Defined Terms**

A. Addendum. Any written or graphic instrument issued prior to the execution of this Contract, dated and signed by Owner or Engineer, that modifies, interprets, or corrects the Bidding Documents or this Contract.

B. Approved Rate. See Paragraph 2.3A4 of these General Conditions of Contract.

C. Approved Schedule. See Paragraph 1.1B2 of these General Conditions of Contract.

D. Bid Package. The bound set of documents based upon which Owner solicited proposals for this Contract, consisting of the Bidding Documents.

E. Bidder's Proposal. The proposal to enter into this Contract, completed and executed by Contractor, and based upon which this Contract was awarded by Owner to Contractor.

F. Bidding Documents. The documents Included in the Bid Package.

G. Bond. Performance Bond, Labor and Material Payment Bond, and any other instrument of security, furnished, or required by this Contract to be furnished, by Contractor or its surety or sureties.

H. Breakdown Schedule. See Paragraph 5.1C1 of these General Conditions of Contract.

I. Change Order. A written order to Contractor executed by Owner authorizing or directing a change in this Contract; an addition to, deletion from, or revision in the Work or the Work Site; or an equitable adjustment in the Contract Price or the Contract Time.

J. Commencement Date. The date set forth in Section 2.1 of the Contract Agreement.

K. Completion Date. The date set forth in Section 2.2 of the Contract Agreement.

L. Contract. The Contract Agreement and all Contract Documents.

M. Contract Agreement. The contract agreement executed by Owner and Contractor.

N. Contract Documents. The documents listed in Section 1.2 of the Contract Agreement.

O. Contract Drawings. All (i) drawings furnished with the Invitation for Bidder's Proposals, (ii) supplementary drawings furnished to clarify and to define in greater detail the intent of the drawings and specifications furnished with the Invitation for Bidder's Proposals, (iii) drawings submitted by Contractor to Engineer pursuant to this Contract and reviewed and stamped by Engineer with no exception noted, and (iv) drawings submitted to Contractor by Engineer during the progress of the Work as provided for in this Contract.

P. Contract Price. The total compensation set forth in Section 5.1 of the Contract Agreement.

Q. Contract Time. The period of time allowed, including the Commencement Date and Completion Date, pursuant to Article II of the Contract Agreement for Contractor to provide, perform, and complete the Work, as such period of time may be modified by Change Order.

R. Contractor. See Subparagraph 1.3A2(a) of the Contract Agreement.

S. Day. Except where otherwise expressly defined, a calendar day of 24 hours, measured from midnight to the next midnight.

T. Decreased Work. See Subsection 2.3B of these General Conditions of Contract.

U. Disputed Decision. See Section 6.1 of these General Conditions of Contract.

V. Engineer. See Subparagraph 1.3A2(b) of the Contract Agreement.

W. Event of Default. See Section 6.6 of these General Conditions of Contract.

X. Final Acceptance. See Subsection 5.2B of these General Conditions of Contract.

Y. Final Pay Request. See Subsection 5.2C of these General Conditions of Contract.

Z. Final Payment. See Subsection 5.2C of these General Conditions of Contract.

AA. General Instructions to Bidders. The instructions to bidders included in the Bid Package.

BB. Increased Work. See Subsection 2.3A of these General Conditions of Contract.

CC. Invitation for Bidder's Proposal. The invitation for bidder's proposals included in the Bid Package and by which Owner invited proposals to enter into this Contract.

DD. Laws. All laws, statutes, ordinances, regulations, orders, decrees and other legal requirements, whether federal, state or local existing on or after the date of execution of this Contract.

EE. Lien. See Subsection 5.3B of these General Conditions of Contract.

FF. Notice of Completion. See Subsection 5.2A of these General Conditions of Contract.

GG. Notice of Dispute. See Section 6.1 of these General Conditions of Contract.

HH. Overtime Work. See Section 1.13 of these General Conditions of Contract.

