

**AGENDA  
CITY OF ST. CHARLES, IL  
GOVERNMENT SERVICES COMMITTEE MEETING  
RITA PAYLEITNER, CHAIRMAN**

**MONDAY, NOVEMBER 27, 2017, 7:00 P.M  
CITY COUNCIL CHAMBERS  
2 E. MAIN STREET, ST. CHARLES, IL 60174**

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. ADMINISTRATIVE**
  - a. Electric Reliability Report – Information only.
  - b. Active River Project Update – Information only.
  - c. Tree Commission Minutes – Information only.
- 4. POLICE DEPARTMENT**
  - a. 2021 Scarecrow Fest Parade – for Discussion Only.
- 5. PUBLIC WORKS DEPARTMENT**
  - a. Recommendation to award Contract to Riley Construction for Professional Construction Management Services related to the Police Facility.
  - b. Recommendation to award the Bid for Snow and Ice Removal Services for the 2017/2018 Winter Season.
  - c. Recommendation to authorize a Purchase Order for Anti-Icing Chemicals for the 2017/2018 Winter Season.
  - d. Recommendation to approve Purchase Order with Von’s Electric for Substation Emergency Generators.
  - e. Recommendation to approve Purchase Order with Border States for Substation Reclosers.
  - f. Recommendation to approve Pole Attachment Agreement with MCImetro Access Transmissions Service Corp. (Verizon).

- g.** Recommendation to Terminate Pole Attachment Agreement with Wide Open West LLC (WOW).
- h.** Recommendation to approve Master Services Agreement between the City of St. Charles and EX2 Technology LLC.
- i.** Recommendation to approve Amendment to the Pole Attachment Agreement between the City of St. Charles and ComEd.
- j.** Recommendation to approve Acceptance of Electric Easement at 875 Country Club Road.
- k.** Recommendation to award the Bid for Wild Rose Valley Siphon Rehabilitation.
- l.** Recommendation to approve Budget Addition to the 7<sup>th</sup> Avenue Creek Project.
- m.** Recommendation to approve Real Estate Purchase Agreement for Lots 5 & 6 in Block 2 G.W. Minards' Resubdivision located at the southeast corner of East Main Street and South 9<sup>th</sup> Avenue.
- n.** Recommendation to award the Bid for Roof Replacement on George's Sports Building to Schramm Construction.

**6. FIRE DEPARTMENT**

- a.** Recommendation to approve an Ordinance Extending the Residential Sprinkler Moratorium until December 31, 2019.

**7. EXECUTIVE SESSION**

- Personnel – 5 ILCS 120/2(c)(1)
- Pending Litigation – 5 ILCS 120/2(c)(11)
- Probable or Imminent Litigation – 5 ILCS 120/2(c)(11)
- Property Acquisition – 5 ILCS 120/2(c)(5)
- Collective Bargaining – 5 ILCS 120/2(c)(2)
- Review of Executive Session Minutes – 5 ILCS 120/2(c)(21)

**8. ADDITIONAL ITEMS FROM MAYOR, COUNCIL, STAFF OR CITIZENS**

**9. ADJOURNMENT**

*ADA Compliance*

Any individual with a disability requesting a reasonable accommodation in order to participate in a public meeting should contact the ADA Coordinator, Jennifer McMahon, at least 48 hours in advance of the scheduled meeting. The ADA Coordinator can be reached in person at 2 East Main Street, St. Charles, IL, via telephone at 630 377 4446 or 800 526 0844 (TDD), or via e-mail at [jmcmahon@stcharlesil.gov](mailto:jmcmahon@stcharlesil.gov). Every effort will be made to allow for meeting participation. Notices of this meeting were posted consistent with the requirements of 5 ILCS 120/1 et seq. (Open Meetings Act).



**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 3.a

Title: Electric Reliability Report – Information Only

Presenter: Tom Bruhl

Meeting: Government Services Committee

Date: November 27, 2017

Proposed Cost: \$

Budgeted Amount: \$

Not Budgeted:

**Executive Summary** *(if not budgeted please explain):*

For Information Only.

**Attachments** *(please list):*

\* October 2017 Outage Report

\* October 2017 Streetlight Repair Report

**Recommendation/Suggested Action** *(briefly explain):*

For information only.



## Streetlight Repair Report

Expectation: Streetlights will be repaired within 10 days of notification

<b>Month Light Was Repaired</b>	<b>Number of Lights Repaired</b>	<b>Average Days to Repair</b>
April	48	30.3
May	45	10.5
June	22	4.0
July	166	6.1
August	63	4.4
September	41	4.3
October	54	3.7

### October repair exceptions:

There were no lights that took longer than 10 days to fix due in October.



**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 3.b

Title: Active River Project Update – Information Only  
Presenter: Chris Adesso

Meeting: Government Services Committee Date: November 27, 2017

Proposed Cost: \$ N/A Budgeted Amount: \$ N/A Not Budgeted:

**Executive Summary** *(if not budgeted please explain):*

The Active River Task Force wishes to provide the Council Committee updates on the status of topics pertaining to the Active River Project/Concept. The Task Force offers the attached information to the Committee. A member of the Task Force will be available at each of the Government Services Committee meetings to respond to any questions or comments that the Council Committee may have.

**Attachments** *(please list):*

\* October 16, 2017 – Task Force Meeting Minutes

**Recommendation/Suggested Action** *(briefly explain):*

None – For information only.

**MINUTES  
ACTIVE RIVER TASK FORCE MEETING  
ST. CHARLES  
JOHN RABCHUK, CHAIRMAN  
OCTOBER 16, 2017**

**Members Present:** Chair. John Rabchuk, Chris Adesso, Trish Beckjord, Rick Brems,  
Holly Cabel, Jim Enck

**Members Absent:** Chris Bong, Monica Meyers, John Wessel

**Others Present:** Phil Held, Ed Werneke, Tony Zehnder, Isabel Soderlind

**1. Call Meeting to Order**

The meeting was convened by John Rabchuk at 8:04 a.m.

**2. Minutes Review and Approval**

Motion was made to accept and place on file the minutes of the September 18, 2017 Active River Task Force meeting minutes.

Motion by Trish Beckjord second by Holly Cabel, to accept and place the minutes on file.

Voice vote: Ayes: unanimous; Nays – None Absent: Chris Bong, Monica Meyers, John Wessel

Motion carried at 8:05 a.m.

**3. Delegation to Greenville, South Carolina – St. Charles Delegation Update & Discussion**

**A. Notes from Attendees**

Two members of this Task Force, John Rabchuk and Holly Cabel, attended the delegation to Greenville, South Carolina the beginning of October. The delegation also included various City officials, St. Charles Park District Board members and several civic/business leaders. John and Holly shared their impressions and impact of the visit with the Active River Task Force members. (See detailed comments attached.) Comments during the meeting included the following:

**General/Initial Impressions:**

- Greenville's population is approximately 55,000 in size, with 500,000 living within the county.
- It was a very good trip that John Rabchuk felt couldn't have gone better. The meeting included the Greenville council, staff and members of the community.
- There are a great number of sculptures and water features included throughout the downtown area.
- It is more than the creek/river; the area was beautiful!



- The suspension bridge built is unique and offers unobstructed view of the river.
- The parks are maintained by the Parks and Recreation department under the direction of the city.
- The area was pristine; all maintained by ground crews. The crews clean the area and public restrooms twice a day. The employees are the epitome of customer service; they would stop pedestrians and asked if they needed help or assistance. They were very helpful and courteous.
- The community is very happy and satisfied with how the project turned out.
- Greenville's governmental body is structured differently than St. Charles.
- Those business related members of the delegation were ecstatic with the visit i.e., WBK, Hitchcock.
- The delegation members from the St. Charles Park District were very enthused with the visit but they also had some questions.

#### **Purpose of the Project:**

- The project was driven by Mayor Knox. He took the initiative to move the project forward. He had the vision and was emotionally invested in this project. He personally endorsed the project to the community and businesses in Greenville.
- The project was not only about beautifying the area, but also building the culture in the downtown area i.e., extremely friendly, very clean, the epicenter of events, activities, dining, etc.
- Mayor Knox's intention for the project was to increase the walkability in town; to get people walking around town, interacting, enjoying the beautiful features of the downtown. He wanted to bring more people back to the area for work and leisure activities.
- Mayor Knox followed the "8-80 Rule". He wanted the project designed for people from 8 to 80 years of age, which would include everyone in between those ages.

#### **Construction of the Project Included:**

- The project included the removal of a five lane highway and land bridge going through the downtown area.
- There was some work done to the river. The river did not have a dam, but it was diverted to increase the water flow in certain areas.
- Currently, Greenville is considering incorporating some whitewater, by acquiring more land upstream. They are calling it the North River Project.

#### **Finance:**

- Approximately, 80% to 90% of the project is bonded, approximately \$11,000,000. Other existing city funds assisted in covering the remainder of the costs.
- The mayor guaranteed property taxes were not going to be utilized for the construction project.

- Greenville had created other funding sources: “hospitality/accommodation” tax. This generated funding for the project. There was very little push back from hotels, restaurants and bars since the project would eventually generate traffic flow and revenue.
- Greenville also received state funds for the project.
- The City of Greenville needed a firm proposal for the project; therefore the city paid for the design of the project. They then went to the bank to cover the construction costs.
- Philanthropic monies were used to cover the cost of sculptures, benches, landscaping, etc.; they were not utilized for the construction portion of the project.
- The project has surpassed the projection of generated revenue and it increases by 7% each year.
- Taxes are generating \$16 to \$17 million a year and grown at over 7% annually. This pays for the zoo, bonding notes, and parks.
- With a local airport 20 to 30 minutes away, the project has been attracting tourism from a vast area.
- The delegation received various ideas on funding sources.

**Downside:**

- Property values are going up and local workers can’t afford to live in town.
- The city is landlocked and can only be built “up” now.
- The City’s operations budget would be impacted to maintain the area at the level it is maintained in Greenville. Falls Park is comprised of 27 acres with 13 full time employees dedicated to Falls Park and Main Street.

**Where are we today?**

- There has been no feedback regarding the visit to Greenville from the City staff and that has been disappointing for the members of this Task Force. John Rabchuk has reached out to Ed Bessner, Rita Tungare and Mark Koenen, but he has not received any feedback. John felt the visit could not have gone any better. The City needs to drive this project.
- The City’s buy-in on this project is necessary to make it successful.
- Holly Cabel mentioned she has a follow up meeting set up with Mark Koenen to discuss the visit.
- John Rabchuk has distributed his notes with Rita Payleitner who has been a supporter of the project. (See attached notes from John Rabchuk.)

**Strategies Considered Moving Forward:**

- Consider including Geneva and Batavia in the project discussions.
- Consider holding a conference call with another river project city, e.g., Columbus to see how they conducted and funded their river project. This might offer some other perspectives and options.
- The project may need to be “promoted” to the aldermen. Should this Task

Force get influential business members from the community to rally around the project and request a meeting with Mayor Rogina and Mark Koenen and/or submit a letter to support the project?

- Include influential organizations e.g., Chamber of Commerce, Downtown Partners, Garden Club, Kiwanis, St. Charles Visitor's Bureau, etc. to support the project. It appears that all the presentations given to date have gone well and the groups are excited about the project.

#### **4. Marketing, Publicity and Community Outreach**

##### **A. Update and Presentation of New River Corridor and Active River Websites**

Most of today's meeting focused on the delegation trip to Greenville, South Carolina. Due to time constraints, the Task Force was unable to preview the new website. A preview will be conducted at the River Corridor meeting, Wednesday, October 18, 2017. John Rabchuk will send out the link to the new site later today for everyone to preview.

##### **B. Scheduled Presentations**

There are a few Active River Project update meetings scheduled for several community organizations in the next couple of weeks. Presentation schedule is as follows:

- St. Charles Kiwanis Club on Tuesday, October 30, 2017;
- St. Charles Rotary Club on Thursday, November 2, 2017
- St. Charles Chamber of Commerce Executive Board Update - TBD

#### **5. Member Organization Updates**

Due to time constraints, St. Charles Park District and City of St. Charles project updates will be discussed at the next meeting.

#### **6. Update on Potential Corporate/Philanthropic Funding Sources**

No updates at this time.

#### **7. Administration**

The taking of these meeting minutes was originally shared between one City and one Park District administrative assistant. For the last five months the Active River Project has been exclusively utilizing the City administrative staff impacting her workload, especially when this Task Force meets twice a month. Chris Adesso proposed this group take their own meeting minutes and have the City administrative assistant distribute them.

John Rabchuk proposed meeting once a month until the City of St. Charles makes a decision to move forward on the Active River Project. For now, the City administrative assistant will continue to take meeting minutes once a month until the City makes a decision on this project.

**8. Adjourn**

The next meeting is scheduled for November 13, 2017, at 8:00 a.m. at the Baker Community Center. Motion to adjourn by Rick Brems, 2nd by Tony Zehnder.

Voice vote: Ayes: unanimous; Nays – None Absent: C. Bong, M. Meyers, J. Wessel

Meeting was adjourned at 9:12 a.m.

October 6, 2017

John Rabchuk notes from Active River delegation visit to Greenville SC on October 4-5, 2017

- 1) Attendees:
  - a) Official
    - i) City of STC
      - (1) Mark Koenen
      - (2) Rita Tungare
      - (3) Ed Bessner
      - (4) Lora Vitek
      - (5) Ron Silkaitis
    - ii) St. Charles Park District
      - (1) Holly Cabel
      - (2) Bob Carne
      - (3) Cathy Camm
    - iii) River Corridor Foundation/Active River Task Force
      - (1) John Rabchuk
  - b) Unofficial
    - i) Jon Wills, WBK Engineering
    - ii) Greg Chismark, WBK Engineering
    - iii) Rick Hitchcock, Hitchcock Design
    - iv) Craig Larsen, AHC Advisors/STC Chamber of Commerce
- 2) City of Greenville Finances
  - a) Annual budget \$184M
    - i) Property taxes represent \$37M annually
      - (1) No property taxes utilized for construction of Falls Park or downtown redevelopment
      - (2) Convinced Greenville residents that no locally sourced tax dollars (except when residents eat at local establishments) would be utilized for the project
    - ii) License permits represent \$36M annually
    - iii) TIF revenue exceeded debt obligations by \$7.5M in 2016
      - (1) Will not be utilizing TIF financing in the future due to impact on schools (which is a county wide school district)
    - iv) Tourism Taxes
      - (1) Generating over \$16M annually and growing at over 7% annually. They serve as a dedicated revenue source for downtown development project bonding including Falls Park and Swamp Rabbit Trail
        - (a) Designated for construction bonds with excess for maintenance, marketing, promotion, Falls Park staff (13 employees dedicated to Falls Park and Main Street), enhanced downtown clean-up and security, Greenville Zoo subsidies, Arena debt service, convention center subsidies, etc.
          - (i) Sales accommodation tax 2% on overnight accommodations
          - (ii) Local accommodations tax 3% on overnight accommodations
          - (iii) Hospitality tax of 2% on prepared food and beverage
          - (iv) Sunday alcohol permits
        - (b) FY2016 estimates are \$495M in restaurant sales and \$115M in hotel sales
      - (2) City includes 123 restaurants and (?) hotel rooms
      - (3) 55,000 residents
      - (4) Exceeding 1.0M tourist visits annually

- (5) Strong pro-business city philosophy. Strong international marketing campaign to attract new businesses. Current focus on technology based businesses because of strong attraction to millennials.
- v) Falls Park construction
  - (1) Falls Park construction cost \$13.7M
    - (a) Includes \$1.5M Liberty Bridge
      - (i) Received \$500K donation for naming rights from Liberty Corporation
      - (ii) No other notable private funding for original construction
      - (iii) City funded design/engineering which enabled them to have a solid vision when convincing the hospitality industry to support the new taxes and the bonding companies of the project viability
    - (b) Estimated annual upgrade and repairs for Falls Park are \$700K
  - (2) Operating expenses for Falls Park
    - (a) \$1.4M annually – division of Parks & Rec Department of the City (the city government includes 78 total Parks & Rec employees, 39 Parks, 400 acres – 27 of which represent Falls Park.) City government manages parks, zoo, library, convention and visitors, marketing and PR, police, fire and other traditional city functions
      - (i) Two restaurants within Falls Park are operated by concessionaires. Proceeds utilized for park operations and maintenance – including public restrooms.
  - (3) City estimates that construction of Falls Park for \$13.7M generated over \$150M in new private development in downtown area with first two years and over \$400M in first six years.
- vi) Philanthropic funding
  - (1) Generally utilized for specific features such as a sculpture, improved seating and landscaping in a particular area, etc. Commercial community has been very generous supporting specific features in proximity to their operations such as developing plazas and greenspace throughout the downtown, seating areas, etc.
    - (a) Example: BMW and Michelin are building a \$300M technology center for self-driving cars and future auto related developments. They are working with the City to develop a five mile extension of the Swamp Rabbit Trail (cycle and walking) that will lead from the city center to this new facility. Assumption is that tech employees will want to live in downtown Greenville because of life style, but many will want to commute via cycle, jogging, etc. They did not reveal the amount contributed by BMW and Michelin.
  - (2) Garden Club created a \$3M endowment fund for Falls Park. Annual proceeds are utilized for public art, street scape, performing arts, etc.
- vii) Advisory Council
  - (1) Greenville has an advisory council that influences decisions regarding capital improvements, public art projects, events, etc. No binding authority.

Holly Cabel's Notes

Greenville Trip

Attendees

City – Mark Koenen, Rita Tungare, Ed Bessner, Lora Vitek, Ron Silkatis

Park District – Holly Cabel, Bob Carne, Cathy Camm

River Corridor – John Rabchuk

WBK – John Wills, Greg Chismark

Hitchcock Design – Rick Hitchcock

Chamber of Commerce – Craig Larsen

### **Meeting Thursday at City Hall**

Matt Efird, Budget Administer

Nancy Whitmore, City Manager

Amy Rydberg Doyle, Councilman

### **Budget Finance**

City's total budget-184 mil; 55,000 population

37 mil, 44% driven by property tax, 43% permits/license fees,

3 TIF District started in late 1980s, in FY 2016 the three district were generating 7.5 million over debt service. No longer using TIF financing in future due to impact on schools.

Main sources of revenue for Tourism are Accommodation Tax (State 2% and local 3%) and Hospitality Tax(2% on prepared food/beverage). Currently over 1 million in tourists visits

Revenues must be spent on tourism related expenses such as Falls Park Construction AND MAINTENANCE.

Total project cost of Fall Park – 13.7 million for 27 acres of Park Development including a 3.5 million unique unobstructed view pedestrian bridge.

