

**DISTRICTS 1**

**VILLAGE OF LOMBARD**  
**REQUEST FOR BOARD OF TRUSTEES ACTION**  
For Inclusion on Board Agenda

    X     Resolution or Ordinance (Blue)                 Waiver of First Requested  
           Recommendations of Boards, Commissions & Committees (Green)  
           Other Business (Pink)

**TO:** PRESIDENT AND BOARD OF TRUSTEES

**FROM:** Scott Niehaus, Village Manager

**DATE:** November 17, 2021      (COW) (B of T)      **Date:** December 2, 2021

**TITLE:** North Avenue Pressure Adjusting Station Rehab & Building Replacement  
Construction Management/Construction Contract (Design/Build Contract)

**SUBMITTED BY:** Brian Jack, Utilities Superintendent/Ray Schwab, Civil Engineer II

**BACKGROUND/POLICY IMPLICATIONS:**

Construction management services/construction contract related to the improvements to the North Avenue pressure adjusting station site, including the replacement of the pressure adjusting station and pump station building. Refer to Legistar item 200300 from the October 15, 2020 Board of Trustees meeting.

**FISCAL IMPACT/FUNDING SOURCE:**

Total Contract Amount: \$2,770,685.00  
NWS Project Number: WA 20 09  
Water/Sewer Capital Reserve Fund: \$2,770,685.00  
Account#: 520.790.715.75420 9 (FY 22 Funding)

Review (as necessary):

Village Attorney X \_\_\_\_\_ Date \_\_\_\_\_  
Finance Director X \_\_\_\_\_ Date \_\_\_\_\_  
Village Manager X \_\_\_\_\_ Date \_\_\_\_\_

**NOTE:** All materials must be submitted to and approved by the Village Manager's Office by noon, Wednesday, before the Agenda Distribution.

## MEMORANDUM



To: Scott Niehaus, Village Manager

From: Brian Jack, Utilities Superintendent  
Ray Schwab Civil Engineer II

Through: Carl Goldsmith, Director of Public Works *g*

Date: November 17, 2021

Subject: North Ave Pressure Adjusting Station and Building  
Construction Management Contract

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Attached are the resolution and contract for the Construction Management services related to the North Avenue Pressure Adjusting Station Rehabilitation & Building Replacement project.

### Background

The North Avenue pressure adjusting station, built-in 1992, is an underground structure that controls the supply of water from the DuPage Water Commission into the Village's standpipe and ultimately into the Village's water distribution system. This facility has heavy groundwater infiltration and other operational deficiencies that are desperately in need of repair. The pump station building, which services the water tower, was constructed in 1955. This building has severe structural defects, water infiltration, and many components which no longer function at the optimal level. Recommendations from a 2019 engineering needs and assessment report by Christopher B. Burke Engineering Ltd (CBBEL) of Rosemont, recommended that the pressure adjusting station be rehabilitated and that the pump station building be replaced.

On October 15, 2020, the Board of Trustees approved the terms of a design/build agreement with Burke Design-Build, LLC (a separate company and legal entity closely affiliated with CBBEL). The scope of work included preparation of bid documents (plans & specifications) and the solicitation of pricing from 3 qualified contractors to construct the project. The selection criteria provisions are that the contractors must be qualified to perform the specific elements of work, manage subcontractors effectively, efficiently and with whom CBBEL and the Village have had positive working relationships. Bids were received by Burke Design-Build, LLC in October with Martam Construction of Elgin being the lowest responsible bidder.

Moving on to the build segment of the process, Burke-Design-Build, LLC will serve as construction manager for the project. The scope of services includes construction observation/documentation, material testing, submittal review, providing the general contractor guidance, assisting in the management of subcontractors, and issuing progress payments to the general contractor.

Burke Design-Build, LLC has done numerous design/builds contracts with multiple local municipalities including Oak Brook, Wheaton, Elmhurst, West Chicago, and Glendale Heights. The purpose of this type of contract is to fast-track the design/construction

Subject: North Ave Pressure Adjusting Station and Building  
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process, however, Public Works staff chose the process due to the “heavy lifting” that Burke Design Build, LLC and CBBEL have done related to the analysis and design of the project. If the project were traditionally bid, CBBEL would have been selected to review the necessary submittals for the project, as they are not only familiar with the project but have a sound understanding of the Village standards having recently completed the Central Pressure Adjusting Station Project (located on East St Charles Road). Concerning the construction observation portion of the project, it is most likely CBBEL would have been chosen as the most qualified firm for the same reasons as stated above.