II. Owner. See Subparagraph 1.3 of the Contract Agreement.

JJ. Pay Request. See Subsection 5.1B of these General Conditions of Contract.

KK. Person. Any corporation, partnership, individual, joint venture, trust, estate, association, business, enterprise, proprietorship or other legal entity of any kind, either public or private, and any legal successor, agent, representative or authorized assign of the above.

LL. Price Proposal. The total compensation proposed to be accepted by Contractor for the Work in the Bidder's Proposal and from which the Contract Price is derived.

MM. Progress Payment. The monthly installment payment to be made by Owner to Contractor in accordance with, and subject to the terms and conditions set forth in, Article V of these General Conditions of Contract.

NN. Punch List. See Subsection 5.2B of these General Conditions of Contract.

OO. Punch List Work. See Subsection 5.2A of these General Conditions of Contract.

PP. Required Coverages. See Section 4.1 of these General Conditions of Contract.

QQ. Required Submittals. See Subsection 1.3A of these General Conditions of Contract.

RR. Specifications. All (i) specifications furnished with the Invitation for Bidder's Proposals, (ii) supplementary specifications furnished to clarify and to define in greater detail the intent of the drawings and specifications furnished with the Invitation for Bidder's Proposals, (iii) specifications submitted pursuant to this Contract by Contractor to Engineer and reviewed and stamped by Engineer with no exception noted, and (iv) specifications submitted to Contractor during the progress of the Work as provided for in this Contract. Unless otherwise noted, the term “Specifications” as used in this Contract shall not refer to any other standard specifications.

SS. Subcontract. Any written or oral contract between Contractor and a Subcontractor or Supplier.

TT. Subcontractor. Any Person, other than Contractor, that provides, performs or completes any part of the Work at the Work Site, and the duly authorized officers, employees, agents, and representatives of any such Person.

UU. Supplier. Any Person, other than Contractor, that supplies equipment, materials or supplies for the Work, including that fabricated to a special design, but that does not provide or perform labor at the Work Site, and the duly authorized officers, employees, agents, and representatives of any such Person.

VV. Value of the Work. The value of the Work, determined in accordance with Subsection 5.1C of these General Conditions of Contract, for purposes of determining the then current amount of any Progress Payment to be made by Owner under this Contract.

WW. Work. See Subparagraph 1.3 of the Contract Agreement.

XX. Work Site. See Subparagraph 1.3 of the Contract Agreement.

**7.2 Word Usage**

A. Tense and Form. Words used or defined in one tense or form shall include other tenses and derivative forms.

B. Number. Words in the singular number shall include the plural number, and words in the plural number shall include the singular number.

C. Shall and May. The word “shall” is mandatory. The word “may” is permissive.

D. Headings. In case of any difference of meaning or implication between any provision of this Contract and any heading, the Contract provision shall control and no heading shall be construed to limit the scope or intent of any provision of this Contract.