Property tax did not go towards the creation of Falls Park (big in community buying into this capital expenditure). Project funded by: Revenue Bonds (10.85 mil); 1.8 mil in TIF equity;

462,000 in TIF bond proceeds; 378,000 in Hospitality Tax fund equity, 200,000 in Greenville Water System and 39,000 Greenville county.

Upgrades and repairs 700,000 in 2015 funded by Hospitality tax equity and State grant (100,000)

Estimated that the Falls Park generated 150 mil in new private development in the first two years and over \$400 mil in first six years.

Operations expense of 27 acres falls Parks – 1,453,928 (This expense has seen an increase from 550,000 in 2009. This area falls under the direction of the Parks and Rec Department of the City. The total parks and rec department has 78 FT, 39 parks, and 400 acres. Falls Park has dedicated 13 FT employees which is approximately 70-75% of expense. Other expenses 200,000 bridge maintenance, 100,000 fountain repairs, 40,000 ADA assessments, Seasonal Labor and Janitorial services. These expenses are covered through revenue generated by the hospitality tax and local accommodation tax. They have a annual sustainable revenue source to continue to cover the expenses.

Falls Park Endowment was created and started to ensure that Falls Parks remains cherished landmark. Used for sculpture purchase, educational programs, park amenities outside the scope of the city's budget. Current balance of over 2.6 million. Garden Club created the endowment fund.

Advisory group was created to recommend capital improvements, public art or events at Falls Park to the City Council.

### **Tour Park**

Edward Kinney, Landscape Architect

Mari Steinbach, Director of Parks/Recreation

Falls Park

27 acres

Amenities – water fountains, suspended unobstructed pedestrian bridge, 2 concessions /restaurant areas (city owned but has concessionaire agreement), bathrooms, trails/walkways, planted areas, gathering spaces, benches, seating areas (benches and tables and chairs as well as rock ledges),10 gardens, dog friendly, river falls, large tree canopy and open grass areas.

13 FT (4 Horticulturist, 9 laborers) + 20 seasonal workers

### **Themes of Park Planning**

If you want a vibrant downtown, you need people working in town. Drive businesses to want to operate in the area.



Walkability. Sculptures and interests points and wide sidewalks all part of making it an easily walkable route with many things to see and do.

Look at businesses that bring in young professional talent recruitment. Focus on grow tech and service industry.

880 Rule – plan for ease of use and functionality for 8 year olds and 80 year olds

Most restaurant/bars had outdoor sidewalk components.

A push to continue to have street side parking throughout the downtown was part of the design.



**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 3.c

Title: Tree Commission Minutes – Information only

Presenter: AJ Reineking

Meeting: Government Services Committee

Date: November 27, 2017

Proposed Cost: \$ N/A

Budgeted Amount: \$ N/A

Not Budgeted:

**Executive Summary** *(if not budgeted please explain):*

A duty of the Tree Commission is to advise and consult with the Government Services Committee. The September 14, 2017 Tree Commission meeting minutes are attached.

**Attachments** *(please list):*

\* Tree Commission Minutes – September 2017 meeting minutes.

**Recommendation/Suggested Action** *(briefly explain):*

For information only.

**MINUTES  
CITY OF ST. CHARLES  
TREE COMMISSION MEETING  
RALPH GRATHOFF, CHAIRMAN  
September 14, 2017**

**Members Present:** Chair. Ralph Grathoff, Valerie Blaine, Kathy Brens, Jon Duerr, Raymond Hauser, Pam Otto, Caroline Wilfong, Ron Ziegler

**Members Absent:** Suzi Myers

**Others Present:** Chris Adesso, Jeremy Craft, Marcelline D'Argento, AJ Reineking

**Visitors Present:** Heather Gondreau, Carol Haggas, Lee Haggas, Loren Nagy

**1. Call to Order & Pledge of Allegiance**

The meeting was convened by Chair. Grathoff at 7:02 p.m.

**2. Introduction of Visitors, Comments and Concerns**

Visitors were introduced to all present.

**3. Minutes Review and Approval**

Motion to approve and place into the public record the minutes of the July 13, 2017 Tree Commission meeting. Motion by Comm. Ziegler, second by Comm. Otto to approve the minutes. Voice vote: unanimous; nays – none. Motion carried at 7:04 p.m.

**4. Old Business**

**A.** Mr. Craft reported approximately 150 trees will be planted in the parkways this fall. A number of Maple trees will be replaced during fall planting.

**B.** Mr. Craft informed the Commissioners that an inventory of the City's trees is underway. Graf Tree Care has made good progress working in the northwest quadrant to document the City's tree population.

**5. Natural Resources Commission**

Public Works staff provided the Commission with a first draft of proposed revisions to the City Code [Title 12, Chapter 12.20, Sections .040 and .050] to reflect the transition from the St. Charles Tree Commission to the St. Charles Natural Resources Commission.

Mr. Reineking summarized the draft is intended to reflect conversations the Tree Commission has had for the past several months. Mr. Adesso further stated the idea for the Tree Commission's transition to a Natural Resources Commission ("NRC") was initially presented to the City's Government Services Committee ("GSC") about six months ago. Since then there has been support and feedback from elected officials who have interacted with Public Works staff, and they are awaiting the Tree Commission's decision on whether it will move forward with the transition to a NRC. The draft code revisions have not been presented to any elected officials at this time. Mr. Adesso noted the proposed revisions were drafted by Ms. D'Argento as a foundation for the Tree Commission to build on moving forward.

Mr. Adesso explained there would be four steps to finalizing the NRC transition: 1) the Tree Commission and City staff will finalize the draft of the proposed revisions to City Code, 2) the City's legal counsel would then review the draft Code revisions, 3) the proposed revisions would be presented to the GSC, and 4) the City Council would formally adopt the revisions into the Code and the Code would be officially amended.

The Commissioners reviewed in detail and discussed the first draft of the proposed Code revisions as follows:

- The revisions reflect a broader umbrella which encompasses the responsibilities of the Tree Commission - no responsibilities were eliminated. Additional responsibilities were included to reflect to proposed activities of a NRC.
- St. Charles will continue to maintain its Tree City USA designation.
- The number of Commissioners would increase from nine (9) to eleven (11) members.
- Four (4) additional non-voting student members would be included. There is strong interest at the high school level in natural resources programs.
- Possibly one upper class student member and one lower class student member could participate from each of the City's two public high schools and/or local colleges with a time commitment to the NRC of one school semester.
- Non-voting student members would be appointed by the NRC.
- Meeting frequency would be once per month.
- The Code does not preclude the NRC from discussing relevant issues with the St. Charles Park District, School District or other City entities.
- Biotic and abiotic inter-relationships are recognized in the revised Code.
- The Mayor would continue to appoint new Commissioners; the Public Works Department would not become involved in this process.

City staff will update the draft Code to reflect the discussions held at this meeting. An updated second draft will be provided to the Commission for review as soon as it is available, and placed on the agenda for the November 2017 meeting.

**6. New Business**

**7. Committee Reports**

**A. Education Committee**

Comm. Myers, in absentia, proposed the purchase of a book entitled *The Sparrow and the Trees* for each of the City's elementary school libraries [twelve copies]. The book is a folktale depicting various tree species and their characteristics. Motion by Comm. Duerr, second by Comm. Brens to purchase the books. Voice vote: unanimous; nays – none. Motion carried at 7:45 p.m. City staff will place the book order utilizing the City's Arbor Day budget.

**B. Langum Woods Clean-Up**

Comm. Otto reported Ms. Gondreau has reached out to an environmental club at St. Charles East High School and is waiting to hear back on their participation. Comm. Blaine suggested contacting some of the environmental studies teachers at the schools regarding a possible field trip during a school day. Key Clubs may also be interested in participating. Comm. Blaine noted there is a teacher who is currently coordinating field trips with her at Creek Bend Nature Center, and she may also be interested in participating at Langum Woods.

**8. Communications – Approval of Public Services Division Tree Activity Reports – July / August 2017**

Motion by Comm. Brens to approve the above-referenced reports and place into the public record, second by Comm. Otto. Voice vote: unanimous; nays – none. Motion carried at 7:50 a.m.

**9. Additional Items**

**A. Commissioners**

Looking ahead, Chair. Grathoff asked if there is another elementary school teacher who may become involved in Arbor Day similarly to Mrs. Tieche, who recently retired from Munhall Elementary School. Ms. Gondreau noted Norton Creek Elementary School has a large earth club and an outdoor education garden; there may be teachers at the school who would be interested in supporting Arbor Day.

Comm. Blaine noted there is an event this Saturday morning to measure trees for the Kane County Big Tree Registry. There is also an opportunity to participate in the Adopt a Turtle program which benefits endangered Blanding's turtles. Comm. Otto has already adopted a turtle.

Comm. Brens informed the Commission and visitors about the Grave Reminders Cemetery Walk coming up in October.

Comm. Duerr thanked the City staff for the holistic improvement to the parkway at Kehoe Drive and Horne Street where Norway Maple trees were removed.

Mr. Nagy commented on the upcoming sustainable landscape event at the Chicago Botanic Garden which will feature low maintenance landscapes.

Ms. Gondreau announced there will be a Green Fair at the DuPage County Fairgrounds in late September.

Comm. Otto reported the beekeeping issue had been resolved and an ordinance was passed which tends to favor beekeepers. The overall issue did not involve any major health concerns, but was essentially a neighborhood dispute.

**B. City Staff**

None.

**C. Visitors**

Mr. & Mrs. Haggas thanked the Commission for welcoming them to the meeting and expressed interest in participating in the NRC.

**9. Adjournment**

Motion by Comm. Otto to adjourn the meeting, second by Comm. Duerr. Voice vote: unanimous; nays – none. Motion carried at 8:00 p.m.



**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 4.a

Title: 2021 Scarecrow Fest Parade - for Discussion Only  
Presenter: Chief Keegan / Fred Martin

Meeting: Government Services Committee Date: November 27, 2017

Proposed Cost: Budgeted Amount: \$ Not Budgeted:

**Executive Summary** *(if not budgeted please explain):*

Mr. Fred Martin from the Medinah Shriners would like to address the Government Services Committee concerning their interest in hosting a parade to coincide with the 2021 Scarecrow Festival. The Shriners are in the process of securing their 2021 conference at Pheasant Run Resort and would like to enhance that conference with a parade in downtown St. Charles to showcase not only their wonderful purpose and cause, but also their keen ability to put on wonderful parades while highlighting both showmanship and children’s entertainment.

For purposes of scheduling and calendars, the Shriners are targeting Saturday, October 9, 2021 as the culmination of their convention and competitions which would span several days at Pheasant Run. They are expecting between 3,000-4,000 visitors at their convention with a smaller portion of those guests requiring overnight lodging. They would like to bring in about 200 units for the parade.

The Shriners are dedicated to fun and fellowship. Their mantra is “having fun and helping kids” and they find personal fulfillment and satisfaction through supporting Shriners Hospitals for Children.

**Attachments** *(please list):*

None

**Recommendation/Suggested Action** *(briefly explain):*

For discussion only.



**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 5.a

Title:

Recommendation to Award Contract to Riley Construction for Professional Construction Management Services related to the Police Facility

Presenter:

Peter Suhr & Jim Keegan

Meeting: Government Services Committee

Date: November 27, 2017

Proposed Cost: \$1,295,279

Budgeted Amount: \$1,684,000

Not Budgeted:

**Executive Summary** *(if not budgeted please explain):*

Dating back to January of 2015, City staff has been working with FGM Architects in preparation to build a new Police Station. Now that we are in the design stage of the project and have secured a site at the Valley Shopping Center, it is staff's recommendation to complete our project team by adding a Construction Management firm who will provide pre-construction services and be responsible for the bidding and construction of our project.

City staff prepared a request for qualification (RFQ) for professional Construction Management Services and received responses from eleven (11) qualified CM firms. City Staff assembled a comprehensive team to review each proposal and interviewed the top four (4) firms. Riley Construction Company, Inc. assembled a superior team and was selected by our review committee.

Riley Construction based out of Lake Bluff, IL and Kenosha, WI; has extensive construction management experience, a vast resume of similar projects and has been respected as a leader in their field since their inception 52 years ago.

Riley Construction will provide both pre-construction services and construction management services as outlined in the attached AIA Document A133-2009.

Riley Construction will provide pre-construction services for a lump sum fee of \$51,176. Riley Construction will also provide construction management services for a lump sum fee of 1.60% (\$272,000) of the projects construction costs which are currently estimated at \$17,000,000. Riley Construction will also provide general conditions for construction for an estimated cost of \$972,103 based on their CM services general conditions form attached to the contract.

While each CM proposer submitted different combinations of total cost for services (pre-construction, construction management and general conditions), Riley Construction submitted a very competitive total package. Of the final four CM's considered and interviewed, Riley Construction had the lowest pre-construction and construction management fees. After negotiating, their general conditions costs are also now the lowest. Therefore, based on being the top qualified firm and the lowest cost, staff recommends approval of the contract with Riley Construction.

**Attachments** *(please list):*

AIA Document A133-2009

**Recommendation/Suggested Action** *(briefly explain):*

Recommendation to award the Contract for Professional Construction Management Services for the Police Facility to Riley Construction Company, Inc.



# AIA<sup>®</sup> Document A133<sup>™</sup> – 2009

## **Standard Form of Agreement Between Owner and Construction Manager as Constructor** where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

**AGREEMENT** made as of the 4 day of December in the year 2017  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status and address)

City of St. Charles Two East Main Street  
St. Charles, IL 60174

and the Construction Manager:  
(Name, legal status and address)

Riley Construction 926 North Shore Drive  
Lake Bluff, IL 60044

for the following Project:  
(Name and address or location)

16-2234.01 St. Charles New Police Station  
Project will be located at the former Valley Shopping Center, located at 1515 W. Main  
Street, St. Charles, IL 60174

The Architect:  
(Name, legal status and address)

FGM Architects Inc. 1211 W. 22nd Street, Suite 700  
Oak Brook, IL 60523

The Owner's Designated Representative:  
(Name, address and other information)

Peter Suhr  
Director of Public Works  
City of St. Charles  
Two East Main Street  
St. Charles, IL 60174

The Construction Manager's Designated Representative:  
(Name, address and other information)

Christopher M Siefert, LEED AP  
Vice President/Project Executive  
Riley Construction  
926 North Shore Drive  
Lake Bluff, IL 60044  
Tel: 847.457.3909

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201<sup>™</sup>-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.



The Architect's Designated Representative:  
*(Name, address and other information)*

Raymond Lee, AIA, LEED AP  
Principal  
FGM Architects Inc.  
1211 W. 22nd Street, Suite 700  
Oak Brook, IL 60523  
630.574.8300

The Owner and Construction Manager agree as follows.

## TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 OWNER'S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 8 INSURANCE AND BONDS
- 9 DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 MISCELLANEOUS PROVISIONS
- 12 SCOPE OF THE AGREEMENT

## EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

#### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

#### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### § 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

### § 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

### § 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

### § 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

### § 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager

shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### **§ 2.1.8 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

#### **§ 2.1.9 Notices and Compliance with Laws**

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

#### **§ 2.2 Guaranteed Maximum Price Proposal and Contract Time**

**§ 2.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

**§ 2.2.2** To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 2.2.3** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

**§ 2.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

**§ 2.2.5** The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

### § 2.3 Construction Phase

#### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal or the Owner’s issuance of a Notice to Proceed, whichever occurs earlier.

#### § 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager’s own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a “related party” according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in 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 and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

#### § 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

#### § 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

### ARTICLE 3 OWNER'S RESPONSIBILITIES

#### § 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

### § 3.3 Architect

The Owner shall retain an Architect to provide services, duties, and responsibilities as described in AIA Document B103™-2007, Standard Form of Agreement Between Owner and Architect for a Large or Complex Project. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:  
*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

Lump sum fee of \$51,176.00 (\$76,176.00 from CM Fee Proposal dated October 4, 2017 minus the \$25,000 discount to provide three estimates in lieu of continuous estimating)

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ten ( 10 ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the

mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

**§ 4.2 Payments**

**§ 4.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

**§ 4.2.2** Payments are due and payable upon presentation of the Construction Manager’s invoice. Amounts unpaid sixty ( 60 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.  
*(Insert rate of monthly or annual interest agreed upon.)*

In accordance with the Illinois Local Government Prompt Payment Act

**ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

**§ 5.1** For the Construction Manager’s performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager’s Fee.

**§ 5.1.1** The Construction Manager’s Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager’s Fee.)*

1.60% of the Cost of the Work for Construction Phase per Article 6 of this contract

**§ 5.1.2** The method of adjustment of the Construction Manager’s Fee for changes in the Work:

1.60% (Percentage of overhead and profit for Change Order Requests

**§ 5.1.3** Limitations, if any, on a Subcontractor’s overhead and profit for increases in the cost of its portion of the Work:

For Self-Performed work overhead mark-up: Add - 10% Deduct 10% See Exhibit A

**§ 5.1.4** Rental rates for Construction Manager-owned equipment shall per Exhibit E – Riley Construction Time and Material Equipment rates, June 1, 2017 – May 31, 2018 with rates subject to annual adjustment as agreed upon with the Owner.

**§ 5.1.5** Unit prices, if any:

*(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
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**§ 5.2 Guaranteed Maximum Price**

**§ 5.2.1** The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

*(Insert specific provisions if the Construction Manager is to participate in any savings.)*

**§ 5.2.2** The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.



### § 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

### § 6.2 Labor Costs

§ 6.2.1 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 prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

§ 6.2.3 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, but only for that portion of their time required for the Work.

§ 6.2.4 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 such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

### § 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

### § 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### § 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

### § 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 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 rights arising from such requirement of the Contract Documents; and 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. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

#### § 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

#### § 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .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 Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;

- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

#### **§ 6.9 Discounts, Rebates and Refunds**

**§ 6.9.1** 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 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 obtained.

**§ 6.9.2** Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### **§ 6.10 Related Party Transactions**

**§ 6.10.1** For purposes of Section 6.10, the term “related party” shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term “related party” includes any member of the immediate family of any person identified above.

**§ 6.10.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

#### **§ 6.11 Accounting Records**

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner’s auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager’s records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor’s proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

### **ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

#### **§ 7.1 Progress Payments**

**§ 7.1.1** Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

**§ 7.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ 7.1.3** Provided that an Application for Payment is received by the Architect not later than the fifteenth day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the thirtieth day of the following month. If an Application for Payment is received by the Architect after the

application date fixed above, payment shall be made by the Owner not later than sixty ( 60 ) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

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

§ 7.1.5 Each Application for Payment shall be based on 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 Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of 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 that 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.