The design/build process also serves as a risk mitigation tool, in that it caps the amount of the construction contract, making the Construction Manager at risk for overruns that are not related to Village instigated modifications/changes or unforeseen site conditions that could not be anticipated based on the soil borings or public utility maps. Another factor for selecting the design-build process is related to the Village’s process of standardization of backup generators (Cummins), SCADA system programmer/integrator (Energenecs), control panel supplier (Flolo Corporation), site security (Imperial Surveillance), and security/burglar alarm system (Johnson Controls). These suppliers and specialty contractors assist in achieving uniformity of the associated systems for the Village’s pump/lift and pressure adjusting stations. They are specified in any contract that incorporates the elements listed above, whether a design-build or traditional design-bid-build process. Therefore, a good working relationship between the required suppliers/subcontractors and the construction manager/general contractor is imperative for assuring the smooth progress and completion of the project. Given these parameters, it made both economic and logistical sense that on this project, the design-build process be employed.

### **Recommendation**

This work will be performed for a not-to-exceed fee of \$2,770,685.00. Through the execution of a contract that has a guaranteed maximum price, the Village can avoid potential cost increases due to issues between the designer and the contractor. Public Works Administration and the Village Attorney have reviewed the terms of the contract and found them to be satisfactory. The project will be funded through the Water and Sewer Capital Reserve Fund.

Please present this resolution and contract to the President and Board of Trustees for their review at their regular meeting of December 2, 2021.

Attachment: Resolution  
Contract

**R E S O L U T I O N**  
**R \_\_\_\_\_ 21**

**A RESOLUTION AUTHORIZING SIGNATURE OF  
PRESIDENT AND CLERK ON AN AGREEMENT**

**WHEREAS**, the Corporate Authorities of the Village of Lombard have received an Agreement between the Village of Lombard, and Burke Design-Build, LLC regarding the North Avenue Pressure Adjusting Station Rehab and Building Replacement project, Construction Management, and Construction services as attached hereto and marked Exhibit "A"; and

**WHEREAS**, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such an agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS as follows:

**SECTION 1:** That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said agreement as attached hereto.

**SECTION 2:** That the Village Clerk be and hereby is authorized to attest said agreement as attached hereto.

Adopted this 2nd day of December 2021.

Ayes; \_\_\_\_\_

Nays: \_\_\_\_\_

Absent: \_\_\_\_\_

Approved this 2nd day of December 2021.

\_\_\_\_\_  
**Keith Giagnorio**  
**Village President**

ATTEST:

\_\_\_\_\_  
**Elizabeth Brezinski**  
**Village Clerk**



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

**OWNER:** Village of Lombard  
1051 S. Hammerschmidt  
Lombard, IL 60148  
P.O.C.: Ray Schwab, Civil Engineer II  
[schwabr@villageoflombard.org](mailto:schwabr@villageoflombard.org)

**CONSTRUCTION MANAGER:** Burke, LLC  
9575 West Higgins Road  
Suite 600  
Rosemont, IL 60018-4920  
P.O.C.: John Caruso, PE  
[jcaruso@cbbel.com](mailto:jcaruso@cbbel.com)

**PROJECT:** **North Ave. Pressure Adjusting Station (PAS)  
On Site Constructed Building Option**

**CONTRACT DATE:** November 1, 2021

**CONSTRUCTION** \$2,450,185.00

**CONSTRUCTION MANAGEMENT** \$ 198,000.00

**GENERAL CONDITIONS** \$ 122,500.00  
(Insurance & Bonds )

**GUARANTEED MAXIMUM PRICE:** \$2,770,685.00

**SUBSTANTIAL COMPLETION DATE:** June 1, 2023

**FINAL COMPLETION:** July 8, 2023

## ARTICLE 1 - RELATIONSHIP OF THE PARTIES

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

## ARTICLE 2 - DEFINITIONS

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

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

- 2.2 Day. A "Day" shall mean one calendar day.
- 2.3 Final Completion. Final Completion of the Work, or a designated portion of the Work, occurs on the date when the Project has achieved all the technical and performance requirements set forth in the Contract Documents, all punch list items have been completed, the Construction Manager has paid to the Owner any delay or performance liquidated damages that may be payable and the Construction Manager has transferred to the Owner all title to all materials and equipment used in construction of the Project and the Owner has accepted said title.
- 2.4 Hazardous Material. A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal, remediation and/or cleanup.
- 2.5 Owner. The Owner for the purposes of this Contract is the Village of Lombard, Illinois, an Illinois municipal corporation.
- 2.6 Subcontractor. A Subcontractor is a person or entity who has an agreement with the Construction Manager to perform any portion of the Work, and includes vendors or material suppliers but does not include the Engineer, any separate contractor employed by the Owner, or any separate contractor's subcontractor.