**CITY OF CRYSTAL LAKE**

**CONTRACT FOR THE CONSTRUCTION OF**

***[ NAME OF PROJECT ]***

**SPECIAL CONDITIONS OF CONTRACT**

***[COMPLETE]***

**CITY OF CRYSTAL LAKE**

**CONTRACT FOR THE CONSTRUCTION OF**

***[ NAME OF PROJECT ]***

**LIST OF CONTRACT DRAWINGS**

**[TO BE SUPPLIED BY ENGINEER]**

SHEET NO.        SHEET TITLE        DATE LAST REVISED

**CITY OF CRYSTAL LAKE**

**CONTRACT FOR THE CONSTRUCTION OF**

***[ NAME OF PROJECT ]***

**SPECIFICATIONS**

**[TO BE SUPPLIED BY ENGINEER]**

**CITY OF CRYSTAL LAKE**

**CONTRACT FOR THE CONSTRUCTION OF**

***[ NAME OF PROJECT ]***

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: that [***CONTRACTOR***], as Principal, hereinafter called Contractor, and ***[FULL NAME AND ADDRESS OF SURETY]***, as Surety, a corporation organized and existing under the laws of the State of ***[INCORPORATION]***, hereinafter called Surety, are held and firmly bound unto the City of Crystal Lake, 100 W Woodstock St, Crystal Lake, IL 60014, as Obligee, hereinafter called Owner, in the full and just sum of ***[CONTRACT PRICE]*** Dollars ($***[CONTRACT PRICE]***), for the payment of which sum of money well and truly to be made, Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents, said amount to include payment of actual costs and damages and for attorneys' fees, architectural fees, design fees, engineering fees, accounting fees, testing fees, consulting fees, administrative costs, court costs, interest and any other fees and expenses resulting from or incurred by reason of Contractor's failure to promptly and faithfully perform its contract with Owner, said contract being more fully described below, and to include attorneys' fees, court costs and administrative and other expenses necessarily paid or incurred in successfully enforcing performance of the obligation of Surety under this bond.

WHEREAS, Contractor has entered into a written agreement dated ***[DATE OF CONTRACT AGREEMENT]***, with Owner entitled “Contract Agreement Between City of Crystal Lake and **[*CONTRACTOR*]** for the Construction of ***[NAME OF PROJECT]*** (the “Contract”), the terms and conditions of which are by this reference incorporated herein as though fully set forth herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT if Contractor shall well, truly and promptly perform all the undertakings, covenants, terms, conditions and agreements of said Contractor under the Contract, including, but not limited to, Contractor's obligations under the Contract: (1) to provide, perform and complete at the Work Site and in the manner specified in the Contract all necessary work, labor, services, transportation, equipment, materials, apparatus, machinery, tools, fuels, gas, electric, water, waste disposal, information, data and other means and items necessary for the [ ***DESCRIBE PROJECT*** ]; (2) to procure and furnish all permits, licenses and other governmental approvals and authorizations necessary in connection therewith except as otherwise expressly provided in the Special Conditions of Contract; (3) to procure and furnish all bonds, certificates and policies of insurance specified in the Contract; (4) to pay all applicable federal, state and local taxes; (5) to do all other things required of Contractor by the Contract; and (6) to provide, perform and complete all of the foregoing in a proper and workmanlike manner and in full compliance with, and as required by and pursuant to, the Contract; all of which is herein referred to as the “Work,” whether or not any of said Work enter into and become component parts of the improvement contemplated, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no changes, modifications, alterations, omissions, deletions, additions, extensions of time, or forbearances on the part of either Owner or Contractor to the other in or to the terms of said Contract; in or to the schedules, plans, drawings or specifications; in or to the method or manner of performance of the Work; in or to Owner-furnished facilities, equipment, material, service or sites; or in or to the mode or manner of payment therefor, shall in any way release Contractor and Surety or either or any of them, or any of their heirs, executors, administrators, successors or assigns or affect the obligations of Surety on this bond, all notice of any and all of the foregoing changes, modifications, alterations, omissions, deletions, additions, extensions of time or forbearances, and notice of any and all defaults by Contractor or of Owner's termination of Contractor being hereby waived by Surety.

Notwithstanding anything to the contrary in the foregoing paragraph, in no event shall the obligations of Surety under this bond in the event of Contractor's default be greater than the obligations of Contractor under the Contract in the absence of such Contractor default.

In the event of a default or defaults by Contractor, Owner shall have the right to take over and complete the Contract upon 30 calendar days' written notice to Surety, in which event Surety shall pay Owner all costs incurred by Owner in taking over and completing the Contract.

At its option, Owner may instead request that Surety take over and complete the Contract, in which event Surety shall take reasonable steps to proceed promptly with completion no later than 30 calendar days from the date on which Owner notifies Surety that Owner wants Surety to take over and complete the Contract.

Owner shall have no obligation to actually incur any expense or correct any deficient performance of Contractor in order to be entitled to receive the proceeds of this bond.