§ 7.1.7 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 of 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 shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .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, less retainage of ten percent ( 10 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of ten percent ( 10 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 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.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## § 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 60 days after the issuance of the Architect's final Certificate for Payment.

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable 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 as provided in Section 5.2.1, 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.

## ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)*

Type of Insurance or Bond  
Performance and Payment Bond

Limit of Liability or Bond Amount (\$0.00)  
110% of the contract value per Exhibit A

#### ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

- Arbitration pursuant to Section 15.4 of AIA Document A201–2007
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

#### § 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

NA

#### ARTICLE 10 TERMINATION OR SUSPENSION

##### § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time

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of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;  
and

- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

#### § 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

#### § 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

### ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

#### § 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

#### § 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

#### § 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement



without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

**ARTICLE 12 SCOPE OF THE AGREEMENT**

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201-2007, General Conditions of the Contract for Construction with modifications attached as Exhibit A
- .3 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
  - .4 AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .5 Other documents:  
*(List other documents, if any, forming part of the Agreement.)*
  - Exhibit B - Riley Construction Construction Management Services Proposal dated October 4, 2017
  - Exhibit C - Riley Construction Construction Management Services Fee Proposal dated October 4, 2017
  - Exhibit D - Riley Construction Confirmation of Best and Final Offer dated November 21, 2017
  - Exhibit E - Riley Construction Time and Material Equipment Rates, June 1, 2017 - May 21, 2018

This Agreement is entered into as of the day and year first written above.

CITY OF ST. CHARLES

RILEY CONSTRUCTION COMPANY, INC.

\_\_\_\_\_  
OWNER *(Signature)*

\_\_\_\_\_  
CONSTRUCTION MANAGER *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*



# AIA<sup>®</sup> Document A201<sup>™</sup> – 2007

## General Conditions of the Contract for Construction

### for the following PROJECT:

*(Name and location or address)*

16-2234.01 St. Charles New Police Station  
Project will be located at the former Valley Shopping Center  
1515 W Main Street, St. Charles, IL 60174

### THE OWNER:

*(Name and address)*

City of St. Charles  
Two East Main Street  
St. Charles, IL 60174

### THE ARCHITECT:

*(Name and address)*

FGM Architects  
1211 West 22<sup>nd</sup> Street, Suite 700  
Oak Brook, IL 60523

### TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

## INDEX

(Numbers and Topics in Bold are Section Headings)

### Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

### Access to Work

**3.16**, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,

10.2.8, 13.4.2, 13.7, 14.1, 15.2

Addenda

1.1.1, 3.11.1

Additional Costs, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4

### Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.5**

Additional Insured

11.1.4

### Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5**

### Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

### Allowances

**3.8**, 7.3.8

All-risk Insurance

11.3.1, 11.3.1.1

### Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.10, 11.1.3

Approvals

2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10,

4.2.7, 9.3.2, 13.5.1

*(Paragraphs deleted)*

## ARCHITECT

4

Architect, Definition of

### 4.1.1

Architect, Extent of Authority

2.4.1, 3.12.7, 4.1, 4.2, 5.2, 6.3.1, 7.1.2, 7.3.7, 7.4, 9.2,

9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,

13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3,

4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2,

9.5.3, 9.6.4, 15.1.3, 15.2

Architect's Additional Services and Expenses

2.4.1, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.4.1, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,

7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,

13.5.2, 15.2, 15.3

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5,

3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18,

4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,

9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

### Award of Subcontracts and Other Contracts for Portions of the Work

**5.2**

### Basic Definitions

**1.1**

Bidding Requirements

1.1.1, 5.2.1, 11.4.1

Binding Dispute Resolution

9.7.1, 11.3.9, 11.3.10, 13.1.1, 15.2.5, 15.2.6.1, 15.3.1,

15.3.2, 15.4.1

### Boiler and Machinery Insurance

**11.3.2**

Bonds, Lien

7.3.7.4, 9.10.2, 9.10.3

### Bonds, Performance, and Payment

7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**

Building Permit

3.7.1

Init.

## Capitalization

### 1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

### Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3

Certificates of Inspection, Testing or Approval  
13.5.4

Certificates of Insurance

9.10.2, 11.1.3

### Change Orders

1.1.1, 2.4.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3

Change Orders, Definition of

### 7.2.1

## CHANGES IN THE WORK

2.2.1, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.3.9

Claims, Definition of

### 15.1.1

## CLAIMS AND DISPUTES

3.2.4, 6.1.1, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4

Claims and Timely Assertion of Claims

15.4.1

Claims for Additional Cost

3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, 15.1.4

Claims for Additional Time

3.2.4, 3.7.4, 6.1.1, 8.3.2, 10.3.2, 15.1.5

Concealed or Unknown Conditions, Claims for  
3.7.4

Claims for Damages

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

*(Paragraph deleted)*

Cleaning Up

3.15, 6.3

Commencement of the Work, Conditions Relating to

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1, 15.1.4

Commencement of the Work, Definition of

### 8.1.2

Communications Facilitating Contract

Administration

3.9.1, 4.2.4

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 13.7, 14.1.2

## COMPLETION, PAYMENTS AND

### 9

Completion, Substantial

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7

Compliance with Laws

1.6.1, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2

Consolidation or Joinder

### 15.4.4

## CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, 6

Construction Change Directive, Definition of  
7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

### 15.1.3

Contract, Definition of

### 1.1.2

## CONTRACT, TERMINATION OR SUSPENSION OF THE

5.4.1.1, 11.3.9, 14

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

Contract Documents, The

### 1.1.1

Contract Documents, Copies Furnished and Use of  
1.5.2, 2.2.5, 5.3

Contract Documents, Definition of

### 1.1.1

Contract Sum

3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, 9.1, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5

Contract Sum, Definition of

### 9.1

Contract Time

3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4, 8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7.1, 10.3.2, 12.1.1, 14.3.2, 15.1.5.1, 15.2.5

Contract Time, Definition of

### 8.1.1

## CONTRACTOR

### 3

**Contractor, Definition of**  
**3.1, 6.1.2**

**Contractor's Construction Schedules**  
**3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2**

Contractor's Employees  
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1,

**Contractor's Liability Insurance**  
**11.1**

Contractor's Relationship with Separate Contractors and Owner's Forces  
3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4

Contractor's Relationship with Subcontractors  
1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8

Contractor's Relationship with the Architect  
1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1

Contractor's Representations  
3.2.1, 3.2.2, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work  
3.3.2, 3.18, 5.3.1, 6.1.3; 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents  
3.2

Contractor's Right to Stop the Work  
9.7

Contractor's Right to Terminate the Contract  
14.1, 15.1.6

Contractor's Submittals  
3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2

Contractor's Superintendent  
3.9, 10.2.6

Contractor's Supervision and Construction Procedures  
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3

Contractual Liability Insurance  
11.1.1.8, 11.2

Coordination and Correlation  
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications  
1.5, 2.2.5, 3.11

Copyrights  
1.5, **3.17**

Correction of Work  
2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**

**Correlation and Intent of the Contract Documents**  
**1.2**

**Cost, Definition of**  
**7.3.7**

Costs  
2.4.1, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14

**Cutting and Patching**  
**3.14, 6.2.5**

Damage to Construction of Owner or Separate Contractors  
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4

Damage to the Work  
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4.1, 11.3.1, 12.2.4

Damages, Claims for  
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Damages for Delay  
6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2

**Date of Commencement of the Work, Definition of**  
**8.1.2**

**Date of Substantial Completion, Definition of**  
**8.1.3**

**Day, Definition of**  
**8.1.4**

Decisions of the Architect  
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2

**Decisions to Withhold Certification**  
9.4.1, **9.5**, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance, Rejection and Correction of  
2.3.1, 2.4.1, 3.5, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

**Defective Work, Definition of**  
**3.5.**

Definitions  
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1

**Delays and Extensions of Time**  
3.2., 3.7.4, 5.2.3, 7.2.1, 7.3.1, **8.3**, 9.5.1, 9.7.1, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

Disputes  
7.3.9, 15.1, 15.2

**Documents and Samples at the Site**  
**3.11**

**Drawings, Definition of**  
**1.1.5**

Drawings and Specifications, Use and Ownership of  
3.11

Effective Date of Insurance  
8.2.2, 11.1.2

**Emergencies**  
**10.4**, 14.1.1.2, 15.1.4

Employees, Contractor's  
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

Equipment, Labor, Materials or  
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1,  
4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3,  
9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

#### Execution and Progress of the Work

1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5, ,  
3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2,  
9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3

#### Extensions of Time

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 10.3.2, 10.4.1, 14.3,  
15.1.5, 15.2.5

#### Failure of Payment

9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

#### Faulty Work

(See Defective or Nonconforming Work)

#### Final Completion and Final Payment

4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.3.1, 11.3.5,  
12.3.1, 14.2.4, 14.4.3

#### Financial Arrangements, Owner's

2.2.1, 13.2.2, 14.1.1.4

#### Fire and Extended Coverage Insurance

11.3.1.1

### GENERAL PROVISIONS

#### 1

#### Governing Law

##### 13.1

Guarantees (See Warranty)

#### Hazardous Materials

10.2.4, 10.3

#### Identification of Subcontractors and Suppliers

5.2.1

#### Indemnification

, 3.18, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2, 11.3.7

#### Information and Services Required of the Owner

2.1.2, 2.2, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5,  
9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1,  
13.5.2, 14.1.1.4, 14.1.4, 15.1.3

#### Initial Decision

##### 15.2

#### Initial Decision Maker, Definition of

1.1.8

#### Initial Decision Maker, Decisions

14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

#### Initial Decision Maker, Extent of Authority

14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4,  
15.2.5

#### Injury or Damage to Person or Property

10.2.8, 10.4.1

#### Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,  
9.9.2, 9.10.1, 12.2.1, 13.5

#### Instructions to Bidders

1.1.1

#### Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2

#### Instruments of Service, Definition of

1.1.7

#### Insurance

3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 11

#### Insurance, Boiler and Machinery

##### 11.3.2

#### Insurance, Contractor's Liability

##### 11.1

#### Insurance, Effective Date of

8.2.2, 11.1.2

#### Insurance, Loss of Use

##### 11.3.3

#### Insurance, Owner's Liability

##### 11.2

#### Insurance, Property

10.2.5, 11.3

#### Insurance, Stored Materials Rider

(Paragraph deleted)

### INSURANCE AND BONDS

#### 11

#### Insurance Companies, Consent to Partial Occupancy

9.9.1, Rider

#### Insurance Companies, Settlement with Rider

#### Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4

#### Interest

##### 13.6

#### Interpretation

1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1

#### Interpretations, Written

4.2.11, 4.2.12, 15.1.4

#### Judgment on Final Award

15.4.2

#### Labor and Materials, Equipment

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3,  
9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

#### Labor Disputes

8.3.1

#### Laws and Regulations

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13.1, 4.1.1, 9.6.4, 9.9.1,  
10.2.2, 11.1.1, 11.3, 13.1.1, 13.4, 13.5.1, 13.5.2,  
13.6.1, 14, 15.2.8, 15.4

#### Liens

2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8

#### Limitations, Statutes of

12.2.5, 13.7, 15.4.1.1

#### Limitations of Liability

2.3.1, 3.2.2, 3.5, 3.18., 4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2,  
9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2, 11.2, 11.3.7,  
12.2.5, 13.4.2

#### Limitations of Time

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,  
5.2, 5.3.1, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.3.1, 9.3.3, 9.4.1,  
9.5, 9.6, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5, 11.3.6,  
11.3.10, 12.2, 13.5, 13.7, 14, 15

#### Loss of Use Insurance

##### 11.3.3

Init.

Material Suppliers  
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5

**Materials, Hazardous**  
10.2.4, 10.3

Materials, Labor, Equipment and  
1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13.1,  
3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3,  
9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and  
Procedures of Construction  
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien  
2.1.2, 15.2.8

**Mediation**  
8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, 15.3,  
15.4.1

**Minor Changes in the Work**  
1.1.1, 3.12.8, 4.2.8, 7.1, 7.4

**MISCELLANEOUS PROVISIONS**  
13

**Modifications, Definition of**  
1.1.1

Modifications to the Contract  
1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7.1,  
10.3.2, 11.3.1

**Mutual Responsibility**  
6.2

**Nonconforming Work, Acceptance of**  
9.6.6, 9.9.3, 12.3

Nonconforming Work, Rejection and Correction of  
2.3.1, 2.4.1, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4,  
12.2.1

Notice  
2.2.1, 2.3.1, 2.4.1, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1,  
9.10, 10.2.2, 11.1.3, 11.4.6, 12.2.2.1, 13.3, 13.5.1,  
13.5.2, 14.1, 14.2, 15.2.8, 15.4.1

**Notice, Written**  
2.3.1, 2.4.1, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.10,  
10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, 13.3, 14, 15.2.8,  
15.4.1

**Notice of Claims**  
3.7.4, 10.2.8, 15.1.2, 15.4

Notice of Testing and Inspections  
13.5.1, 13.5.2

Observations, Contractor's  
3.2, 3.7.4

Occupancy  
2.2.2, 9.6.6, 9.8, 11.3.1.5

Orders, Written  
1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2,  
14.3.1

**OWNER**  
2

**Owner, Definition of**  
2.1.1

**Owner, Information and Services Required of the**  
2.1.2, 2.2, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2,  
9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.3, 13.5.1,  
13.5.2, 14.1.1.4, 14.1.4, 15.1.3

**Owner's Authority**  
1.5, 2.1.1, 2.3.1, 2.4.1, 3.4.2, 3.8.1, 3.12.10, 3.14.2,  
4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 7.2.1,  
7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1,  
9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, 12.3.1,  
13.2.2, 14.3, 14.4, 15.2.7

**Owner's Financial Capability**  
2.2.1, 13.2.2, 14.1.1.4

**Owner's Liability Insurance**  
11.2

**Owner's Loss of Use Insurance Rider**  
Owner's Relationship with Subcontractors  
1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

**Owner's Right to Carry Out the Work**  
2.4, 14.2.2

**Owner's Right to Clean Up**  
6.3

**Owner's Right to Perform Construction and to  
Award Separate Contracts**  
6.1

**Owner's Right to Stop the Work**  
2.3

Owner's Right to Suspend the Work  
14.3

Owner's Right to Terminate the Contract  
14.2

**Ownership and Use of Drawings, Specifications  
and Other Instruments of Service**  
1.1.1, 1.1.6, 1.1.7, 1.5, 2.2.5, 3.2.2, 3.11, , 4.2.12, 5.3

**Partial Occupancy or Use**  
9.6.6, 9.9, 11.3.1.5

**Patching, Cutting and**  
3.14, 6.2.5

Patents  
3.17

**Payment, Applications for**  
4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5, 9.6.3, 9.8.5, 9.10.1,  
14.2.3, 14.2.4, 14.4.3

**Payment, Certificates for**  
4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.10.1, 9.10.3,  
13.7, 14.1.1.3, 14.2.4

**Payment, Failure of**  
9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

Payment, Final  
4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 12.3.1,  
13.7, 14.2.4, 14.4.3

**Payment Bond, Performance Bond and**  
7.3.7.4, 9.6.7, 9.10.3, 11.4

**Payments, Progress**  
9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

**PAYMENTS AND COMPLETION**  
9

Payments to Subcontractors  
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2  
PCB  
10.3.1  
**Performance Bond and Payment Bond**  
7.3.7.4, 9.6.7, 9.10.3, 11.4  
**Permits, Fees, Notices and Compliance with Laws**  
2.2.2, 3.7, 3.13, 7.3.7.4, 10.2.2  
**PERSONS AND PROPERTY, PROTECTION OF**  
**10**  
Polychlorinated Biphenyl  
10.3.1  
**Product Data, Definition of**  
**3.12.2**  
**Product Data and Samples, Shop Drawings**  
3.11, 3.12, 4.2.7  
**Progress and Completion**  
4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.3  
**Progress Payments**  
9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3  
**Project, Definition of the**  
**1.1.4**  
Project Representatives  
4.2.10  
**Property Insurance**  
10.2.5, 11.3  
**PROTECTION OF PERSONS AND PROPERTY**  
**10**  
Regulations and Laws  
1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1,  
10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14,  
15.2.8, 15.4  
Rejection of Work  
3.5, 4.2.6, 12.2.1  
Releases and Waivers of Liens  
9.10.2  
Representations  
3.2.1, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2,  
9.10.1  
Representatives  
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2,  
13.2.1  
Responsibility for Those Performing the Work  
3.3.2, 3.18, 4.2.3, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10  
Retainage  
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3  
**Review of Contract Documents and Field**  
**Conditions by Contractor**  
**3.2, 3.12.7, 6.1.3**  
Review of Contractor's Submittals by Owner and  
Architect  
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2  
Review of Shop Drawings, Product Data and Samples  
by Contractor  
3.12

**Rights and Remedies**  
1.1.2, 2.3, 2.4, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,  
6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4,  
13.4, 14, 15.4  
**Royalties, Patents and Copyrights**  
**3.17**  
*(Paragraph deleted)*  
**Safety of Persons and Property**  
**10.2, 10.4**  
**Safety Precautions and Programs**  
3.3.1, 4.2.2, 4.2.7, 5.3.1, 10.1, 10.2, 10.4  
**Samples, Definition of**  
**3.12.3**  
**Samples, Shop Drawings, Product Data and**  
**3.11, 3.12, 4.2.7**  
**Samples at the Site, Documents and**  
**3.11**  
**Schedule of Values**  
**9.2, 9.3.1**  
Schedules, Construction  
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2  
Separate Contracts and Contractors  
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2  
**Shop Drawings, Definition of**  
**3.12.1**  
**Shop Drawings, Product Data and Samples**  
**3.11, 3.12, 4.2.7**  
**Site, Use of**  
**3.13, 6.1.1, 6.2.1**  
Site Inspections  
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5  
Site Visits, Architect's  
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5  
Special Inspections and Testing  
4.2.6, 12.2.1, 13.5  
**Specifications, Definition of the**  
**1.1.6**  
**Specifications, The**  
1.1.1, 1.1.6, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14  
Statute of Limitations  
13.7, 15.4.1.1  
Stopping the Work  
2.3, 9.7, 10.3, 14.1  
Stored Materials  
6.2.1, 9.3.2, 10.2.1.2, 10.2.4  
**Subcontractor, Definition of**  
**5.1.1**  
**SUBCONTRACTORS**  
**5**  
Subcontractors, Work by  
1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7  
**Subcontractual Relations**  
**5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1**  
Submittals  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8,  
9.9.1, 9.10.2, 9.10.3, 11.1.3