- 2.7 Substantial Completion. Substantial Completion of the Work, or of a designated portion of the Work, occurs on the date when construction is sufficiently complete in accordance with the Contract Documents so that the Owner accepts and can begin to occupy or utilize the Project, or the designated portion, for the use for which it is intended.
- 2.8 Subsubcontractor. A Subsubcontractor is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's work.
- 2.9 The Work. The Work consists of all of the construction, procurement and administration services to be performed by the Construction Manager and the Subcontractors under this Contract, as well as any other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

### ARTICLE 3 - CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

- 3.6 Cost Control. The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities and progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner in the monthly written reports. In the event that the Construction Manager identifies a variance between actual and estimated costs in excess of Ten Thousand Dollars (\$10,000.00), the Construction Manager shall report the variance to the Owner as soon as possible.
- 3.7 Permits. The Construction Manager shall provide reasonable assistance to the Owner relative to the Owner's obligation to secure the permits necessary for construction of the Project, as set forth in Art. 6.1.3, below.
- 3.8 Safety. The Construction Manager shall take necessary precautions for the safety of its employees on the Project and shall comply with all applicable provisions of federal, state and local safety laws and regulations to prevent accidents or injuries to persons on or adjacent to the Project site. The Construction Manager, directly or through its Subcontractors, shall erect and properly maintain necessary safeguards for the protection of workers and the public. However, the Construction Manager shall not be responsible for the elimination or abatement of safety hazards created or otherwise resulting from any work at the Project site being performed by someone other than the Construction Manager, a Subcontractor or Subsubcontractor. The Engineer shall have no responsibility for safety programs or precautions in connection with the Work and shall not be in charge of or have any control over any construction means, methods, techniques, sequences or procedures.
- 3.9 Cleanup. The Construction Manager shall keep the site of the Work and adjacent roadways and properties free from debris and waste materials resulting from the Work. At the completion of the Work, the Construction Manager or its Subcontractors shall remove from the site of the Work all construction equipment, tools, surplus materials, waste materials and debris.
- 3.10 Hazardous Materials. The Construction Manager shall not be obligated to commence or continue Work, until any known or suspected Hazardous Material discovered at the Project site has been removed or rendered or determined to be harmless by the Owner as certified by an independent testing laboratory and approved by the appropriate government agency. The Construction Manager shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material. The Construction Manager shall not be required to perform any Work relating to or in the area of known or suspected Hazardous Material without written mutual agreement and shall resume Work in the area affected by any Hazardous Material only upon written agreement between the parties after the Hazardous Material has been removed or rendered harmless. If the Construction Manager incurs additional costs and/or is delayed due to the presence of known or suspected Hazardous Material, the Construction Manager shall be entitled to a Change Order equitably adjusting the Guaranteed Maximum Price and/or the date of Substantial Completion.
- 3.11 Intellectual Property. The Construction Manager shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Construction Manager and incorporated in the Work. The Construction Manager shall defend, indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to defend, indemnify and hold the Construction Manager harmless from any suits or claims of



infringement of any patent rights arising out of any patented materials, methods or systems selected, required or specified by the Owner.

3.12 Completion. At the date of Substantial Completion, the Construction Manager shall secure required certificates of inspection, testing or approval and deliver them to the Owner; collect all written warranties and equipment manuals and deliver them to the Owner; with the assistance of the Owner's maintenance personnel, direct the checkout of utilities and operations of systems and equipment for readiness, and assist in their initial start-up and testing; provide the Owner with a set of record drawings, including redlined pdf record drawings, which the Construction Manager shall have maintained throughout the Project; and prepare and forward to the Owner a punch list of items of Work yet to be completed. Substantial Completion of the Work cannot occur until the Construction Manager complies with the requirements of this paragraph.

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

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

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

3.14 Overtime Work. Except in connection with the safety or protection of persons, or the work, or property at the site or adjacent thereto, and subject to Art. 7.5.2 hereof, all work at the site shall be performed during regular working hours; and the Construction Manager will not permit overtime work or the performance of work on Saturday, Sunday or any Owner observed legal holiday without the Owner's written consent, which shall not be unreasonably withheld, given after prior written notice. Regular working hours shall be a consecutive eight-hour period between the hours of seven o'clock (7:00) A.M. and five o'clock (5:00) P.M., Monday through

Friday. No loading, unloading, opening, closing or other handling of crates, containers, building materials or the performance of construction work shall be performed before the hour of seven o'clock (7:00) A.M. and after the hour of nine o'clock (9:00) P.M. without the Owner's written consent, which shall not be unreasonably withheld, given after prior written notice.