No right of action shall accrue on this bond to or for the use of any person or corporation other than Owner or the heirs, executors, administrators or successors of Owner.

Signed and sealed this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_.

Attest/Witness: PRINCIPAL: ***[ CONTRACTOR ]***

By: By:

***[NAME OF CONTRACTOR'S***

***EXECUTING OFFICER]***

Title: Title: ***[TITLE OF CONTRACTOR'S***

***EXECUTING OFFICER]***

Attest/Witness: SURETY: ***[ NAME OF SURETY ]***

By: By:

Title: Title:

Telephone:

**SEE GENERAL INSTRUCTIONS TO BIDDERS, SECTION 8,**

**FOR SIGNATURE REQUIREMENTS**

**CITY OF CRYSTAL LAKE**

**CONTRACT FOR THE CONSTRUCTION OF**

***[ NAME OF PROJECT ]***

**LABOR AND MATERIAL PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS: that ***[CONTRACTOR]*** as Principal, hereinafter called Contractor, and ***[FULL NAME AND ADDRESS OF SURETY]***, as Surety, a corporation organized and existing under the laws of the State of ***[INCORPORATION]***, hereinafter called Surety, are held and firmly bound unto the City of Crystal Lake, 100 W Woodstock St, Crystal Lake, IL 60014, as Obligee, hereinafter called Owner, for the use and benefit of itself and of claimants as hereinafter defined, in the full and just sum of ***[CONTRACT PRICE]*** Dollars ($***[CONTRACT PRICE]***), to be paid to it or the said claimants or its or their assigns, to which payment well and truly to be made Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents, said amount to include attorney's fees, court costs and administrative and other expenses necessarily paid or incurred in successfully enforcing performance of the obligation of Surety under this bond.

WHEREAS, Contractor has entered into a written agreement dated ***[DATE OF CONTRACT AGREEMENT]***, with Owner entitled “Contract Agreement Between City of Crystal Lake and ***[CONTRACTOR]*** for the ***[NAME OF PROJECT]***”(the “Contract”), the terms and conditions of which are by this reference incorporated herein as though fully set forth herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT if Contractor shall promptly pay or cause to be paid all sums of money that may be due to any claimant with respect to Contractor's obligations under the Contract: (1) to provide, perform and complete at the Work Site and in the manner specified in the Contract all necessary work, labor, services, transportation, equipment, materials, apparatus, machinery, tools, fuels, gas, electric, water, waste disposal, information, data and other means and items necessary for the [ ***DESCRIBE PROJECT*** ] (2) to procure and furnish all permits, licenses and other governmental approvals and authorizations necessary in connection therewith except as otherwise expressly provided in the Special Conditions of Contract; (3) to procure and furnish all bonds, certificates and policies of insurance specified in the Contract; (4) to pay all applicable federal, state and local taxes; (5) to do all other things required of Contractor by the Contract; and (6) to provide, perform and complete all of the foregoing in a proper and workmanlike manner and in full compliance with, and as required by and pursuant to, the Contract; all of which is herein referred to as the “Work,” whether or not any of said Work enter into and become component parts of the improvement contemplated, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

For purpose of this bond, a claimant is defined as one having a direct contract with Contractor or with a subcontractor of Contractor to provide, perform or complete any part of the Work.

Contractor and Surety hereby jointly and severally agree that every claimant who has not had all just claims for the furnishing of any part of the Work paid in full, including, without limitation, all claims for amounts due for materials, lubricants, oil, gasoline, rentals of or service or repairs on machinery, equipment, and tools consumed or used in connection with the furnishing of any part of the Work, may sue on this bond for the use of such claimant, may prosecute the suit to final judgment for such sum or sums as may be justly due such claimant, and may have execution therein; provided, however, that Owner shall not be liable for the payment of any costs or expenses of any such suit. The provisions of 30 ILCS 550/1 and 30 ILCS 550/2 shall be deemed inserted herein, including the time limits within which notices of claim must be filed and actions brought under this bond.