Submittal Schedule  
3.10.2, 3.12.5, 4.2.7  
**Subrogation, Waivers of**  
6.1.1, Rider, **11.3.7**  
**Substantial Completion**  
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2,  
13.7  
**Substantial Completion, Definition of**  
**9.8.1**  
Substitution of Subcontractors  
5.2.3, 5.2.4  
Substitution of Architect  
4.1.3  
Substitutions of Materials  
3.4.2, 3.5, 7.3.8  
**Sub-subcontractor, Definition of**  
**5.1.2**  
Subsurface Conditions  
3.7.4  
**Successors and Assigns**  
**13.2**  
**Superintendent**  
3.9, 10.2.6  
**Supervision and Construction Procedures**  
1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3,  
7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3  
Surety  
5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7  
Surety, Consent of  
9.10.2, 9.10.3  
Surveys  
2.2.3  
**Suspension by the Owner for Convenience**  
**14.3**  
Suspension of the Work  
5.4.2, 14.3  
Suspension or Termination of the Contract  
5.4.1.1, 14  
**Taxes**  
3.6, 3.8.2.1, 7.3.7.4  
**Termination by the Contractor**  
**14.1**, 15.1.6  
**Termination by the Owner for Cause**  
5.4.1.1, **14.2**, 15.1.6  
**Termination by the Owner for Convenience**  
**14.4**  
Termination of the Architect  
4.1.3  
Termination of the Contractor  
14.2.2  
**TERMINATION OR SUSPENSION OF THE CONTRACT**  
**14**  
**Tests and Inspections**  
3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2,  
9.10.1, 10.3.2, 11.4.1.1, 12.2.1, **13.5**

**TIME**  
**8**  
**Time, Delays and Extensions of**  
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, **8.3**, 9.5.1, 9.7, 10.3.2,  
10.4.1, 14.3.2, 15.1.5, 15.2.5  
Time Limits  
2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2,  
5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1,  
9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 12.2, 13.5, 13.7, 14,  
15.1.2, 15.4  
**Time Limits on Claims**  
3.7.4, 10.2.8, **13.7**, 15.1.2  
Title to Work  
9.3.2, 9.3.3  
**Transmission of Data in Digital Form**  
**1.6**  
**UNCOVERING AND CORRECTION OF WORK**  
**12**  
**Uncovering of Work**  
**12.1**  
Unforeseen Conditions, Concealed or Unknown  
3.7.4, 8.3.1, 10.3  
Unit Prices  
7.3.3.2, 7.3.4  
Use of Documents  
1.1.1, 1.5, 2.2.5, 3.12.6, 5.3  
**Use of Site**  
**3.13**, 6.1.1, 6.2.1  
**Values, Schedule of**  
**9.2**, 9.3.1  
Waiver of Claims by the Architect  
13.4.2  
Waiver of Claims by the Contractor  
9.10.5, 11.34.7, 13.4.2, 15.1.6  
Waiver of Claims by the Owner  
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6  
Waiver of Consequential Damages  
14.2.4, 15.1.6  
Waiver of Liens  
9.10.2, 9.10.4  
**Waivers of Subrogation**  
6.1.1, Rider,  
**Warranty**  
3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2,  
Weather Delays  
15.1.5.2  
**Work, Definition of**  
**1.1.3**  
Written Consent  
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5,  
9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2  
Written Interpretations  
4.2.11, 4.2.12  
Written Notice  
2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7,  
9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, **13.3**, 14,  
15.4.1

Written Orders

1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1,  
15.1.2

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, any certifications required by the bid documents, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

#### § 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 THE WORK

The term "Work" means all of the Contractor's obligations under the Contract Documents, including the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

#### § 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

#### § 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### § 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

#### § 1.1.9 CONTRACTOR

The term "Contractor" as used herein means the General Contractor or the Construction Manager at risk retained by the Owner.

### § 1.1.10 PROJECT MANUAL

The Project Manual is a volume assembled for the Work that includes, but is not limited to the Contract Documents and all Exhibits thereto.

### § 1.1.11 PROVIDE

When the word "provide", including derivatives thereof, is used, it shall mean to properly fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, ready for operation or use under the terms of the specifications and related Contract Documents.

### § 1.1.12 SURETY

The surety is any firm or corporation that has executed as surety the Contractor's Performance Bond and Payment Bond guaranteeing the performance of the Contract.

## § 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor and items which are reasonable inferable therefrom. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. The use of the singular or plural, or the use of a male or female pronoun, is solely for the purpose of convenience and the Contract Documents shall be read to include the male and female, and the plural where such meaning is appropriate.

§ 1.2.4 In the event of discrepancies or conflicts among or between the Contract Documents or observable conditions exist, the Contractor shall request an interpretation in writing from the Owner and Architect before proceeding with the Work. If the Contractor fails to request such an interpretation from the Architect, it is presumed that the more stringent, better quality or higher quantity requirement is included in the Work. The Contractor shall be responsible for the cost and installation of such requirement at no additional cost to Owner. Before ordering any materials or doing any Work, the Contractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. Any difference which may be found shall be submitted to the Architect for interpretation before proceeding with the Work as a condition precedent to any claim for an increase in the Contract Sum or GMP.

## § 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

## § 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

## § 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

#### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

### ARTICLE 2 OWNER

#### § 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

#### § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; or (2) a change in the Work materially increases the Contract Sum; and (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents or by law, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. The Contractor shall provide information or other assistance as the Architect or Owner may request in connection with obtaining permits.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, geotechnical data, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner unless the Contractor knows of any error, omission or discrepancy in such information, in which case the Contractor shall promptly report same in writing to the Owner and Architect. The Contractor shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. Subcontractors and Vendors shall obtain their copies from the General Contractor from his allotment.

### § 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### § 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or approved construction schedules, and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses (including attorneys' fees and consequential or incidental expenses) and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

### ARTICLE 2.5 OWNER'S RIGHT TO AUDIT

§2.5.1 The Contractor shall keep full and accurate records of all labor and material costs incurred and items billed in connection with the performance of the Work, which records shall be open to audit by the Owner or its authorized representatives during performance of the Work and until three years after Final Payment. In addition, the Contractor shall include a provision in all subcontracts relating to the Work that any and all Subcontractors will keep accurate records of costs incurred and items billed in connection with their work and that such records shall be open to audit by the Owner or its authorized representatives during performance of the Work and until three years after each Subcontractor's final completion.

### ARTICLE 3 CONTRACTOR

#### § 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

#### § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, correlated personal observations with requirements of the Contract Documents, and has satisfied itself as to the nature and location of the work, the general and local conditions, including those bearing upon access (including partial or total restriction in access), transportation, disposal, staging, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, ground water table or similar physical conditions of the ground, the character, quality and quantity of existing conditions to be encountered, the character of equipment and facilities needed prior to and during the prosecution of the work and all other matters which can in any way effect the work or the cost thereof under this Contract. Any failure by the Contractor to acquaint itself with all the available information concerning these conditions will not relieve the Contractor from any obligations to comply with the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the

information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 In all cases of interconnection of the Work with existing facilities, Contractor shall field measure and verify at the site all dimensions relating to such existing facilities. Any conflicts in the Work and the existing facilities which could have been mitigated by the Contractor's obligation to verify the dimensions of the existing facilities shall be promptly rectified by the Contractor at its own expense.

### § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety, good construction practices to accomplish the installation, including manufacturer's installation procedures, and warranty implications, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe or in accordance with good construction practice or affects the warranties, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. If for any reason Work in place does not comply with the Contract Documents, the Contractor shall immediately correct the Work before proceeding with subsequent Work.

§ 3.3.4 The Contractor shall coordinate inspections by governmental authorities having jurisdiction over the Work.

§3.3.5 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

#### § 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall require employees for whom it is responsible working at the jobsite to participate in a mandatory drug testing program to the extent permitted in union agreements administered by the Contractor and required by the Owner. The costs for drug testing, reports and other related costs are the responsibility of the Contractor.

§ 3.4.4 The Contractor shall only employ labor on the Project or in connection with the Work capable or working harmoniously with all trades, crafts and any other individuals associated with the Project. The Contractor shall also use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance. If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members of councils which regulate or distinguish what activities shall or shall not be included in the Work of any particular trade.

#### § 3.5 WARRANTY

§3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents and that the Work will be free from faults and defects and in conformance with the Contract Documents. The Contractor's warranty will not be restricted by the limitations of any manufacturer or subcontractor warranty nor shall the warranty be affected by the specification of any product or procedure, unless the Contractor objects promptly to such product or procedure and advises the Architect in writing of possible substitute products or procedures which will not affect the warranty. Work, materials or equipment not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

§ 3.5.2 Inability or refusal of the Subcontractor or supplier responsible for the defective Work to correct such Work shall not excuse the Contractor from performing under the warranty. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor's warranty shall be in effect as set forth in Articles 9 and 12 herein. This warranty does not limit any other rights or remedies of the Owner or Architect.

#### § 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

#### § 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. It is not the

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Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations governing the design of the Project. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Change Order.

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear any penalties assessed and the costs attributable to correction.

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly, within 24 hours, provide notice to the Owner and the Architect before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.8 ALLOWANCES**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner and reviewed by the Architect with reasonable promptness.

### **§ 3.9 SUPERINTENDENT**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor's Project Manager and superintendent may not be removed from the Project by the Contractor, absent death, disability or termination of employment without Owner's written approval.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. Updated schedules do not constitute an amendment of the Contract Time set forth in the Contract Documents. The Contract Time shall be amended only by written Change Order. Failure of the Owner or Architect to object to a submitted schedule that exceeds time limits current under the Contract Documents shall not relieve the Contractor of its obligations to meet those time limits, nor shall it make the Owner or Architect liable for any of the Contractor's damages incurred as a result of increased construction time or not meeting those time limits. Similarly, failure of the Owner or the Architect to object to the Contractor's schedule showing performance in advance of such time limits shall not create or imply any rights in favor of the Contractor for performance in advance of such time limits.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform and complete the Work in general accordance with the most recent approved schedules submitted to the Owner and Architect. Should the Contractor fail to adhere to the approved construction schedule(s), the Contractor shall immediately, at its own expense, take such measures, at its own expense, so as to fully correct such failure, including addition of personnel and/or equipment, overtime, and/or additional shifts. The Owner shall be entitled to rely on Contractor's schedules for coordination of its own activities, as well as the activities of other contractors working at the Project site or on the Project.

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals (all collectively referred to herein as "Record Documents"). These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.1 Plans and sections of all concealed work, particularly concealed piping and conduit, and deviations from conditions shown on the Contract Drawings, shall be shown and dimensioned on the "Record Documents". Contractor shall develop layout drawings for all concealed work that is schematically indicated on Contract Drawings.

§ 3.11.2 The Contractor will make the Record Documents available for inspection by the Architect upon reasonable notice. Adequate maintenance of the Record Documents shall be a prerequisite to certification of the Contractor's application for payment.

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action. For standard product selections, color selections, and simple shop drawings (defined as less than three (3) pages), the Architect and its consultants shall have fifteen (15) working days for review of such materials. For complex shop drawings (totaling more than three (3) pages in size), the Architect and its consultants shall have twenty (20) days for review of such material or such longer time as the Architect, in its professional judgment, deems necessary.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's review of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's review of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services

must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

**§3.12.11** After the award of the Contract, a request by the Contractor for a substitution of materials or equipment in place of that specified in the Contract Documents will be considered only under one or more of the following conditions:

- .1 Required for compliance with interpretation of code requirements or insurance regulations then existing.
- .2 Unavailability of specified products, through no fault of the Contractor.
- .3 Subsequent information discloses inability of specified products to perform properly or to fit in designated space.
- .4 Manufacturer/fabricator refuses to certify or guarantee performance of specified product as required.
- .5 When it is clearly seen, in the judgment of the Architect and with the Owner's approval that a substitution would be substantially to the Owner's best interests, in terms of cost, time or other considerations.

Substitution requests shall be written, timely, and accompanied by adequate technical and cost data. Requests shall include a complete description of the proposed substitution, name of the material or equipment for which it is to be substituted, drawings, cuts, performance and test data, and any other data or information necessary for a complete evaluation by the Architect.

### **§ 3.13 USE OF SITE**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall provide all temporary protection necessary to ensure the safety of persons in or about the Project site.

**§ 3.13.1** For Projects involving renovations or additions, the Contractor shall keep the building water tight at all times during the execution of the Work to the extent possible. The Contractor shall keep noise levels to a minimum, refrain from unreasonable interference with building personnel, maintain utilities in the building in proper working order at all times absent advance special coordination with Owner, and comply with special requirements of the Owner, if any.

### **§ 3.14 CUTTING AND PATCHING**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### **§ 3.15 CLEANING UP**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project. Throughout the progress of the Work, the Contractor shall continually remove from the Project Site and

any adjacent property, waste, tools, equipment, storage facilities, machinery, trailers, vehicles and surplus materials no longer required for the diligent prosecution of the Work, so as to maintain as orderly and contained a Work Site as reasonably possible at such state of the Work.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### § 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor waives any right of contribution against and shall defend, indemnify and hold harmless the Owner, Architect, Architect's consultants, and their directors, officers, members, agents and employees (hereinafter "Indemnitees") of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, caused by or arising from the acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. The purchase of insurance by the Contractor with respect to the obligations required in Article 3.18 shall in no event be construed as fulfillment or discharge of such obligations. The Contractor's indemnity obligation is in addition to, and cumulative of, any other obligations provided by law or contract, all of which are preserved to the Indemnitees without diminution.

§3.18.3 "Claims, damages, losses and expenses" as these words are used in this Contract shall be construed to include, but not be limited to (1) injury of damage consequent upon the failure of or use or misuse by Contractor, its Subcontractors, agents, servants or employees, of any hoist, rigging, blocking, scaffolding, or any and all other kinds of items of equipment, whether or not the same be owned, furnished or loaned by Owner; (2) all attorneys' fees and costs incurred in defense of the claim or in bringing an action to enforce the provision of this Indemnity or any other indemnity contained in the Contract Documents; and (3) all costs, expenses, lost time, opportunity costs, etc. incurred by the party being indemnified or its employees, agents or consultants.

§3.18.4 Only to the extent prohibited by Illinois law the indemnification obligations of the Contractor under this Article 3.18 shall not extend to the liability of Owner, any Owner's Representative, or the Architect, or their agents, consultants or employees, arising out of their own negligence.

§3.19 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members of councils which regulate or distinguish what activities shall not be included in the work of any particular trade.

## ARTICLE 4 ARCHITECT

### § 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or Architect's authorized representation.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect whose status under the Contract Documents shall be that of the Architect.

### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site as agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts for Work completed in accordance with the Contract Documents.

§ 4.2.6 The Architect has authority to recommend to the Owner that the Owner reject Work that does not conform to the Contract Documents. Subject to Owner's written approval, whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work nor shall the Architect be responsible for defects or deficiencies of the Contractor, its Subcontractors, or suppliers resulting from their failure to complete the Work in accordance with the Contract Documents.

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§ 4.2.7 The Architect will review , or take other appropriate action upon, only upon the Contractor's submittals such as Shop Drawings, Product Data and Samples that are required by the Contract Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of specific details, equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Regardless of the review, notations, or mark-ups of the Architect on any submittal, shop drawing or product data, neither the Architect nor its consultants shall be responsible for any aspect of the submittal, shop drawing or product data which does not comply with the requirements of the Contract Documents, responsibility for which rests solely with the Contractor.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if reasonably inferable from the Contract Documents as being necessary to produce the intended results.

§ 4.2.14 When submitted in accordance with the Contract Documents, the Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information. Requests for information which do not conform to the requirements of the Contract Documents, or whose answer is reasonably obtainable or inferable from the Contract Documents, may be returned by the Architect without action.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

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§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

## § 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 5.2.2 All subcontracts shall be in writing and shall be assignable by the Contractor to the Owner upon termination for cause pursuant to the terms of the Contract Documents. All subcontracts shall contain a provision that the subcontract is intended to directly benefit the Owner and the Owner is a third party beneficiary of such subcontract. The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

## § 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

## § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.



*(Paragraph deleted)*

§ 5.4.2 When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

*(Paragraph deleted)*

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site if the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

*(Paragraph deleted)*

### § 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractors completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 OWNER'S RIGHT TO CLEAN UP

§ 6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

§ 7.1.1 The Owner may, without invalidating the Contract and without notice to the surety, direct changes in the Work. Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

### § 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of any adjustment in the Contract Sum; and
- .3 The extent of any adjustment in the Contract Time.

§ 7.2.2 No payment for Change in the Work shall be made until such Changes has been memorialized in an executed Change Order and the Change has been implemented into the Work. Partial payments on partially implemented changes shall be paid similarly as partial payment on base contract Work.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

### ARTICLE 8 TIME

#### § 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement or the Notice to Proceed authorizing the Contractor to commence Work.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

## § 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. Unless provided elsewhere in the Contract Documents, Final Completion shall be completed within thirty (30) days following Substantial Completion.

## § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 The Contractor shall not be entitled to an increase in the Contract Sum as a result of any delays in the progress of the work. The Contractor's sole remedy for delay shall be an extension of Contract Time. In no event shall any delays or extensions of time be construed as cause of justification for payment of extra compensation to the Contractor. Any claims for an increase of the Contract Time shall be made in writing to the Architect within seven (7) days of the event causing the delay.

§ 8.3.4 Extension of Contract Time resulting from Changes in the Work shall be by Change Order. Whenever the Contractor seeks an adjustment in the Contract Time as part of a Claim or Change Order, the Contractor shall justify the request with proper reference to the approved construction schedules and submitted updated schedules. All executed Change Orders shall be deemed to include adjustments in the Contract Time, if any, resulting from the underlying Change in the Work.

§ 8.4 If the Contractor, but for a delay not within its control, would have completed the Work prior to the time set forth in the project schedule, the Contractor shall not be entitled to any recovery of damages arising out of any event of delay which prevented such early completion of the Work.

§ 8.5 The stated milestone schedule dates for commencement of the Work, Substantial Completion of the Work and Final Completion of the Work, are material inducements to Owner in entering into this Agreement, and all time limits stated in the Contract Documents are of the essence of this Agreement.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### § 9.2 SCHEDULE OF VALUES

The Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The Contractor shall prepare the schedule of values using actual bids or negotiated proposals for various components of the Work. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Approval of the schedule of values (and revisions thereto) by the Architect shall be an absolute prerequisite to certification of the Applications for Payment.

### § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay. However, this paragraph will not apply to routine retainage the Contractor intends to withhold from the Subcontractor pursuant to the subcontract.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Stored materials may be included in the Applications for Payment provided the Architect can verify the cost and the existence of such stored materials. The Contractor shall submit requisitions from suppliers and Subcontractors to substantiate the amounts requested on the Application for Payment for materials or equipment stored on or off site. Applications for Payment for stored materials must meet the following criteria: 1) evidence of insurance is required for the stored materials; 2) the materials must be produced or stored for this Project only; and 3) the materials must be stored separately from other inventory and identified for this Project only.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. Although title to the Work covered by partial payments made shall pass to the Owner, this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of the materials and Work upon which payments have been made, or the restoration of any damaged Work, or as a waiver of the right of the Owner to require the fulfillment of all terms of the Contract Documents. A Sworn "Contractor's Affidavit" shall be submitted with each payment request in sufficient form for the Owner to determine Contractor's right to payment and compliance with the Illinois Mechanic's Lien law. Each payment request shall include properly executed waivers of lien in conformity with information set forth on a properly completed Contractor's Affidavit. In the event that the Owner is satisfied with Contractor's payment procedures, the Owner may accept partial waivers of lien of subcontractors and suppliers who were included in the immediate proceeding payment. The Contractor shall submit waivers on a current basis, but the Owner may allow Subcontractors and suppliers to be not more than one payment late with their partial waivers.

### § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of

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the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§9.5.4 At the election of the Owner, in addition to the Owner's remedy described in Subparagraph 9.5.1 above, a sufficient sum may be retained by the Owner as determined to be necessary for the purpose of setting aside a reasonable reserve to fully correct the loss or to protect the Owner from the loss for the items above set forth.

§9.5.5 The Contractor shall submit lien waivers and sworn statements in accordance with the terms of the Contract Documents. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner not later than the time of payment. The Contractor shall keep the Project free and clear of all liens which arise from the Work. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certifications of Payment have been previously issued and payments made by the Owner, will be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, its subcontractors, material supplies, or other persons or entities making a claim by reason of having provided labor, materials or equipment relating to the Work. To the extent of payments made by Owner, the Contractor shall appear, defend, indemnify and hold harmless the Owner and Indemnitees, at Contractor's sole expense, against any and all costs resulting from liens, claims, actions, law suits or proceedings brought against Owner or its property filed in connection with the Work, the Project site or any improvements thereon. To the extent of payment made by Owner, the Contractor agrees to appear, defend,

indemnify and hold harmless the Owner and Indemnitees against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits or proceedings.

**§9.5.6** The Owner shall release any payments withheld due to a lien if the Contractor obtains security acceptable to the Owner or a lien bond which is 1) issued by a surety acceptable to the Owner, 2) in form and substance satisfactory to the Owner, and 3) in an amount not less than one hundred fifty percent (150%) of such lien claim or such other amount as may be reasonably required by the Escrow Agent, if any, to insure over such lien claim. By posting a lien bond or other acceptable security, the Contractor shall not be relieved of any responsibilities or obligations under this Section, including without limitation, the duty to defend, appear, indemnify and hold harmless Owner and Indemnitees. The Cost of any premiums incurred in connection with such lien bond and security shall be the responsibility of the Contractor and shall not be reimbursable to the Contractor as a Cost of the Work or otherwise.

## **§ 9.6 PROGRESS PAYMENTS**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

**§ 9.6.3** The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor. Notwithstanding Article 4.2.4, the Architect and Subcontractor may communicate directly on the matters covered by this paragraph.

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

**§ 9.6.5** Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

**§9.6.8** The Owner will withhold ten percent (10%) from the periodic Progress Payments as retention. Payment of retention shall be requested with the Contractor's application for Final payment. No interest shall accrue on monies held in retention.

## **§ 9.7**

*(Paragraphs deleted)*

## **INTENTIONALLY DELETED § 9.8 SUBSTANTIAL COMPLETION**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The Work will not be considered suitable for Substantial Completion review until all Project systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections

and certifications have been made and posted, designated instruction of the Owner's personnel in the operation of systems has been completed and documents, and all final finishes within the Contract Documents are in place. In general, the only remaining Work shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations and/or use and enjoyment of the Project. As a further condition of Substantial Completion acceptance, the Contractor shall certify that all remaining Work will be completed within thirty (30) calendar days or within the time stated elsewhere in the Contract Documents following the Date of Substantial Completion. Upon the Owner's written consent, the Date of Substantial Completion of landscaping portions of the Work may be as mutually acceptable to the Owner and the Contractor. The Contractor shall secure and deliver to the Owner written warranties and guarantees from its Subcontractors, Sub-Subcontractors and suppliers bearing the date of Substantial Completion or some other date as may be agreed to by the Owner and stating the period of warranty as required by the Contract Documents. The Contractor is responsible for the warranty of all Work, whether performed by it or by its subcontractors at any tier.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list ("Punch List") of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion or as set forth in Article 12 for Punch List items and warranty work.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§9.8.6 Among other items identified elsewhere in the Contract Documents, submission of the following shall be a prerequisite to Substantial Completion:

- .1 All Record Documents
- .2 All Operations and Maintenance Manuals, if any
- .3 All manufacturers' warranties, if any
- .4 Complete commissioning of all systems required by the Contract Documents to be commissioned.

## § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not



be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 All Work shown on the Contractor's Punch List and thereafter identified in the Architect's inspection shall be completed within thirty (30) days of issuance of the Certificate of Substantial Completion, unless a different time is stated elsewhere in the Contract Documents. Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, based upon the exercise of professional skill and care and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

#### § 9.10.4

*(Paragraphs deleted)*

Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

*(Paragraph deleted)*

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Neither the Owner nor the Architect shall be responsible for any safety precautions or programs in connection with the Work.

### § 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

### § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### § 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl

(PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 Intentionally Deleted

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

#### § 10.4 EMERGENCIES

§ 10.4.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### ARTICLE 11 INSURANCE AND BONDS

*(Paragraphs deleted)*

§ 11.0 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable as set forth in the Agreement.

11.0.1 All Contractors, Manufacturers/Distributors, and Suppliers shall be required to carry and evidence insurance coverage with a standard Acord Certificate of Insurance with minimum limits applicable. Sample attached.

#### 1. Minimum Insurance Requirements and Limits

<i>Coverage</i>		<i>Limits</i>
A. Automobile Liability	\$1,000,000	Combined single limit
B. Commercial General Liability	\$1,000,000	Per occurrence
	\$2,000,000	General aggregate

All Commercial General Liability policies must include Blanket Contractual coverage and Broad Form Vendors' Liability coverage.

C. Workers' Compensation	\$500,000	Per accident
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Init.

	(Employers' Liability)	\$500,000	Disease limit
		\$500,000	Each Disease
D.	Umbrella Liability	\$5,000,000	Limit

2. Cancellation or Alteration  
The policies of insurance required by this exhibit shall provide that they cannot be cancelled or altered in any way changing coverage except after 30 days' prior written notice by certified mail to owner.
3. Workers' Compensation and General Liability Waiver of Subrogation in favor of the City.
4. Insurance Certificates
  - A. Must be submitted ten (10) days prior to any work being performed to allow review of certificates.
  - B. Certificates not meeting requirements must be revised and resubmitted within fifteen (15) days or the subcontractor will not be allowed on the jobsite.
5. Additional Insured and Broad Form Vendors' Liability in favor of the City.
  - A. The City must be named as an Additional Insured with the following wording appearing on the Certificate of Insurance: "The City of St. Charles and any official, trustee, director, officer, or employee of the City (plus any holder or mortgage as designated by the City) as to any and all projects, as an Additional Insured for the Commercial General Liability as respects any and all projects for any work being performed and this coverage will be primary and noncontributory."
  - B. The Architect and Architect's consultants shall be included as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during Contractor's operations.
6. Minimum Insurance Carrier  
All contractors, manufacturers/distributors, and suppliers' insurance carriers must comply with the minimum A.M Best rating of A-VI for all insurance carriers.

**§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

§ 11.4.1 Contractor, within ten (10) days after receiving notice of the award, shall furnish a performance bond and a payment bond in the full amount of the Contract agreeing to perform the Work and fulfill all obligations in accordance with all of the projections of the Contract Documents with a surety rated not less than A, VI by Best's Insurance Guide Key.

11.4.1.1 If, at any time, the Owner shall become reasonably dissatisfied with any surety or sureties then upon the bonds, or for any other reason such bonds shall cease to be adequate security for the Owner, Contractor shall, within five (5) days after notice to do so, substitute an acceptable bond in such form and sum and signed by such other sureties as may be satisfactory to the owner. No further payment shall be deemed due not shall be made until the new sureties shall have qualified.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

11.4.3 The Performance Bond and Labor and Material Bond shall be executed in conformity with American Institute of Architects, Doc A312. A certified copy of the Power of Attorney from the surety company stating that the person executing the bond is duly authorized by the surety to execute the bond, shall accompany the bond.

11.4.4 Whenever the Contractor shall be and is declared by the Owner to be in default under the Contract, the surety of the contractor shall be responsible to compensate the Owner for the following costs incurred by the Owner as they result from the default: 1) any and all extra work, 2) additional Architect costs, 3) accounting costs, 4) legal costs and reasonable attorneys' fees 5) testing, consulting, and other engineering costs, 6) any other costs incurred resulting from the default. Notwithstanding, the performance bond surety's payment obligation shall not exceed the penal sum of the bond.

11.4.5 It shall be the duty of the Surety to give an unequivocal notice in writing to Owner within ten (10) days after receipt of a Declaration of Default and notice of termination of the Agreement of the Surety's election either to remedy the default or defaults promptly or to perform the remaining Work promptly or to pay to Owner costs as herein provided, time being of the essence. In said Notice of Election, the Surety shall indicate the date on which the remedy or performance will commence and it shall then be the duty of the Surety to give prompt notice in writing to Owner immediately upon completion of (a) the remedy and/or correction of each default (b) the remedy and/or correction of each item of condemned Work, (c) the furnishing of each omitted item of Work and (d) the performance of the Contract. The Surety shall not assert solvency of its principal or its principal's denial of default as justification for its failure to give notice of election or for its failure to promptly remedy the default or perform the Contract. If the surety reasonably requires additional time to investigate the declaration of default, it shall within the aforesaid ten (10) days so notify the Owner. In such case, the Owner may, without prejudice to its rights under the performance bond, continue construction of the Work, and charge the costs of such Work to the surety. Upon completion of its investigation, which shall be completed as otherwise set forth in the bond or herein, or in any event not in excess of a reasonable time, the Surety may exercise its rights otherwise held herein and under the bond.

11.4.6 In the event the said Surety shall fail to act promptly as hereinbefore provided, then Owner may cause ten (10) days notice of such failure to be given, both to said principal and Surety, and that at the expiration of said ten (10) days, the obligee shall have the authority to cause said Work to be done, and when the same is completed and the cost thereof quantified, the said principal and Surety shall hereby agree to pay any excess in the cost of said Work above the agreed price to be paid under said Contract, cut not exceeding the penal sum of the bond.

11.4.7 As the work is completed by a completing contractor in accordance with the terms of the Contract Documents, to the extent that any portion of the Contract Price remains owing after setoff, Owner shall pay completing contractor in accordance with the Schedule of Values as certified by the Architect, and upon the completion of the Work pursuant to the Agreement, if any funds remain due on said Contract, the same shall be paid to said Surety.

11.4.8 In case of any conflict between any provision of the performance bond and the Contract Documents, the provisions of the Contract Documents shall prevail.

11.4.9 Any provisions contained within the bonds creating a condition precedent for Owner not otherwise required herein, or abrogating Owner's rights or remedies otherwise available in contract, law, or equity are void.

11.4.10 In the event the Surety shall make any assignment for the benefit of creditors or commit any act of bankruptcy, or if it shall be declared bankrupt, or if it shall file a voluntary petition in bankruptcy, or shall in the opinion of the Owner be insolvent, the Contractor agrees forthwith upon request of the Owner to furnish and maintain other corporate surety with respect to said bonds satisfactory to the Owner.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

### § 12.2 CORRECTION OF WORK

#### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall commence to run with respect to portions of Work first performed or corrected after Substantial Completion at the time of the subsequent acceptance of this Work in writing by the Owner.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor except has set forth in Article 12.2.2.2 herein.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the law of the State of Illinois and that exclusive jurisdiction for all matters relating to the contract lies with the Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois.

#### §13.1.1 HUMAN RIGHTS ACT

In addition to the certifications, if any, required by the Owner and to the extent required by law, the Contractor shall comply with the terms and procedures of the Illinois Human Rights Act, 775 ILCS 10/0.01 *et seq.* To the extent required by law, the Contractor agrees as follows:

- .1 That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service, and further that it will examine all job classifications to determine if minority persons or women are under-utilized and will take appropriate affirmative action to rectify any such under-utilization.
- .2 That, if it hires employees in order to perform this Contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) 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 under-utilized.

- .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, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an 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 a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Contractor's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with such Act and Rules and Regulations, the Contractor will promptly so notify the Department and the Contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
- .5 That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the Contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department'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 and the Department 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 it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such Subcontract. In the same manner as with other provisions of this Contract, the Contractor will be liable for compliance with applicable provisions of this clause by such Subcontractors; and further it will promptly notify the Contracting Agency and the Department in the event any Subcontractor fails or refuses to comply therewith. In addition, the Contractor will not utilize any Subcontractor declared by the Illinois Human Rights Commission to be ineligible for Contracts or Subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

**§13.1.2 DEBARMENT** The Contractor by submitting its bid certifies that the Contractor is not barred from bidding on the Project as a result of a conviction for either bid-rigging or bid rotating. 720 ILCS 5/33/E-11.

**§13.1.3 DRUG FREE WORKPLACE** The Contractor by submitting its bid certifies that it will provide a drug free workplace and that it is in compliance with the requirements of the Drug Free Workplace Act. 30 ILCS 580. 1 *et seq.*

**§13.1.4 SEXUAL HARASSMENT** The Contractor by submitting its bid certifies that it has a written sexual harassment policy which includes (i) the illegality of sexual harassment; (ii) a definition of sexual harassment (iii) a description of sexual harassment, utilizing examples; (iv) an internal complaint process including penalties; (v) the legal recourse, investigative and compliant process through the Illinois Department of Human Rights; (vi) directions on how to contact the Department and Commission; and (vii) protection against retaliation for exercising rights under the policy in accordance with 775 ILCS 5/1 – 15.1.1 The Owner, and other parties to this Contract, are subject to the rules and regulations of the Illinois Department of Human Rights and the statutory requirements thereof.

#### **§13.1.5 ILLINOIS DEPARTMENT OF LABOR REQUIREMENTS**

**§13.1.5.1** It shall be mandatory upon the Contractor and upon any Subcontractors thereof to pay all laborers, workmen, and mechanics employed by them not less than the prevailing wages in the locality for each craft or type of workman or mechanic needed to perform such work and the general prevailing rate for legal holidays and overtime work as ascertained by the Illinois Department of Labor and pursuant to Illinois law and statutes in such case made and provided.

**§13.1.5.2** The Contractor and Subcontractors shall comply with *the Illinois Prevailing Wage Act* (11 Re. Stat. Ch. 48, Sections 39S-1-12) and shall include in Bids the costs for the current prevailing wage. As changes are made in these prevailing wages, the Contractor and Subcontractors performing Work on the Project will be responsible for conforming to the changes and shall have the responsibility for determining when changes are made. No additional costs are to be incurred by the Owner as a result of changes in the prevailing wage. All record keeping requirements are the obligation of the Contractor and Subcontractors. Certified payrolls must be submitted to the Owner pursuant to Illinois law.

**§13.1.5.3** To the extent that there are any violations of this Act and any demands are made upon the Owner, Architect, or Construction Manager by the Illinois Department of Labor or by any employee of the Contractor or a Subcontractor performing Work on the Project, the Contractor or the particular Subcontractor and Contractor shall be responsible for indemnifying and holding the Owner and Architect free and harmless from all costs, liability or damages incurred, directly or indirectly, by the Owner or Architect including attorneys' fees, in responding to and complying with demands made by the Department of Labor or an aggrieved employee and such amounts may be withheld from the payments to be made on the Project. It is the intention that the Owner, Architect shall suffer no time loss or other additional expenses in complying with any inquiry made with regard to this Act.

**§13.1.5.4** No less than once per month, the Contractor shall submit certified payments to the Owner in compliance with the Illinois Prevailing Wage Act.

**§13.1.6 ILLINOIS DRUG-FREE WORKPLACE ACT** Upon request Contractor shall execute a Certification in compliance with the City of St. Charles as submitted by the Owner to the Contractor.

**§13.1.7 MISCELLANEOUS PROVISION OF LAW.** It is specifically provided that this Contract is subject to all the provisions of law regulating and controlling the performance of Work for the Owner, and that the rules of law shall prevail over any provision contained in any of the Contract Documents which may be in conflict thereto or inconsistent therewith. Each and every provision of law and clause required by law to be inserted in the Contract Documents shall be deemed to be inserted herein and the Contract Documents shall be read and enforced as though it were included herein, and if, through mistake or otherwise, such provision is not inserted, or is not correctly inserted, then upon application of either party, the Contract Documents shall forthwith be physically amended to make such insertion or correction.

**§13.1.9.** The Owner may at its sole and exclusive option, invoke the following:

- 1 Upon request by the Owner, any employee of the Contractor or any of its subcontractors or vendors shall submit state-issued identification documents (e.g. driver's license, state identification card, etc.) or other documents to the Owner so that the Owner may obtain a criminal background check of the employee. No employee who fails or refuses to produce such documents may work on the Project at the Project site. Alternatively, the Owner reserves the right to direct the Contractor, at any time during the Project, to immediately obtain criminal background investigations of any of Contractor's or Subcontractor's employees to ascertain whether such employees have been convicted of any offenses. If objectionable information regarding any employee is discovered via the background check, whether performed by Owner or Contractor, such employee shall not be allowed to work on the Project at the Project site. If no objectionable information is revealed, then the employee shall receive a visitor's badge that must be worn at all times while working on the Project site. The Owner shall be the sole judge of what information may be deemed objectionable. The Owner may request new background checks of any employee at any time.

## **§ 13.2 SUCCESSORS AND ASSIGNS**

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. Notwithstanding any of the provisions of this paragraph, however, the Owner may assign the Contract to an affiliated entity without the consent of the Contractor.

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

## **§ 13.3 WRITTEN NOTICE**

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or



certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

#### § 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

#### § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

#### § 13.6 INTEREST

Payments shall be made in accordance with the Local Government Prompt Payment Act and interest, to the extent permitted under said Act, shall accrue at the rate set forth in the provisions of the applicable state of local statutes governing payment to Contractors on public projects. On privately funded projects, interest shall only accrue as set forth in the Contract Documents. Under no circumstances shall interest accrue on amounts held in retention until such time as retainage is due under the Contract, and once due under the Contract, interest shall be as prescribed under herein referenced statutes.

#### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law.

#### §13.8 ARCHITECTS ADDITIONAL COMPENSATION

§13.8.1 The Contractor shall compensate the Owner for Additional Services for time expended by the Architect for contract administration time, at the Architect's hourly rate of the individual providing the service for the following:

- .1 After two (2) reviews of shop drawings/submittals per item.
- .2 Any office or field time spent after the second Punch List (excluding project closeout procedures).
- .3 Any office or field time spent should project closeout extend more than thirty (30) days beyond Substantial Completion.
- .5 Any office or field time necessitated by the Contractor's failure to achieve the scheduled date of Substantial Completion.

§13.8.1.1 The amounts paid to the Architect will be deducted by the Owner from the amounts due the Contractor for these Additional Services by change order and paid directly to the Architect.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit earned to date and direct costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 If suspension, delay or interruption by the Owner constitutes more than 20 percent of the total number of days scheduled for completion, the Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall not include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.3.3 Any adjustment made in the Contract Sum pursuant to paragraph 14.3.2 shall be subject to the provisions of Article 7.3.6. Overhead shall be allowed to the extent of one-half the percentages set forth in Article 7.5.

#### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Termination under this Article 14.1 shall be by written notice of termination delivered to the Contractor specifying the effective date of termination.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and direct costs incurred by reason of such termination, such as reasonable cancellation restocking charges associated with materials purchased for the Project.

### ARTICLE 15 CLAIMS AND DISPUTES

#### § 15.1 CLAIMS

##### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties to the Contract seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in

question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, whether or not any impact on cost or time has been determined.

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§15.1.5.3 The criteria on which the term "weather delays" shall be based on the normal average amount of precipitation received in the project areas, as recorded over a period of the last five (5) years by NOAA, National Climatic Data Center. Any extension of time due to unusually severe weather must be requested by the Contractor on the basis of documented records of the actual precipitation for a minimum period of three (3) months' time, compared with the normal average for the area. The criteria shall also include the number of excessive precipitation days over the same period and whether or not the Contractor's force worked on said days or any stage of construction was affected.

§15.1.5.4 Delay caused by any Subcontractor shall be the responsibility of the Contractor. The Contractor shall, therefore, ensure that all Subcontractors provide at all times sufficient personnel, equipment and materials to substantially complete the Work in the time specified herein.

§15.1.5.5 Where a delay occurs which is beyond the Contractor's control, the Contractor has an affirmative duty to mitigate the effect of that delay on the progress of the Work. An extension of the Substantial Completion date will not be granted to the extent that the Contractor breaches said duty to mitigate.

§ 15.1.5.6 Additionally, the Contractor shall not be entitled to payment or compensation for any alleged damages, costs or expenses whatsoever, including but not limited to costs of acceleration, arising in any manner because of hindrance or delay, from any cause whatsoever, whether such hindrances or delay be reasonable, foreseeable, avoidable or unavoidable.

§15.1.5.7 The Contractor shall not be entitled to recover from the Owner, and hereby waives all rights which it or its Subcontractors or any other person may otherwise have to recover, any costs, expenses and damages of any nature which it or its Subcontractors or any other person, may suffer by reason of delay in the performance of the Work or any portion thereof for any reason, the extension of Contract Time granted herein being the Contractor's sole and exclusive remedy.

### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### § 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.5.1 When the Architect is acting as the Initial Decision Maker, interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents. In no event, shall the Architect be liable for results of interpretation or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effects shall be final if consistent with the intent expressed in the Contract Documents.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

*(Paragraphs deleted)*

**ST. CHARLES POLICE STATION  
CONSTRUCTION MANAGEMENT SERVICES FIRMS FEE PROPOSAL FORM**

This Fee Proposal Form must be submitted by each proposer in conjunction with the Construction Manager General Conditions Form.

**A. Considerations**

1. The Construction Management firm's pre-construction basic scope of services are to include but not necessarily be limited to:
  - a. Providing cost estimating services throughout the design phase. Estimates are to be provided during the schematic design, design development and construction documents phases as a minimum.
  - b. Attend all design meetings with Owner and Architect, become an active participant in the project team.
  - c. Provide value engineering during the design phases.
  - d. Provide constructability reviews of construction documents.
  - e. Establish bidding procedures in conjunction with Owner and Architect.
  - f. Establish all scope of work bid packages for bidding.
  - g. Solicit a minimum of three (3) bids from pre-qualified subcontractors for all trades.
  - h. Conduct public bidding, open and record all bids from sub-contractors.
  - i. Evaluate all bids, prepare recommendations and make presentations to Owner.
2. The Construction Management firm's basic scope of services are to include but not necessarily be limited to:
  - a. Responsibility for all Construction Management and General Conditions services.
  - b. Construction Scheduling entire project.
  - c. Administration/Project Coordination.
  - d. On site management.
3. All laborers and mechanics employed by the contractors and/or subcontractors for this project shall be paid wages at rates not less than those prevailing wages current at the time work is performed as determined by the Illinois Department of Labor (Kane County). The letting of this contract is subject to Illinois Compiled Statutes 820 ILCS 130/1-12.
4. All subcontracts will be required to public bid.
5. Owner retains and reserves the right to approve and/or reject the CM recommendation of all sub-contractor contracts.

6. If the CM wishes to perform construction with their own forces, they must state their intention prior to the Notice to Bid and will be required to submit their bid for each trade separately and one (1) day (24 hours) in advance of the bid due date. Should Construction Management firms wish to submit multiple bids, then individual bids for each trade must be submitted. Multiple trade bids on one form will disqualify the submittal and the bid will be rejected.
7. The Owner is not subject to the payment of Retailer's Occupational Tax or any other state sales or use taxes.

**B. Provide Fee Information as Follows:**

1. Provide proposed fee for Construction Management services to be provided totally for a complete project: 1.60 %.

State the proposed fee for pre-construction services. \$ 76,176.00

2. Provide proposed anticipated budget cost for reimbursable items listed by completing the General Conditions Form. No other indirect costs will be considered for reimbursement after award of this work.
3. Change Order (Percentage of overhead and profit for Change Order requests) 1.60 %
4. Bond rate. 0.61 % based on current estimated cost of construction of \$17,000,000.
5. Indicate the overhead mark-up on any work your own forces will consider performing excluding General Conditions.

	<u>Add</u>	<u>Deduct</u>
Mark-Up on Self Performed	<u>10</u> %	<u>10</u> %

6. List which trades/work that will be considered to be performed by your own forces.

Selective Demolition, Concrete, Masonry, Carpentry, Gypsum Board

7. Provide mark-up for C.M. Fee and General Conditions on any changes in the work.

	<u>Add</u>	<u>Deduct</u>
General Conditions	<u>Actual Cost</u>	<u>Actual Cost</u>
C.M. Fee	<u>1.60</u> %	<u>1.60</u> %

9. State the cost for a 110% Performance Bond based on \$17,000,000 contract value:

\$ 114,440

- 10 Construction Management services firm is invited to add any additional items that would be customarily considered as required on this project.



Barbara J Riley, being duly sworn, deposes and says that he/she is the  
Name  
Executive Vice President of Riley Construction Company, Inc., Construction  
Title Name of Organization

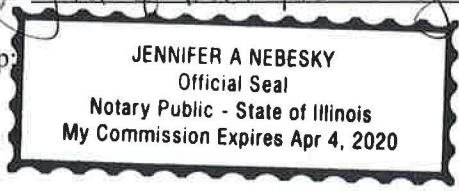
Management services firm(s), and the answers to the foregoing questions and all statements therein contained are true and correct. He/she has examined and carefully prepared this proposal based upon the pre-qualification documents and all issued addenda and have checked the same in detail prior to submittal. I have full authority to make statements and submit this proposal on this firm's behalf.

By: *Barbara J Riley*, Executive Vice President  
Signature, Title

Subscribed and sworn before me this 4 day of October, 2017.

Notary Public: *Jennifer A Nebesky* Jennifer A Nebesky

Notary Stamp: State of Illinois  
Commission Expires 04/04/20



Dated this 4 day of October, 2017.

Pursuant to information for prospective bidders for above mentioned proposed project, the undersigned is submitting the information as required with the understanding that it is for your confidential use only to assist in determining the qualifications of their organization to perform the type and magnitude of work included; and further, guarantee that truth and accuracy of all statements herein made. We will accept your determination of qualifications sub-contractor, supplier, or any other persons, firms, or corporations with whom we have done business, or who have extended any credit to us are hereby authorized to furnish you with any information you may request concerning our organization including, but not limited to, information concerning performance on previous work or credit standing with any of them. We hereby release any and all such parties from any legal responsibility whatsoever of having furnished such information to you.

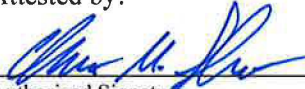
Each prospective Construction Management services firm making a proposal for Construction Management services agrees to waive any claim it has or may have against the Owner, the Architect/Engineer, and their respective employees, arising out of or in conjunction with the administration, evaluation, or recommendation of any submittal.

Riley Construction Company, Inc.  
Name of Company  
*Barbara J Riley*  
Authorized Signature  
Barbara J Riley, Executive Vice President

Type or Print Name and Title

Dated this 4 day of October, 2017

Attested by:



Authorized Signature

Christopher M Siefert, Vice President

Type or Print Name and Title

The City reserves the right to select the CM process that it judges best serves its interest. The City reserves the right to reject any or all submittals and to waive any and all informalities or irregularities to any submittal when such is deemed by the City to be in the City's best interest.

**ST. CHARLES POLICE STATION  
CONSTRUCTION MANAGEMENT SERVICES GENERAL CONDITIONS FORM**

The following list represents items to be categorized as General Conditions, and are not to be included as part of the proposed fee. The list is intended for evaluation purposes. During negotiations with the selected Construction Manager, certain items may be negotiated into the base fee. Provide an estimate for each item, and indicate whether or not the work will be performed by your own forces, or assigned to a subcontractor. For the General Conditions, assume a 16-month schedule (includes demolition work) and a three month construction closeout duration.

All other indirect costs are to be included as part of the base fee, no other indirect costs will be considered for reimbursement after award of this work.

General Conditions shall minimally include all labor, materials, equipment and incidentals:

<u>Item</u>	<u>Cost</u>	<u>By CM</u>	<u>By SC</u>
Project Manager	\$ <u>162,239</u>	X	
Full Time On-Site Superintendent	\$ <u>383,138</u>	X	
Other Personnel (Identify)			
Project Executive	\$ <u>73,716</u>	X	
Project Coordinator	\$ <u>44,100</u>	X	
Lean / QC Project Manager	\$ <u>14,019</u>	X	
MEP / BIM Project Manager	\$ <u>14,019</u>	X	
Safety Project Manager	\$ <u>11,814</u>	X	
Temporary Jobsite Trailer	\$ <u>14,058</u>	X	
Temporary Jobsite Trailer Equipment (Telephone/Fax/Copy Machine, Including Service & Equipment)	\$ <u>770</u>	X	
Temporary Drinking Water	\$ <u>1,777</u>	X	
Temporary Jobsite Toilets	\$ <u>3,554</u>	X	
Temporary Protection (Enclosures / Partitions)	\$ <u>4,476</u>		X
In-Progress Cleaning	\$ <u>28,722</u>	X	
Final Cleaning	\$ <u>30,459</u>		X
Dumpsters	\$ <u>40,425</u>		X
Traffic Controls, Barricades & Flagman	\$ <u>1,606</u>		X
Safety, First Aid and Fire Extinguishers	\$ <u>770</u>	X	

Survey/Layout (Site, Building, Partition, Foundation, As-Built)	\$ <u>23,100</u>		X
Reproduction Costs (Bidding & Construction)	\$ <u>1,925</u>	X	
Miscellaneous Materials, Tools, & Equipment	\$ <u>385</u>	X	
Temporary Signage	\$ <u>1,389</u>		X
Temporary Project Sign (4'x8' code permitting), Including Permits	\$ <u>1,353</u>		X
Postage & Delivery Services	\$ <u>385</u>	X	
Construction Testing	\$ <u>26,950</u>		X
Street Cleaning	\$ <u>9,240</u>		X
Tree Protection	\$ <u>1,078</u>		X
Winter Conditions	\$ <u>57,289</u>		X
Construction Progress Photos	\$ <u>1,925</u>	X	
Insurance	\$ <u>91,577</u>	X	
General Conditions Contingency	\$ <u>Incl. in Project Contingency</u>	X	
<b>TOTAL</b>	\$ <u><b>1,046,257</b></u>		

List an additional items that may or may not be required:

Projected Labor Rate Increases	\$ <u>25,846</u>	X
	\$ _____	
	\$ _____	
	\$ _____	
	\$ _____	
<b>TOTAL</b>	\$ <u><b>1,072,103</b></u>	

Peter Suhr  
Public Works Director  
City of St. Charles, Public Works Facility  
200 Devereaux Way  
St. Charles, IL 60174  
Email: [psuhr@stcharlesil.gov](mailto:psuhr@stcharlesil.gov)

November 21, 2017

**RE: Proposal for Construction Management Services, City of St. Charles New Police Station Confirmation of Best and Final Offer**

Dear Mr. Suhr,

Thank you again for allowing Riley Construction Company, Inc., the opportunity to negotiate with the City of St. Charles for the New Police Station Project.

As requested, please refer to the following discounts for our best and final offer.

1. Carpentry Tradework Discount. If Riley Construction is awarded the Carpentry Trade Work for the project, discount \$20,000 from our fee.
2. Concrete Tradework Discount. If Riley Construction is awarded the Concrete Trade Work for the project, discount \$30,000 from our fee.
3. Preconstruction Services Discount. A \$25,000 discount in Preconstruction Services is provided for three (3) design phase estimates (100% DD Estimate / 30%-40% CD Estimate / 60-70% CD Estimate) and an estimate analysis of a Schematic Design without a Basement versus one with a Basement lieu of continuous estimating. If additional estimates are requested or needed; the City of St. Charles will authorize Riley Construction to proceed and pay additional costs for those estimates.
4. Schedule Reduction Discount. For a \$100,000 savings in General Conditions, Riley proposes a 14-month versus 16-month schedule. The reduced schedule will require early procurement of long lead items; multiple bid packages; and advancement of the start of Demolition and Construction which may have some affect on design sequencing. We would propose the following for the approximate modified dates for the 14-month schedule:
  - a. Abatement and Demolition (2.5 Mo.): May 01, 2018 – July 15, 2018
  - b. Construction (11.5 Mo.): August 01, 2018 – July 15, 2019
  - c. Closeout (3 Mo.): July 16, 2019 – October 15, 2019

The multiple bid packages are defined as:

- a. Bid Package #1: Abatement, Demolition, and Initial Site Prep (Issued for Bid 03/15/18)
- b. Bid Package #2: Structure, Shell, and Long Lead Items (Issued for Bid 06/01/18)
- c. Bid Package #3: Remaining Construction (Issued for Bid 09/01/18)

If there are issues during the design process that result in delays in the completion of the bid packages, the shortened schedule and associated savings may not be realized.



5. Technology. Riley has sophisticated construction management techniques and technology utilizing LEAN and Building Information Modeling (BIM) methods to achieve a savings of approximately \$350,000 in the overall cost of the project.

Should the City have any comments or questions about this letter, please feel free to contact me on my mobile phone ((262) 620-2325).

We hope the City finds this offer acceptable and we eagerly look forward to becoming a member of the Project Team and building of a fruitful business relationship.

Respectfully,

**RILEY CONSTRUCTION COMPANY, INC.**

A handwritten signature in black ink, appearing to read "Chris M. Siefert".

Christopher M. Siefert, LEED AP, Vice-President / Project Executive

Encl. – St. Charles Police Station Construction Management Services General Conditions Form (revised for 14 – month schedule)

Copy: Riley Construction Company, Inc. – Barb Riley  
FGM Architects – Raymond Lee, AIA, LEED AP

**CHICAGO**

926 North Shore Drive  
Lake Bluff, IL 60044

P (847) 457.3909  
F (847) 457.3916  
[rileycon.com](http://rileycon.com)

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**ST. CHARLES POLICE STATION**  
**CONSTRUCTION MANAGEMENT SERVICES GENERAL CONDITIONS FORM**  
*(REVISED FOR 14-MONTH SCHEDULE)*

The following list represents items to be categorized as General Conditions, and are not to be included as part of the proposed fee. The list is intended for evaluation purposes. During negotiations with the selected Construction Manager, certain items may be negotiated into the base fee. Provide an estimate for each item, and indicate whether or not the work will be performed by your own forces, or assigned to a subcontractor. For the General Conditions, assume a 14-month schedule (includes demolition work) and a three month construction closeout duration.

All other indirect costs are to be included as part of the base fee, no other indirect costs will be considered for reimbursement after award of this work.