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

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

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

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

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

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

obligations under the Illinois Human Rights Act and the Owner's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Construction Manager in its efforts to comply with such Act and Rules and Regulations, the Construction Manager will promptly notify the Illinois Department of Human Rights and the Owner and will recruit employees from other sources when necessary to fulfill its obligations thereunder.

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

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

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

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

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

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

The submission by the Construction Manager and each subcontractor of payrolls, or copies thereof, is required by 820 ILCS 130/5. In addition, the Construction Manager and each

subcontractor shall preserve their weekly payroll records for a period of five years from the date of completion of this Contract.

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

3.22 Certifications.

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

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

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

.1 Publishing a statement:

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

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

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

.1 abide by the terms of the statement; and

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

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

.1 the dangers of drug abuse in the workplace;

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

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

.7 Gift Ban.

- .1 At the time the Construction Manager was awarded this Contract, the Construction Manager shall certify that no officer or employee of the Owner has solicited any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to the government employment or the official position of the employee or officer from the Construction Manager in violation of Section 15.02 of Chapter 15 of the Elmhurst Municipal Code; and
- .2 At the time the Construction Manager was awarded this Contract, the Construction Manager shall certify that it has not given to any officer or employee of the Owner any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to the government employment or the official position of the employee or officer in violation of Section 31.68 of Chapter 31 of the Lombard Municipal Code.

.8 Substance Abuse Prevention. At the time the Construction Manager was awarded this Contract, the Construction Manager shall certify that in compliance with the Substance Abuse Prevention on Public Works Projects Act (Public Act 95-0635), the Construction Manager is a party to a collective bargaining agreement dealing with the subject matter of the Substance Abuse Prevention on Public Works Projects Act or has in place and is enforcing a written program which meets or exceeds the program requirements of the Substance Abuse Prevention on Public Works Projects Act.

.9 Presidential Executive Order 13224. At the time the Construction Manager was awarded this Contract, the Construction Manager shall certify that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person and that the Construction Manager and its principals, shareholders, members, partners, or affiliates, as applicable, are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person.

.10 Freedom of Information Act. At the time the Construction Manager was awarded this Contract, the Construction Manager acknowledges that, pursuant to the provisions of the Illinois Freedom of Information Act, (5 ILCS 140/1 *et seq.*), documents or records prepared or used in relation to work performed under this agreement are considered a public record of the Owner; and therefore, within thirty (30) days of completion of the work required of the Construction Manager under this agreement, the Construction Manager shall produce to the Owner, in electronic format, all records that directly relate to the governmental function performed by the Construction Manager under this agreement at no additional cost to the Owner; and furthermore, the Construction Manager shall review its records and promptly produce to the Owner any additional records in the Construction Manager's possession which the Owner requires in order to properly respond to a request made pursuant to the Illinois Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.*), and the Construction Manager shall produce to the Owner such records within three (3) business days, as defined by FOIA, of a request for such records from the Owner at no additional cost to the Owner.

## ARTICLE 4 - SUBCONTRACTS

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

## ARTICLE 5 - CONSTRUCTION MANAGER'S WARRANTIES

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

therefrom or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents.

- 5.2 Other Warranties. **ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED.**

## **ARTICLE 6 - OWNER'S RESPONSIBILITIES**

- 6.1 Information and Services. The Owner shall provide:
- .1 All necessary information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations;
  - .2 Inspection and testing services during construction as required by the law or as mutually agreed;
  - .3 Any necessary approvals, rezoning, easements and assessments, permits, fees and charges required for the construction, use, occupancy or renovation of permanent structures, including any legal and other required services; and
  - .4 any other information or services stated in the Contract Documents as being provided by the Owner.
- 6.2 Reliance. The Construction Manager shall be entitled to rely on the completeness and accuracy of the information and services required by paragraph 6.1 above, and the Owner agrees to provide such information and services in a timely manner so as not to delay the Work.
- 6.3 Notice of Defect. If the Owner becomes aware of any error, omission or other inadequacy in the Contract Documents or of the Construction Manager's failure to meet any of the requirements of the Contract Documents, or of any other fault or defect in the Work, the Owner shall give prompt written notice to the Construction Manager; however, the Owner's failure to provide notice shall not relieve the Construction Manager of its obligations under this Contract.
- 6.4 Communications. The Owner shall communicate with the Subcontractors and Subsubcontractors only through the Construction Manager. The Owner shall have no contractual obligations to any Subcontractors or Subsubcontractors.
- 6.5 Owner's Representative. The Owner's Representative for this Project is the Public Works Director, who shall be fully acquainted with the Project; shall be the conduit by which the Owner furnishes the information and services required of the Owner; and shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization or written notice, provided, however, that the Owner's Representative shall not have authority to increase the Contract Price by more than \$10,000.00 nor to extend the Substantial Completion Date by more than thirty (30) days. Authority to increase the



Contract Price by more than \$10,000.00 or to extend the Substantial Completion Date by more than thirty (30) days may only be exercised by written Change Order signed by the Public Works Director and authorized by a due and proper vote of the Lombard Village Board of Trustees. If the Owner changes its representative, the Owner shall notify the Construction Manager in advance in writing.