Contractor and Surety hereby jointly agree that Owner may sue on this bond if Owner is held liable to, or voluntarily agrees to pay, any claimant directly, but nothing in this bond shall create any duty on the part of Owner to pay any claimant.

Surety, for value received, hereby stipulates and agrees that no changes, modifications, alterations, omissions, deletions, additions, extensions of time or forbearances on the part of Owner or Contractor to the other in or to the terms of said Contract; in or to the schedules, plans, drawings or specifications; in or to the method or manner of performance of the Work; in or to Owner-furnished facilities, equipment, material, service or site; or in or to the mode or manner of payment therefor shall in any way release Contractor and Surety or either or any of them, or any of their heirs, executors, administrators, successors or assigns, or affect the obligations of said Surety on this bond, all notice of any and all of the foregoing changes, modifications, alterations, omissions, deletions, additions, extensions of time or forbearances and notice of any and all defaults by Contractor or of Owner's termination of Contractor being hereby waived by Surety.

Signed and sealed this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_.

Attest/Witness: PRINCIPAL: ***[ CONTRACTOR ]***

By: By:

***[NAME OF CONTRACTOR'S***

***EXECUTING OFFICER]***

Title: Title: ***[TITLE OF CONTRACTOR'S***

***EXECUTING OFFICER]***

Attest/Witness: SURETY: ***[NAME OF SURETY]***

By: By:

Title: Title:

Telephone:

**SEE GENERAL INSTRUCTIONS TO BIDDERS, SECTION 8,**

**FOR SIGNATURE REQUIREMENTS**

**CITY OF CRYSTAL LAKE**

**CONTRACT FOR THE CONSTRUCTION OF**

***[ NAME OF PROJECT ]***

**ADDENDA NOS. *[COMPLETE]***

**CITY OF CRYSTAL LAKE**

**CONTRACT FOR THE CONSTRUCTION OF**

***[ NAME OF PROJECT ]***

**CONSTRUCTION MANAGEMENT SERVICES**

The ***[ NAME OF PROJECT ]*** will proceed based on the following arrangement:

A Construction Manager shall be appointed as a single point of responsibility for the Work. The Construction Manager will not be an employee of the City but an independent contractor. The Construction Manager, in addition to acting as an advisor to the City during the design period, assumes financial responsibility for the construction of the Work. The Construction Manager's services are divided into two phases: the Pre-Construction Phase and the Construction Phase, portions of which may proceed concurrently. Contractor hereby agrees to act as the Construction Manager during the Pre-Construction and the Construction Phase.

1. **Construction Management Services – Pre-Construction Phase**

Construction Manager will provide services required for the Pre-Construction Phase and will consult with the City and Engineer regarding the following Pre-Construction activities:

Pre-Construction Activities:

1. Construction Sequencing

Develop construction sequencing, subcontractors and suppliers selection strategy.

[***COMPLETE***]

1. Permit Processing
2. Packaging of Bid Documents
3. Develop recommendation for project bid packages. Bid packages shall be developed to maximize the City's ability to directly procure equipment, materials and breakout of trade contracts.
4. Prepare bid packages
5. Pre-purchased/Pre-negotiated Equipment
6. Prepare strategy and documents for incorporating pre-purchase/pre-negotiated equipment purchase agreements in bid documents and assigning responsibility to the contractor.
7. General Conditions/Front End Documents
8. Budget Cost Estimates
9. Project Scheduling
10. Provide input on project items (e.g., schedule, submittal procedure, change order procedure) required in the contract documents.
11. Develop final construction schedule for bid documents.
12. Develop construction milestones for each bid package and recommend liquidated damages amounts for each milestone.
13. Constructability Review

Review 50% and 90% design submittals for constructability and consistency of standard construction practices and provide written comments. Attend two design meetings to discuss constructability review comments.