General Conditions shall minimally include all labor, materials, equipment and incidentals:

<u>Item</u>	<u>Cost</u>	<u>By</u> <u>CM</u>	<u>By</u> <u>SC</u>
Project Manager	\$ <u>144,159</u>	X	
Full Time On-Site Superintendent	\$ <u>340,441</u>	X	
Other Personnel (Identify)			
Project Executive	\$ <u>65,501</u>	X	
Project Coordinator	\$ <u>39,185</u>	X	
Lean / QC Project Manager	\$ <u>12,457</u>	X	
MEP / BIM Project Manager	\$ <u>12,457</u>	X	
Safety Project Manager	\$ <u>10,497</u>	X	
Temporary Jobsite Trailer	\$ <u>12,491</u>	X	
Temporary Jobsite Trailer Equipment (Telephone/Fax/Copy Machine, Including Service & Equipment)	\$ <u>684</u>	X	
Temporary Drinking Water	\$ <u>1,579</u>	X	
Temporary Jobsite Toilets	\$ <u>3,158</u>	X	
Temporary Protection (Enclosures / Partitions)	\$ <u>3,977</u>		X
In-Progress Cleaning	\$ <u>25,522</u>	X	
Final Cleaning	\$ <u>30,459</u>		X
Dumpsters	\$ <u>35,920</u>		X
Traffic Controls, Barricades & Flagman	\$ <u>1,427</u>		X
Safety, First Aid and Fire Extinguishers	\$ <u>684</u>	X	

Survey/Layout (Site, Building, Partition, Foundation, As-Built)	\$ <u>23,100</u>		X
Reproduction Costs (Bidding & Construction)	\$ <u>1,710</u>	X	
Miscellaneous Materials, Tools, & Equipment	\$ <u>342</u>	X	
Temporary Signage	\$ <u>1,234</u>		X
Temporary Project Sign (4'x8' code permitting), Including Permits	\$ <u>1,353</u>		X
Postage & Delivery Services	\$ <u>342</u>	X	
Construction Testing	\$ <u>26,950</u>		X
Street Cleaning	\$ <u>8,210</u>		X
Tree Protection	\$ <u>1,078</u>		X
Winter Conditions	\$ <u>50,904</u>		X
Construction Progress Photos	\$ <u>1,710</u>	X	
Insurance	\$ <u>91,577</u>	X	
General Conditions Contingency	\$ <u>Incl. in Project Contingency</u>	X	
<b>TOTAL</b>	<b>\$ <u>949,109</u></b>		

List an additional items that may or may not be required:

Projected Labor Rate Increases	\$ <u>22,993</u>	X
	\$ _____	
	\$ _____	
	\$ _____	
	\$ _____	
<b>TOTAL</b>	<b>\$ <u>972,103</u></b>	



ID	EQUIPMENT BILLING RATE PER	HOURLY	DAY	WEEK	MONTH	OTHER
<b>PHONES</b>						
N/A	CELL AND BASIC PHONES	\$ 0.35				
<b>TRUCKS</b>						
101	FLATBED TRUCK, 1 1/2 TON	\$ 25.00				
102	DUMP TRUCK, 1 TON	\$ 25.00				
103	PICKUP TRUCK		\$ 70.00			
<b>TRAILERS</b>						
104	OFFICE TRAILER				\$ 400.00	
106	STORAGE BOX				\$ 175.00	
107	TOOL TRAILER				\$ 180.00	
<b>LIFT &amp; EXCAVATING EQUIPMENT</b>						
201	FORKLIFT - 5 Ton - 54'		\$ 708.90	\$ 1,820.70	\$ 4,256.80	
202	FORK LIFT - 3 Ton - 34' REACH		\$ 415.65	\$ 971.20	\$ 2,237.20	
203	STRAIGHT MAST - 2 Ton - 21' REACH		\$ 212.50	\$ 595.00	\$ 1,530.00	
601/602	SIZZOR LIFT		\$ 120.70	\$ 246.50	\$ 499.80	
206	UNILOADER		\$ 221.00	\$ 671.50	\$ 1,619.25	
207	UNILOADER ATTACHMENT		\$ 125.80	\$ 365.50	\$ 907.80	
208	LOADALL		\$ 349.35	\$ 853.40	\$ 1,930.35	
<b>CONCRETE EQUIPMENT</b>						
310	FINISHING MACHINE - RIDING		\$ 215.05	\$ 643.45	\$ 1,858.95	
311	FINISHING MACHINE - 4' WALK BEHIND		\$ 74.80	\$ 216.75	\$ 582.25	
312	FINISHING MACHINE - 3' WALK BEHIND		\$ 56.95	\$ 181.90	\$ 498.10	
317	POWER BUGGY		\$ 142.80	\$ 442.00	\$ 919.70	
313	COMPACTOR		\$ 73.95	\$ 227.80	\$ 526.15	
314	VIBRATOR		\$ 43.35	\$ 132.60	\$ 297.50	
316	VIBRATING SCREED		\$ 73.10	\$ 224.40	\$ 499.80	
309	SOFT CUT SAW		\$ 151.30	\$ 453.90	\$ 1,361.70	
315	GROUT PUMP		\$ 281.35	\$ 844.05	\$ 2,532.15	
307	AIR COMPRESSOR		\$ 75.65	\$ 230.35	\$ 472.60	
<b>CONCRETE FORMS</b>						
401	SYMONS FORMS PER SQUARE FOOT		\$ 0.10			
402	SYMONS SHORING POSTS		\$ 10.00			
<b>SCAFFOLDING</b>						
510	HYDRO-MOBILE 60' (ONE POWER UNIT)			\$ 1,100.00	\$ 3,600.00	
500	24' HYDRO MOBILE POWER UNIT				\$ 2,800.00	
504	18' CANTILEVER				\$ 400.00	
516	5' HYDRO TOWER				\$ 50.00	
513	HOG LEG KIT			\$ 350.00		
514	HOG LEG EXTENSION KIT			\$ 235.00		
512	HYDRO WINTER ENCLOSURES (Per 60 FEET)			\$ 213.00		
506	SCAFFOLD RINGS		\$ 1.91			
503	PLANK		\$ 2.02			
<b>MASONRY EQUIPMENT</b>						
507	MORTAR/CONCRETE MIXER		\$ 96.90	\$ 328.10	\$ 810.90	
508	MASONRY TABLE SAW		\$ 59.50	\$ 164.90	\$ 442.00	
511	GROUT HOG		\$ 244.80	\$ 637.50	\$ 1,912.50	
509	ELECTRIC MULE		\$ 40.80	\$ 113.05	\$ 285.60	
<b>MISC. EQUIPMENT</b>						
308	SMALL AIR TOOLS		\$ 22.10	\$ 66.30	\$ 198.90	
604	ELECTRIC HOIST, 1 & 2 TON		\$ 28.05	\$ 85.00	\$ 229.50	
629	FLOOR SCRUBBER		\$ 145.00	\$ 385.00	\$ 850.00	
702	WATER PUMP - 2" or 3"		\$ 47.60	\$ 142.80	\$ 356.15	
703	GENERATOR		\$ 44.20	\$ 145.35	\$ 385.05	
704	WELDER		\$ 84.15	\$ 204.00	\$ 452.20	
706	PORTABLE HEATER		\$ 31.00	\$ 95.00	\$ 235.00	
801	AIR COMPRESSOR		\$ 45.00	\$ 148.50	\$ 450.00	

Time and Material Equipment Rates  
June 1, 2017 - May 31, 2018

501	HAND HELD GAS SAW (INCLUDES BLADE)	\$ 87.55	\$ 247.35	\$ 525.30	
809	INSULATED BLANKET	\$ 5.00		\$50.00	with a max of \$50/ea blanket
812	HEPA FILTER	\$ 60.00	\$ 180.00	\$ 540.00	
802	BARRICADES	\$ 4.25	\$ 8.50	\$ 21.25	
804	EXHAUST FANS	\$ 36.75	\$ 110.24	\$ 334.05	
806	PANEL LIFT	\$ 30.00	\$ 90.00	\$ 270.00	
810	AIR QUALITY TESTER	\$ 30.00			
811	TRASH CHUTE			\$ 215.00	
814	CARPET PULLER	\$ 80.00	\$ 240.00		
813	CARPET & TILE TURBO STRIPPER	\$ 130.05	\$ 390.15	\$ 1,170.45	
815	AES - RAPOR FALL PROTECTION	\$ 14.00		\$ 42.00	
816	FIREPROOF SPRAYER	\$ 77.35	\$ 178.50	\$ 487.05	
817	SAFETY GATE SYSTEMS		\$ 1.75	\$ 5.00	
818	POWER/PRESSURE WASHER	\$ 66.57	\$ 199.72	\$ 605.20	
819	SNOW BLOWER	\$ 55.00			
820	AIR COOLER AC UNIT	\$ 120.00	\$ 300.00	\$ 820.00	
	RENTAL PARTITIONS			\$ 25.00	
	EQUIPMENT FUEL CHARGES				current gas prices
	OFFICE EQUIPMENT (TECHNOLOGY)	\$ 0.75			

\*\*\* All rates subject to change annually on June 1st due to market conditions



**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 5.b

Title:

Recommendation to Award the Bid for Snow and Ice Removal Services for the 2017/2018 Winter Season

Presenter:

AJ Reineking

Meeting: Government Services Committee

Date: November 27, 2017

Proposed Cost: \$154,000.00

Budgeted Amount: \$154,000.00

Not Budgeted:

**Executive Summary** *(if not budgeted please explain):*

The Public Works Department is responsible for snow and ice control on City properties and roadways throughout the community. To accomplish this task, contractors are used to supplement City staff in snow removal efforts in specific applications as conditions warrant. For the last several seasons, the City has utilized the services of up to seven different contractors per year to maintain parking lots, sidewalks, allies, and eight cul-de-sac routes.

On October 4, 2017, bids were opened for Snow & Ice Removal Services for the 2017/18 winter season with the option to extend the contract for up to two additional years. This advertisement furnished six competitive bids, including a bid for Zone 13, which consists of the Commercial/Manufacturing District in the southeast quadrant.

Tovar Snow Professionals, who was assigned Zone13 last season, has indicated that they need more consistent work to allocate their resources to the City. Staff is not prepared to make such a guarantee and feels that Zone 13 can be maintained by Public Works staff without disruption to services.

The remaining five contractors have indicated that they wish to extend their services at the 2017/18 bid rates.

**Attachments** *(please list):*

Bid Tabulation \* Bid Specifications

**Recommendation/Suggested Action** *(briefly explain):*

Recommendation to award the bid for Snow and Ice Control Services to Skyline Tree Service, Clean Sweep Environmental, Countywide Landscaping, Cornerstone Partners, and Schollmeyer Landscaping in the submitted bid rates, cumulatively not to exceed \$154,000.00.

City of St. Charles  
 Snow & Ice Removal Services Bid Tabulation  
 2017/2018 Snow Season  
 Bid Opening: 10/4/2016

Hourly Rates						
	Skyline Tree Service	Clean Sweep Environmental	Countywide Landscaping	*Tovar Snow Professionals	Cornerstone Partners	Schollmeyer Landscaping
	St. Charles, IL	Batavia, IL	Elburn, IL	East Dundee, IL	St. Charles, IL	Big Rock, IL
<b>EQUIPMENT RATES</b>						
Semi Truck		\$ 125.00		\$ 135.00	\$ 145.00	
Tandem Axle Dump Truck		\$ 110.00		\$ 135.00	\$ 135.00	
Single Axle Dump Truck		\$ 95.00		\$ 125.00	\$ 125.00	
1-ton Dump Truck		\$ 95.00	\$ 120.00	\$ 115.00	\$ 95.00	
4WD Pickup	\$ 104.00	\$ 95.00	\$ 110.00	\$ 110.00	\$ 85.00	
Front End Loader		\$ 150.00		\$ 195.00	\$ 165.00	
Backhoe		\$ 150.00		\$ 162.00	\$ 205.00	
Skidsteer		\$ 125.00	\$ 150.00	\$ 130.00	\$ 130.00	
Sidewalks				\$ 65.00	\$ 42.00	\$ 60.00
<b>AVAILABILITY/CAPABILITY</b>						
Downtown Parking Lots		X		X		
Downtown Sidewalks				X		X
Alleys			X	X		
Cul-de-Sacs (8 total routes)	X (up to 3 routes)		X (up to 2 routes)		X (up to 3 routes)	
Main Snow Routes			X (up to 3 routes)	X (up to 13 routes)		

Recommended Assignments	
Parking Lots:	Clean Sweep Environmental
Sidewalks:	Schollmeyer Landscaping
Alleys:	Countywide Landscaping
Cul-de-Sacs:	Cornerstone Partners (Blue, Purple, Red)
	Skyline Tree Service (Green, Brown, Orange)
	Countywide Landscaping (Emerald, Yellow)

\*Contract not renewed for FY18 per bidder's request

# **SPECIFICATIONS/SPECIAL PROVISIONS**

## **Snow & Ice Removal Services**

**BID OPENING** – Bids must be submitted to the St. Charles Municipal Center, located at 2 E. Main Street, St. Charles, IL 60174 by October 4, 2016 at 2:00 PM.

### **Intent**

The City of St. Charles desires to enter into an agreement with multiple contractors to provide Snow & Ice Removal Services. The locations will be throughout the City of St. Charles within the City limits as designated on the attached Snow Route Maps (“Exhibit C”). Contractors will be asked to provide snow and ice removal services on an **as needed basis** and as defined in this contract.

### **General Information / Description**

The City of St. Charles is responsible for Snow & Ice removal throughout the City. The City intends to utilize the services of several contractors to help supplement the City’s Snow Program. City staff has maintained a progressive Snow Removal Program for over twenty years and has always been focused on safe roads for our residents and visitors. Generally, the City will continue to maintain the majority of the arterial and secondary roadways throughout St. Charles, including plowing, salting, anti-icing applications for ice, sleet, light snow and heavy snow events.

Through this bid process, the City is seeking supplemental help from contractors to assist City staff as needed. Snow services available to contractors will not be limited; however, the current focus is for contractual Snow Removal to be performed within the City’s 180 cul-de-sacs, downtown parking lots, downtown sidewalks, and roadways in the Central Manufacturing District (also referred to as CMD or Zone 13).

Particular snow services that are currently available and offered will be noted on the Snow Route Maps (“Exhibit C”). **Contractors are to submit bids based on the potential of accepting more work as it may become available. In the location provided on the Base Bid/Fee Schedule From, each contractor shall identify the quantity of work they can perform based on the available services. Also, contractors shall identify the quantity of work they would like to perform if additional services become available.**

Contractors are responsible for coming to work based on the parameters of work (winter event/storm) established by the City.

### **Scope of Work**

The Contractor shall be responsible for all services required herein to be performed, and shall provide and furnish all labor, materials, necessary tools, expendable equipment and supplies, vehicles and transportation services required to perform and complete the Snow & Ice Removal Services from defined areas within the corporate limits of the City of St. Charles for the duration of the contract. Such services shall be performed within the corporate limits of St. Charles and any territory hereinafter annexed thereto, all in strict accordance with the parameters and scope of this document.

Work will generally consist of Snow & Ice Removal in various locations throughout the City of St. Charles. Works locations may include, but not be limited to, Main Routes, Connector Routes, Downtown Area, Cul-de-sacs, Parking Lots, Alleys and Sidewalks. Work locations are defined on the attached Snow Route Maps (“Exhibit C”).

The Contractor shall bid on all services/tasks for each Bid Item.

Contractor is responsible for any and all damage to any properties, which are a result of Contractor’s actions. Contractor shall repair or replace any and all property damaged due to Contractor’s work.

All work shall be performed by experienced personnel directly employed by the Contractor.

The Contractor shall provide management and technical supervision through competent supervisors as required to implement the required contract.

Contractor shall be responsible for the skills, methods, and actions of Contractor’s employees and for all work.

Contractor shall employ a sufficient number of staff to ensure performance of the work described.

**Designated Contact**

The Contractor shall designate one person to be the primary point of contact, available to receive callouts twenty-four (24) hours per day. The City will make every effort to give as much advanced warning of a call-out as practical.

**Contract Period**

The term of this contract will be for (1) year with two (2) additional one (1) year options, with an option to terminate after one (1) year, or 30 days after written notice, commencing on the eighth (8<sup>th</sup>) day of November 2016 and shall remain in full force and effect through April 30, 2017.

Option years shall begin May 1, 2017 through April 30, 2018, and May 1, 2018 through April 30, 2019.

Work to be done in response to the Invitation to Bid will be divided between multiple contracts and City of St. Charles staff. The work will be divided based on the attached Snow Route Maps (“Exhibit C”).

**Documentation**

Contractor shall maintain a complete record of all services provided including, but not limited to, start and end times, driver information, salt utilization, vehicle information and special comments. Records shall be kept on a form provided by the City. Contractor shall keep forms available for review during monthly meetings and/or as required by City staff.

**Submittals and Inspections**

The City will conduct regular inspections of Contractor's work. The City may conduct monthly meetings with Contractor to evaluate Contractor's services. During such meetings, the Contractor's past billings may be reviewed for compliance with the contract.

Contractor shall provide the City with a report of any problems encountered and recommendations for resolution of problems outside the contract scope of services with the monthly progress billings.

### **Vehicles and Equipment**

The Contractor shall furnish a complete list of vehicles and equipment to be used in servicing the contract as required by the City. The City reserves the right to require descriptive literature or specification sheets for each type of vehicle or equipment listed as it deems necessary to properly administer specifications of this contract. Upon request of the City, the Contractor shall demonstrate the equipment is suitable for the proposed services. The Contractor shall notify the City if there is any change in the number of vehicles or equipment being used.

All vehicles and equipment shall be maintained in good working order and appearance, free of rust, and shall be clean at the start of each working day. No vehicle or equipment shall be operated on a St. Charles street that leaks any fluids from the engine or working mechanism. In the event that any vehicle or equipment is not properly operable, a substitute vehicle shall immediately be provided that complies with the terms herein. All vehicles shall display the name of the Contractor, a local phone number, and a vehicle identification number that is clearly visible on both sides. All vehicles and equipment must have a flashing amber light affixed to them while plowing for the City to ensure proper visibility.

### **Accident Prevention and Notification**

The Contractor shall be responsible for initiation, maintaining, and supervising all safety precautions and programs in connection with the work of this contract. Precaution shall be exercised at all times for the protection of persons and property. The safety provisions of all applicable laws, regulation and building codes shall be observed, including safeguards on machinery and equipment, the elimination of hazards, and worker safety training.

In the event of accidents of any kind that involve the general public and/or private or public property in St. Charles, the Contractor shall immediately notify the City. Upon request of St. Charles, the Contractor shall provide such accounting of details and/or copy of written accident reports as St. Charles may require.

### **Damage**

The Contractor shall take all necessary precaution for the protection of public and/or private property. The Contractor shall be responsible for damages on or to public or private property resulting from careless or negligent operation of vehicles or handling of any receptacle. All property which suffers damage, including grass, mailboxes, etc. (reasonable wear-and-tear excepted) caused by the Contractor shall be repaired or replaced as soon as possible to equivalent quality at the time of the damage, and at no extra charge to the property owner or the City. If the Contractor fails to do so within a reasonable period of time, the City may, after the expiration of a period of forty-eight (48) hours after giving the contractor notice in writing, proceed to repair or replace such property as may

be deemed necessary at the Contractor's expense. Contractor agrees to pay for said expenses within ten (10) days of receipt of said invoice.

### **Employees and Conduct**

The Contractor shall undertake to perform all Snow & Ice Removal Services rendered hereunder in a neat, orderly and efficient manner; to use care and diligence in the performance of this contract; and to provide courteous and knowledgeable personnel in its customer service office.

The Contractor shall prohibit any consumption of alcoholic beverages or use of any controlled substances, except by a doctor's prescription, by its drivers and crew members while on duty, or in the course of performing their duties under this contract.

In the event that any of the Contractor's employees is deemed by the City to be unfit or unsuitable to perform the services under this contract as a result of intoxication, drug use or by virtue of abusive or obnoxious behavior, upon formal written or verbal request by the City, the Contractor shall remove such employee from work within St. Charles and furnish a suitable and competent replacement employee.