## ARTICLE 7 - CONTRACT TIME

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

number of calendar days, as determined by the Parties' monthly determinations as to number of days lost due to greater than normal inclement weather.

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

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

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

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

## ARTICLE 8 - PAYMENT

8.1 Guaranteed Maximum Price. The sum of the Cost of Work and the Construction Manager's Fee including professional services is guaranteed by the Construction Manager not to exceed the price listed on page 1, subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. The Construction Manager's Fee including professional fees, general conditions, insurance, overhead and profit is identified on **Exhibit A - Summary Schedule of Values.**

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

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

- .1 With each Application for Payment the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence reasonably required by the Owner to demonstrate that cash disbursements or obligations already made or incurred by the Construction Manager on account of the Work equal or exceed (1) progress payments already received by the Construction Manager less (2) that portion of those payments attributable to the Construction Manager's Fee plus (3) payrolls and other costs for the period covered by the present Application for Payment.
- .2 Each Application for Payment shall be based upon the most recent Schedule of Values submitted by the Construction Manager in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may reasonably require and shall be used as a basis for reviewing the Construction Manager's Applications for Payment.
- .3 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

- 4 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.
  - .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.
  - .3 Add the Construction Manager's Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in paragraph 8.2 or, if the Construction Manager's Fee is stated as a fixed sum in that paragraph, shall be an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion.
  - .4 Subtract the aggregate of previous payments made by the Owner.
  - .5 Payments to Subcontractors shall be subject to a retention payment of ten percent up to the first 50 percent of the completed work. After 50 percent or more of the work is completed, the Owner may certify the remaining partial payments without any further retention, provided that satisfactory progress is being made, and provided that the amount retained is not less than five percent of the total adjusted contract price. When the principal items of the work have been satisfactorily completed, a semi-final estimate may be made. In no event shall the amount retained after making the semi-final payment be less than one percent of the adjusted contract price.
  - .6 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

8.4 Progress Payment Documentation. The Construction Manager shall supply and each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner:

- (A) a duly executed and acknowledged sworn statement showing all Subcontractors with whom the Construction Manager has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor in the requested progress payment and the amount to be paid to the Construction

Manager from such progress payment, together with similar sworn statements from all Subcontractors and, where appropriate, from sub-Subcontractors;

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

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

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

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

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

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

.2 Subtract the aggregate of previous payments made by the Owner. If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

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

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

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

- .3 Costs of materials and equipment incorporated in the completed construction.
  - .1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
  - .2 Costs of materials described above in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager, with the amounts realized, if any, from such sales credited to the Owner as a deduction from the Cost of the Work.
- .4 Costs of other materials and equipment, temporary facilities and related items.
  - .1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work, and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager.
  - .2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof.
  - .3 Costs of removal of debris from the site.
  - .4 Reproduction costs, postage and express delivery charges.
  - .5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work, which shall be calculated from the Construction Manager's business office and the location of the Work.
- .5 Miscellaneous costs.
  - .1 That portion directly attributable to this Contract of premiums for insurance and bonds.
  - .2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.
  - .3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager has paid or is required by the Contract Documents to pay.

- .4 Fees of testing laboratories for tests required by the Contract Documents or advisable in the Construction Manager's discretion.
  - .5 Expenses and time incurred investigating potential changes in the Work.
  - .6 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent.
  - .7 Data processing costs related to the Work.
  - .8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.
  - .9 Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work.
- .6 Other costs. Other costs incurred in the performance of the Work.
- .7 Professional Service Fees. Fees shall be Lump Sum as identified in Schedule of Values and shall be attached as "Cost of Work".
- 8.9 Non-Reimbursable Costs. The Cost of the Work shall not include any of the following.
- .1 The Cost of the Work shall not include:
    - .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in paragraph 8.7.1, unless such personnel are directly engaged in the performance of the Work.
    - .2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Paragraph 8.7.
    - .3 Overhead and general expenses, except as may be expressly included in Paragraph 8.7.
    - .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
    - .5 The Construction Manager's Fee.