1. Design Alternatives Review
2. Alternate Material Information
3. Pre-construction Minutes and Records
4. Attend and participate in Design Review meetings.
5. Project Familiarization
6. Review documents from previous construction projects.
7. Review current design documents.
8. Review site and available investigation information.
9. Quality Assurance/Quality Control Plan
10. Schedule of Values
11. Traffic Control Plans
12. Construction Safety Program
13. Screen and pre-qualify subcontractors and suppliers.
14. Administer bid packaging plan, including compiling, advertising reproducing and issuing bid packages.
15. Conduct pre-bid conferences and site visits.
16. Advertise for construction bids.
17. Receive bids, screen, and recommend award of contracts.
18. Assist with preparation of Bidding addendum.
19. Identify Contractor Staging Location.

**B**. **Construction Management Services – Construction Phase**

1. The Construction Phase shall commence on the earlier of:
2. the City's acceptance of the Construction Manger's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, or
3. the City's fist authorization to the Construction Manger to:
4. Award a subcontract, or
5. Undertake construction Work with the Construction Manager's own forces, or
6. Issue a purchase order for materials or equipment required for the Work.

Work items included in the Construction phase shall include but not necessarily be limited to the following: [***COMPLETE***]

1. Construction Phase Activities
2. Draft and/or advise the City in the awarding and execution of all trade contracts.
3. Arrange and conduct Pre-Construction conferences.
4. Provide full-time, on-site staff to coordinate and administer all construction contracts.
5. Manage and coordinate trade contractors regarding general contract provisions.
6. Monitor and update a master project schedule.
7. Prepare a master cost control budget.
8. Provide the City with periodic projections of the final completion schedule and costs.
9. Monitor and develop mitigation plans for unforeseen events and/or changed conditions which impact the master schedule and cost budget.
10. Conduct and document periodic meetings to schedule and coordinate Work.
11. Administer all billings, check scope of work and quality, and approve payments.
12. Administer all change requests.
13. Review all shop drawings.
14. Technical shop drawings will be reviewed by the Design Engineer.
15. Establish and monitor a quality control program.
16. Develop and administer an overall safety program.
17. Each individual Trade Contractor will be responsible for development and monitoring of a safety program within the guideline of the overall project safety program.
18. Maintain all records of meetings, conversations and activities on the site.
19. Develop preliminary and final punch lists for each construction contract.
20. Coordinate and manage the interface of work between the construction contracts.
21. Recommend contract(s) final payments and project close-out.
22. Conduct and participate in trade contract coordination meetings (partnering).
23. Provide on-site space, equipment and clerical staff and the Design Engineer staff. Office space sufficient for one engineer will be required.
24. Provide all inspection services necessary to ensure construction is in conformance to construction documents.
25. Provide for construction inspection testing of materials and equipment.
26. Claims Management
27. Processing of contract documents including requests for information, submittals, change orders, progress and final payments.
28. Provide pre-construction photo documentation and maintain throughout the construction photo documentation of critical elements of the Work.
29. Monitor and document compliance with permit conditions on behalf of the City.
30. Respond to trade contractors' requests for information (RFI's) and provide initial review for completeness/appropriateness prior to distribution to the Design Engineer.
31. Coordinate and maintain a status log of all RFI's and design clarifications.
32. Change order management
33. Maintain detailed project records including daily logs, inspection records, photos, measurements and quantities, schedules and correspondence and documentation of all major decisions and actions.
34. Assist start-up and commissioning operations and issues, attend all contractor walk-throughs, final inspections, final testing and demonstrations.
35. Compile, review and submit all information in a single set of documents necessary for the Design Engineer to prepare record drawings of final project depicting as-built conditions.
36. Compile, review and submit all individual equipment maintenance manuals.
37. Monitor and document compliance of subcontractor/supplier bond and insurance requirements.
38. Conduct screening and selection procedures for pre-qualification of subcontractors and suppliers.