- .6 The payment of Retailers' Occupation Tax, the Service Occupation Tax (both state and local), the Use Tax and the Service Use Tax in Illinois from which the Owner as a unit of local government is exempt.
  - .7 Costs which would cause the Guaranteed Maximum Price to be exceeded, except as otherwise provided for in this Contract.
  - .2 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured. Amounts which accrue to the Owner shall be credited to the Owner as a deduction from the Cost of the Work.
- 8.10 Accounting Records. The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract. The accounting and control systems shall be reasonably satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access, upon advance written notice, to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of ten years after final payment, or for such longer period as may be required by law.
- 8.11 Payment Approval. The Owner may disapprove a payment, in whole or in part, or because of subsequent observations, nullify any progress payment previously made, to such extent as may be necessary, in its opinion, to protect its interests due to:
- .1 Defective work not remedied;
  - .2 Third party claims or reasonable evidence indicating the probable filing of such claims;
  - .3 Failure to make payments to subcontractors for labor, materials or equipment;
  - .4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price;
  - .5 Failure to prosecute the Work with sufficient workers, materials, and/or equipment;
  - .6 Failure to perform the Work in accordance with the Contract Documents.

## ARTICLE 9 - CHANGES

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

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

- .1 Unit prices as set forth in this Contract;
- .2 A mutually accepted, itemized lump sum;
- .3 Time and materials.

Construction Manager's fee, as set forth in Art. 8.2 hereof, shall be proportionately increased in all Change Orders that decreases the Guaranteed Maximum Price. If the parties cannot agree on the price term of a Change Order, then the Change Order will be calculated on the basis of actual time and materials costs incurred. If at the Owner's request the Construction Manager incurs substantial costs or time investigating a proposed change which is never ultimately made, the Guaranteed Maximum Cost and Substantial Completion Date shall be equitably adjusted.

9.3 Unknown Conditions. If in the performance of the Work, the Construction Manager finds latent, concealed or subsurface physical conditions which differ from the conditions the Construction Manager reasonably anticipated, or if physical conditions are materially different from those normally encountered and generally recognized as inherent in the kind of work provided for in this Contract, then the Guaranteed Maximum Price and/or the Substantial Completion Date shall be equitably adjusted by Change Order within a reasonable time after the conditions are first observed.

9.4 Claims. For any claim for an extension in the date of Substantial Completion and/or Final Completion, the Construction Manager shall give the Owner written notice of the claim within twenty-one (21) days after the Construction Manager first recognizes the condition giving rise to the claim. Except where impractical due to an emergency affecting the safety of persons and/or property related to the Work, notice shall be given before proceeding with the Work. In any emergency affecting the safety of persons and/or property, the Construction Manager shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in Date of Substantial Completion and/or Final Completion resulting from such claim shall be effectuated by Change Order.

**ARTICLE 10 - INSURANCE AND BONDING**

10.1 The Construction Manager's Insurance. The Construction Manager shall obtain and maintain insurance coverage for the following claims which may arise out of the performance of this Contract, whether resulting from the Construction Manager's operations or by the operations of any Subcontractor, anyone in the employ of any of them, or by an individual or entity for whose acts they may be liable:

- .1 workers' compensation, disability benefit and other employee benefit claims under acts applicable to the Work;
- .2 under applicable employer's liability law, bodily injury, occupational sickness, disease or death claims of the Construction Manager's employees;
- .3 bodily injury, sickness, disease or death claims for damages to persons not employed by the Construction Manager;
- .4 usual personal injury liability claims for damages directly or indirectly related to the person's employment by the Construction Manager or for damages to any other person;
- .5 damage to or destruction of tangible property, including resulting loss of use, claims for property other than the work itself and other property insured by the Owner;
- .6 bodily injury, death or property damage claims resulting from motor vehicle liability in the use, maintenance or ownership of any motor vehicle;
- .7 contractual liability claims involving the Construction Manager's indemnity obligations; and
- .8 loss due to errors or omission with respect to provision of professional services under this Agreement, including engineering services.

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

**Commercial General Liability Insurance**

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

**Comprehensive Automobile Liability Insurance**

Combined Single Limit, each accident	\$1,000,000
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or

Bodily Injury (per person)	\$1,000,000
Bodily Injury (per accident)	\$1,000,000
Property Damage (per accident)	\$1,000,000

**Worker's Compensation & Employer's Liability**

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

**Commercial Umbrella/Excess Liability**

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

**Professional Liability**

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

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

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

10.4 Primary Insurance. The Construction Manager's insurance shall be primary insurance as respects the Owner and Engineer. Any insurance or self-insurance maintained by the Owner and Engineer shall be excess of Construction Manager's insurance and shall not contribute with it. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Owner and Engineer.

10.5 Acceptability of Insurers. The insurance carrier(s) used by the Construction Manger shall have a minimum insurance rating of A:VII according to the AM Best Insurance Rating Schedule.

10.6 The Owner's Insurance. The Owner shall obtain and maintain property insurance in a form reasonably acceptable to the Construction Manager upon the entire Project for the full cost of replacement at the time of any loss. This insurance shall include as named insureds the Owner and Construction Manager, Engineer, Subcontractors and Subsubcontractors. This insurance shall insure against loss from the perils of fire and

extended coverage, and shall include "all risk" insurance for physical loss or damage including without duplication of coverage, at least: theft, vandalism, malicious mischief, transit, collapse, falsework, temporary buildings, debris removal, flood, earthquake, testing, and damage resulting from defective design, workmanship or material. The Owner shall increase limits of coverage, if necessary, to reflect estimated replacement cost. The Owner shall be responsible for any co-insurance penalties or deductibles. If the Owner occupies or uses a portion of the Project prior to its Substantial Completion, such occupancy or use shall not commence prior to a time mutually agreed to by the Owner and the Construction Manager and to which the insurance company or companies providing the property insurance have consented by endorsing the policy or policies. This insurance shall not be canceled or lapsed on account of partial occupancy. Consent of the Construction Manager to such early occupancy or use shall not be unreasonably withheld. Upon the Construction Manager's request, the Owner shall provide the Construction Manager with a copy of all policies before an exposure to loss may occur. Copies of any subsequent endorsements shall be furnished to the Construction Manager. The Construction Manager shall be given thirty (30) days' notice of cancellation, non-renewal, or any endorsements restricting or reducing coverage. The Owner shall give written notice to the Construction Manager before commencement of the Work if the Owner will not be obtaining property insurance. In that case, the Construction Manager may obtain insurance in order to protect its interest in the Work as well as the interest of the Engineer, Subcontractors and Subsubcontractors in the Work. The Guaranteed Maximum Price shall be increased by the cost of this insurance through Change Order. If the Construction Manager is damaged by failure of the Owner to purchase or maintain property insurance or to so notify the Construction Manager, the Owner shall bear all reasonable costs incurred by the Construction Manager arising from the damage.

- 10.7 Property Insurance Loss Adjustment. Any insured loss shall be adjusted with the Owner and the Construction Manager and made payable to the Owner and Construction Manager as trustees for the insureds, as their interests may appear, subject to any applicable mortgagee clause. Upon the occurrence of an insured loss, monies received will be deposited in a separate account; and the trustees shall make distribution in accordance with the agreement of the parties in interest, or in the absence of such agreement, in accordance with the dispute resolution provisions of this Contract. If the trustees are unable to agree between themselves on the settlement of the loss, such dispute shall also be submitted for resolution pursuant to the dispute resolution provisions of this Contract.
- 10.8 Waiver of Subrogation. The Owner and Construction Manager waive all rights against each other, the Engineer, and any of their respective employees, agents, consultants, Subcontractors and Subsubcontractors, for damages caused by risks covered by insurance provided in Paragraph 10.2 to the extent they are covered by that insurance, except such rights as they may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all Subcontractors, and shall require each of them to include similar waivers in their subsubcontracts and consulting agreements. The Owner waives subrogation against the Construction Manager, Engineer, Subcontractors and Subsubcontractors on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion. If the policies of insurance referred to in this Paragraph

require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

- 10.9 Bonds. The Construction Manager shall furnish bonds covering faithful performance of the Contract, exclusive of the aggregate of the Construction Manager's Fee and the Engineer's Fee, and payment of the obligations arising thereunder. Bonds may be obtained through the Construction Manager's, or subcontractor's usual source and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to 100% of the Guaranteed Maximum Price, less the aggregate of the Construction Manager's Fee and the Engineer's Fee. The Construction Manager shall deliver the required bonds to the Owner at least three days before commencement of any Work at the Project site.

## ARTICLE 11 - TERMINATION

- 11.1 By the Construction Manager. Upon seven (7) days' written notice to the Owner, the Construction Manager may terminate this Contract for any of the following reasons:

- .1 if the Work has been stopped for a sixty (60) day period;
  - a. under court order or order of other governmental authorities having jurisdiction;
  - b. because of the Owner's failure to pay the Construction Manager in accordance with this Agreement;
- .2 if the Work is suspended by the Owner for sixty (60) days;
- .3 if the Owner otherwise materially breaches this Contract.

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

- 11.2 By the Owner.

- .1 This Agreement may be terminated by the Owner upon seven (7) days' written notice to the Construction Manager, at its last known post office address, provided that, should this Agreement be terminated by the Owner, the Construction Manager shall be paid for any services completed and any services partially completed. All field notes, test records, drawings, and reports completed or partially completed at the time of termination shall become the property of, and made available to, the Owner. Within five (5) days after notification and request, the Construction Manager shall deliver to the Village Engineer all property, books and effects of every description in its possession belonging to the Owner.
2. This Agreement may additionally be terminated by the Owner upon seven (7) days' written notice to the Construction Manager upon the occurrence of any one

or more of the following events, without cause and without prejudice to any other right or remedy:

- a. If the Construction Manager violates or breaches the terms of this Agreement.
- b. If the Construction Manager commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereinafter in effect, or if the Construction Manager takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to bankruptcy or insolvency;
- c. If a petition is filed against the Construction Manager under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against the Construction Manager under any other federal or state law in effect at the time relating to bankruptcy or insolvency;
- d. If the Construction Manager makes a general assignment for the benefit of creditors;
- e. If a trustee, receiver, custodian or agent of the Construction Manager is appointed under applicable law or under contract, whose appointment or authority to take charge of property of the Construction Manager is for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of the Construction Manager's creditors;
- f. If the Construction Manager admits in writing an inability to pay its debts generally as they become due.

.3 Delivery of Documents. Upon termination, the Construction Manager shall deliver to the Owner copies of partially completed drawings, specifications, partial and completed estimates, and data, if any, from investigations and observations, with the understanding that all such material becomes the property of the Owner. In such case, the Construction Manager shall be paid for all services and any expense sustained, less all costs incurred by the Owner to have the services performed which were to have been performed by the Construction Manager.

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

## ARTICLE 12 - DISPUTE RESOLUTION

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

## ARTICLE 13 - LIQUIDATION AND LIMITATION OF LIABILITY

- 13.1 Late Completion. In the event that the Work is not Finally Complete by the date set forth in this Contract, then the Owner shall withhold from the Final Payment due the Construction Manager as liquidated damages a sum equal to Two Hundred Dollars (\$200.00) for each day that the Work is late in reaching Substantial Completion. In the event that the sum of liquidated damages exceeds the Final Payment, then the Owner shall withhold the entire Final Payment and the Construction Manager shall promptly pay the balance of liquidated damages to the Owner.
- 13.2 Limitation of Liability. The Owner acknowledges that the Construction Manager is a limited liability company and agrees that any claim made by the Owner arising out of or pertaining to this Contract shall be made against only the Construction Manager and not against any member, manager, director, officer, employee or agent of the Construction Manager or any other company affiliated with the Construction Manager.

## ARTICLE 14 - MISCELLANEOUS

- 14.1 Project Sign. The Owner agrees that the Construction Manager and Engineer will be properly identified and will be given appropriate credit on all signs, press releases and other forms of publicity for the Project. Owner will permit the Construction Manager and Engineer to photograph and make other reasonable use of the Project for promotional purposes.
- 14.2 Notices. Notices to the parties shall be given at the addresses shown on the cover page of this Contract by mail, electronic mail or any other reasonable means.
- 14.3 Integration. This Contract is solely for the benefit of the parties, and no one is intended to be a third party beneficiary hereto. This Contract represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral.
- 14.4 Governing Law. This Contract shall be construed in accordance with and governed by the laws of the State of Illinois, without application of its conflicts-of-laws provisions.
- 14.5 Severability. The partial or complete invalidity of any one or more provisions of this Contract shall not affect the validity or continuing force and effect of any other provision.
- 14.6 Assignment. Neither party to this Contract shall assign the Contract as a whole without written consent of the other, except that the Owner may collaterally assign this Contract to a lender if required to secure financing for this Project.



14.7 Existing Contract Documents. A list of the Plans, Project Manual, Specifications and Addenda in existence at the time of execution of this Contract is attached as an exhibit to this Contract.

Owner:

**Village of Lombard**  
1051 S. Hammerschmidt  
Lombard, IL 60148

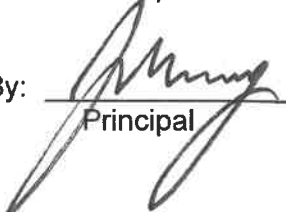
Contractor:

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

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

Attest: \_\_\_\_\_ Date: \_\_\_\_\_

By:  \_\_\_\_\_ Date: 11/11/2021  
Principal

By:  \_\_\_\_\_ Date: 11/11/2021  
Principal