The Contractor's drivers and crewmembers shall be attired at all times in a neat and professional manner. St. Charles has the right to require or define what shall be considered suitable work clothes for the Contractors' employees.

All vehicle operators shall carry valid Illinois state driver's licenses for the class vehicle operated. Vehicle operators shall obey all traffic regulations, including weight and speed limits.

### **Non-Performance of Service**

If the Contractor fails to respond in accordance with the provisions of this specification for more than two (2) consecutive working days/call-outs, the City reserves the right to determine if there has been sufficient cause to justify non-observance of the service schedule. If, in the City's sole judgement, sufficient cause has been demonstrated, then the City shall serve notice either personally in writing stating that this contract shall be deemed in default if the Contractor does not take action to re-establish the schedule within twenty-four (24) hours of said notice (or the next call-out). If at the end of the twenty-four (24) hour period the Contractor has not taken corrective action, the City shall take such steps as are necessary to remedy the situation. In such cases, the Contractor shall be liable for any costs incurred by the City to correct such default. Notwithstanding, the City shall further reserve the right to terminate this contract.

### **Prevailing Wage**

Per the Illinois Department of Labor website, snow removal activities not associated with covered "Public Works" activities are not subject to the Illinois Prevailing Wage Act. As such, services rendered under this scope are not covered under the Prevailing Wage Act.

<http://www.illinois.gov/idol/FAQs/Pages/Landscaping.aspx>

### **Minimum Requirements**

All contractors MUST meet the following minimum requirements to be considered for work:



Contractors may be required to respond to a minimum of two inches of snow and remain until all awarded areas are cleaned to the standard of the City of St. Charles and the event is completed. The Public Works Division Managers will maintain sole call-out discretion based on the event.

1. Minimum of five (5) years of experience providing snow and ice removal on public or private roadways, not including parking lots. If less than five years' experience, previous experience with the City will be considered.
2. Provide adequate communications. All vehicles will need a cell phone with hands-free capabilities. The City may opt to have the Contractor(s) carry a 2-way radio with the Public Works frequency. If this option is exercised, the City will provide the Contractor(s) with a radio to carry. The radio must be returned by the end of the season.
3. Ability to respond to designated work area within one (1) hour of being called out.
4. Ability to provide necessary assigned equipment 24 hours per day, 7 days per week.
5. Ability to provide competent drivers/operators that are capable of efficiently operating the equipment assigned and are able to read City supplied maps.
6. Provide equipment that meets or exceeds the Department of Public Works equipment specifications. All equipment shall display the name of the contractor for identification purposes.

### **Snowplowing Specifications**

The City of St. Charles prides itself on providing safe roadways to our residents during every type of snow event. The Public Works Department will expect the same level of service from our contractors. The City is seeking hourly rate unit costs for snow plowing of roadway zones and of cul-de-sac zones.

Roadway zone plowing must be performed in a 3-ton dump truck (International 7400 or equivalent).

Cul-de-sac plowing shall be performed in appropriately sized equipment or a pickup truck.

All snowplowing operations MUST meet the following minimum specifications. All work is subject to approval from the Public Works Department based on these specifications.

1. Snowplowing shall commence within one (1) hour following notification by the City.
2. Cul-de-sac snowplowing shall be complete within four (4) hours following commencement of the work. Contractors are to provide enough equipment and the proper equipment to complete the tasks in a timely manner.

3. Roadway route plowing shall be continuous until the work is complete at the discretion of the Public Works Division Manager.
4. Snow will be plowed from all roadways and/or parking lots as per agreed upon in the contract.
5. Plowing shall be from curb-to-curb and plowed to bare pavement.
6. No large or excessive windrows will be allowed across driveways in cul-de-sacs, such determination shall be made by the Public Works Division Manager.
7. Residential driveways shall be clear of all large snow and ice boulders or chunks, allowing cars to pass through. Acceptable conditions shall be made at the sole discretion of the Public Works Department.
8. Backing into residential driveways is prohibited.
9. Stacking snow shall be done only in designated areas identified on the Snow Maps.
10. Special snow handling equipment requiring special charges above and beyond the contractor's normal snow plowing rates shall be utilized only with the City's prior authorization. Tandem axle dump trucks (6 wheelers) and single axle dump trucks (3-tons) are prohibited in cul-de-sacs unless approved by the City.
11. Fire hydrants, shutoff valves, extruding curb points, curbs or similar obstacles may or may not be flagged by the City at the City's sole discretion. Any damage to such items shall be repaired or replaced by the City at the Contractor's expense.
12. Any damage to residential property or parkways, including, but not limited to fences, landscaping, mail boxes, driveway improvements, etc. shall be repaired by the Contractor at the Contractor's expense. Repairs or replacements shall be completed as soon as practical, but no later than May 1<sup>st</sup> of the same year.
13. The downtown parking lot contractor(s) is responsible to remove snow from the sidewalk adjacent to the parking lots.
14. Contractor is to notify Public Works Division Manager if snow piles in cul-de-sacs or parking lots are becoming too large and/or impeding on sidewalks, driveways, or parking stalls.

### **Salting Specifications**

All salting operations MUST meet the following minimum specifications. All work is subject to approval from the Public Works Department based on these specifications.

1. Salting operations shall commence within one (1) hour following notification by the City.

2. Salting operations shall be complete within four (4) hours following commencement of the work. Contractors are to provide enough equipment and the proper equipment to complete the tasks in a timely manner.
3. The City shall provide rock salt for contractors use or the City may direct the Contractor to provide salt as needed based on the alternate unit price. Salt will be billed to the City on a per-ton basis. Proper documentation for salt amounts/use must be provided to the City.
  - a. Salt spreading shall be equal to the SOP's followed by the City of St. Charles
  - b. Contractor shall verify that they have had their salt distribution equipment calibrated to meet City's standards
4. Contractor shall be given access to the City's salt storage areas. The Contractor shall provide the City a detailed monthly inventory of the City's salt utilized. City staff will record salt inventory for each Snow Event. Contractors will be expected to assist utilizing City provided documentation sheets.

The City will not provide an operator to load salt into Contractor equipment.

5. Contractor shall apply rock salt, salt/sand mix, or chemical at all collector roadways and intersections when plowing or salting as warranted and throughout the local area as directed by the City.
6. Contractor shall apply rock salt, salt/sand mix, and/or chemicals on all icy areas on roadways, driveways, entries, and exits with particular emphasis on intersections, but only as prioritized by the City.
7. During the existence of chronic ice, Contractor shall implement an ongoing program for applying rock salt, salt/sand mix and/or chemicals to assure maximum safety.

### **Parking Lot & Sidewalk Snow Removal Specifications**

All parking lot and sidewalk snow removal operations MUST meet the following minimum specifications. All work is subject to approval from the Public Works Department based on these specifications.

The City maintains 23 parking lots and adjacent sidewalks in its downtown business district. For the purposes of this bid, the lots may be divided among multiple contractors based on their location with respect to the Fox River. East Side lots and sidewalks shall be identified as those east of the river (lots A, B, J, K, N, P, S, U, and the Public Works Department, as well as the adjacent sidewalks and sidewalks on the Main Street Bridge, the Prairie Street Bridge, and the N. 2<sup>nd</sup> Avenue, N. 3<sup>rd</sup> Avenue, and N. 5<sup>th</sup> Avenue bridges). West Side lots and sidewalks shall be identified as those on the west side of the river (lots C, E, F, G, H, I, L, O, Q, R, T, V, X, and Y, as well as the adjacent sidewalks and the Pedestrian Bridge and the Illinois Street Bridge).

1. Parking lot and sidewalk snow removal shall commence within one (1) hour following notification by the City.
2. Parking lot and sidewalk snow removal shall be complete within four (4) hours following commencement of the work. Contractors are to provide enough equipment and the proper equipment to complete tasks in a timely manner.
3. Parking lot and sidewalks shall be cleared from edge to edge and shoveled to bare pavement.
4. Contractor shall apply safety salt as supplied and when directed by the City.
5. Contractor shall be given access to the City's Public Works Garage area for pickup of City supplied materials and used for removing snow from sidewalks.
6. Snow shall be piled and plowed in areas designated by City staff.
7. Many of the City's downtown sidewalks and Plaza areas consist of brick pavers and/or set stone. Caution shall be taken at all times to ensure that no damage is caused to the surface. All powered equipment shall have rubber/poly protective covers over all steel that contacts surfaces. **No steel blades will be allowed on powered equipment.**

**REFERENCES**

List below other organizations (users of similar size and structure to St. Charles preferred) for which these or other similar services have been provided:

Agency Name: \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip Code \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Contact Person \_\_\_\_\_  
Dates of Service \_\_\_\_\_

Agency Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip Code \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Contact Person \_\_\_\_\_  
Dates of Service \_\_\_\_\_

Agency Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip Code \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Contact Person \_\_\_\_\_  
Dates of Service \_\_\_\_\_

Agency Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip Code \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Contact Person \_\_\_\_\_  
Dates of Service \_\_\_\_\_

Agency Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip Code \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Contact Person \_\_\_\_\_  
Dates of Service \_\_\_\_\_

**BASE BID / FEE SCHEDULE**

Bidders will be required to submit costs for Snow & Ice Removal based on the following Fee Schedule. Bidders will be compensated based on hourly rates for use of the specified equipment to perform the specified services. Bidders will be awarded this procurement not necessarily based on least cost, but rather to the contractor whose bid and documentation best meets the requirements of this document. It is understood that the contractor will be required to perform and complete the proposed work in a thorough and professional manner. The contractor shall provide all necessary labor, tools, implements, equipment, materials, and supplies to complete the contracted work.

The bid shall include a detailed list of the equipment that the contractor will have available, including the following information for each piece of equipment:

1. The make and model of equipment
2. Age of equipment
3. Condition of equipment

All costs entered below shall be on an hourly rate for the 2016/2017 Snow Season. Percentage of increase will apply for the 2017/2018 and the 2018/2019 Snow Seasons.

**Bidder Information**

**Company Name:** \_\_\_\_\_ **Telephone:** \_\_\_\_\_  
**Address:** \_\_\_\_\_ **Fax:** \_\_\_\_\_  
**City, State, Zip:** \_\_\_\_\_ **Email:** \_\_\_\_\_  
**Contact Person:** \_\_\_\_\_

List any and all deviations from minimum specifications:

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I certify that I am acting as an agent for the firm designated below and that the firm will sell to the City of St. Charles the product(s) described herein for the amount specified above. Further, I certify that all exceptions or deviations from the attached detailed specifications are clearly stated in writing and the price quoted shall include all terms specified unless otherwise noted.

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Signature of Authorized Representative

**CITY OF ST. CHARLES  
SNOW & ICE REMOVAL EQUIPMENT RATES  
2016/2017 SEASON**

EQUIPMENT	HOURLY RATE
Semi/Bomber	\$
Tandem Axle Dump (6 wheeler)	\$
Single Axle Dump (3-ton)	\$
Dump Truck (1-ton)	\$
4WD Utility Truck (4WD Pickup)	\$
Articulated Front End Loader	\$
Backhoe	\$
Skidsteer	\$
Sidewalk Snow Removal	\$

Other (if applicable)	\$
Other (if applicable)	\$
Other (if applicable)	\$
Other (if applicable)	\$

<b>ALTERNATE PRICING</b>	
White bulk road salt (Est. 250 ton)	\$
Percent (%) Increase for 2017/18 Snow Season	\$
Percent (%) Increase for 2018/19 Snow Season	\$

A. Please indicate which services you are able to perform as of November 2016:

- East Side Downtown Parking Lots & Sidewalks
- West Side Downtown Parking Lots & Sidewalks
- Contractor Maintained Alleys
- Main Snow Routes
  - i. Number of Routes Capable of Covering: \_\_\_\_\_
  - ii. Route Preference (if multiple, check all that apply):
    - Zone 1
    - Zone 2
    - Zone 3
    - Zone 4
    - Zone 5
    - Zone 6
    - Zone 7
    - Zone 8
    - Zone 9
    - Zone 10
    - Zone 11
    - Zone 12
    - Zone 13
- Cul-de-Sac Routes
  - i. Number of Routes Capable of Covering: \_\_\_\_\_
  - ii. Route Preference (if multiple, check all that apply):
    - Blue
    - Green
    - Purple
    - Brown
    - Yellow
    - Orange
    - Red
    - Emerald

*The City will make every attempt to accommodate route preferences where practical; however, such accommodation cannot be guaranteed.*





**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 5.c

Title:

Recommendation to Authorize a Purchase Order for Anti-Icing Chemicals for the 2017/2018 Winter Season

Presenter:

AJ Reineking

Meeting: Government Services Committee

Date: November 27, 2017

Proposed Cost: \$40,000

Budgeted Amount: \$40,000

Not Budgeted:

**Executive Summary** *(if not budgeted please explain):*

The anti-icing/de-icing industry has incrementally evolved over the last several years as municipal and contractual snow removal agencies embrace new products. This fall, Public Services Division staff met with manufacturers and suppliers of anti-icing and de-icing chemicals to review their products and to get an update on the materials available prior to the 2017/18 winter season.

The Public Works Department primarily uses two types of chemicals for anti-icing, an organic containing a chloride, such as calcium chloride, while the other is a chloride free variant. Typically, chloride is an active ingredient in roadway anti-icing liquids while chloride free materials are used on concrete infrastructure such as parking decks and sidewalks.

After reviewing product information from three different suppliers, staff determined that Industrial Systems, Ltd. of Lakemoor, IL provided the lowest pricing quote for a premium product in both the traditional and chloride-free anti-icing materials.

Industrial Systems has provided anti-icing materials to the City in the past and has met the expectations of staff.

**Attachments** *(please list):*

Quote Sheets \* Quote Tabulation \* Bid Waiver \* Material Information Sheet

**Recommendation/Suggested Action** *(briefly explain):*

Recommendation to authorize a Purchase Order for anti-icing materials to Industrial Systems, Ltd. in the amount not to exceed \$40,000.

**Industrial Systems, Ltd.**  
 112 West Route 120  
 Lakemoor, IL 60051  
 Tel: 815-344-5566 • Fax: 815-344-5588

# ISL Quote

1/26

**St. Charles Public Works**  
**Attn: Tony Whittaker**  
 2 East Main Street  
 St. Charles, IL 60174

**October 31, 2017**

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Reference:  
**Liquid Ice Melters**

Submitted By	FOB	Delivery	Terms
Greg Schams	St. Charles	Included	Net 30 days from delivery

Quantity	Product Description	Price
500 bags (10 skids)	50# bags Professional Ice Melter 50-50# bags/skid (- 16F)	\$8.10 bag delivered
250 bags (5 skids)	50# bags Professional Ice Melter 50-50# bags/skid (- 16F)	\$8.30 bag delivered
4,500 gal	<b>InfernalMelt S/C</b> A refined variant of your current ThermaPoint S for stockpile treating and blending with salt brine at an 80/20 ratio.	\$1.50/gal/ delivered
2200#	<b>Clariant Safeway Sodium Formate prills 40-55# bags/skid - FAA 1433 Airport Approved &amp; non corrosive (works down to 0°F)</b>	\$2,300.00/ skid
275 gl tote	<b>InfernalMelt NC Liquid non-chloride (-32°F freeze point) Includes used tote that you keep.</b>	\$995.00 delivered
2200 gls.	<b>InfernalMelt NC Liquid non-chloride (-32°F freeze point)</b>	\$3.09/gl delivered
4,500 gls	<b>ThermaPoint R</b> (Road Ready) - Used for pre-wetting, de-icing & anti-icing. <i>It is ready to use.</i> It is based on a <b>Proprietary Organic Polymer</b> mixed with Calcium Chloride & brine. This rates an NACE PNS corrosion number of 9.2 which means it is 90.8% less corrosive than rock salt. It has a freezing point of <b>-40°F</b> .	\$1.05 gl Delivered

**You can knock \$100 off the price on the sodium formate skid or the InfernalMelt NC tote if you have it delivered with the Professional Ice Melter skids you buy from us regularly.**

**Thank You for your Business !!**

<b><u>Note</u></b>
<b><u>Important</u></b>
Prices in effect at time of delivery and subject to availability, unless such time is extended in writing. Quantities shown above are not guaranteed.

\_\_\_\_\_  
 Greg Schams

2017



205 N. STEWART ST  
GENESE0, IL 61254  
PH: 888-840-5564 FAX: 309-944-4620

[www.snisolutions.com](http://www.snisolutions.com)

**QUOTATION**

Mr. A.J. Reineking  
Public Works Manager  
City of St. Charles, IL

November 1, 2017

RE: 2017 Winter Liquid Deicer Quote

Dear Mr. Reineking;

Thank you and your staff for taking to speak with on Monday. I have determined pricing for Biomelt 4.5 and Biomelt AG64 for the upcoming winter operations season. The Biomelt 4.5 is 100% organic, blue-green in color and can be used straight on your parking decks. Biomelt 4.5 can also be used as a salt brine accelerator and should be added at a 30% inclusion rate. Biomelt AG64 is also 100% organic (combination of Geomelt and Biomelt Concentrate) and is brown in color. This fluid can be used in the same manner as Biomelt 4.5.

Biomelt AG64 (4,500 gallons) delivered to St. Charles, IL:	\$1.95/gallon.
Biomelt 4.5 (4,500 gallons) delivered to St. Charles, IL:	\$3.25/gallon.
Biomelt 4.5 (4,500 gallons) FOB Geneseo, IL:	\$1,200.00/tote.
Freight charge for tote delivery (Pricing good for only 1 week):	\$90.00/tote.

If you wish to use a granular deicer on your parking decks, Biomelt X22 granular could be an option to consider. This product is a medium pellet sodium chloride with X22 corrosion inhibitor added. This gives Biomelt X22 a 80% reduction in corrosion compared to untreated sodium chloride. The organic accelerator allows a 30% reduction in the amount of salt used.

Biomelt X22 granular deicer 50# (48 bags per pallet):	\$25.00/bag.
Freight charge for pallet delivery (Pricing good for only 1 week):	\$90.00/pallet.

NOTE: If 4 pallets are purchased, SNI Solutions will waive freight charge.

Harmony Deicing Products  
 40w372 Edgar Lee Masters Lane  
 St. Charles, IL 60175

# Estimate

Date	Estimate #
11/6/2017	1956

City of St. Charles  
 200 Devereaux Way  
 St. Charles, IL 60174



P.O. No.	Terms
	Net 30

Item	Description	Qty	Rate	Total
Potassium Acetate	2,500 gallons of 50% potassium acetate delivered in totes	2,500	4.99	12,475.00
Potassium Acetate	4,000 gallon semi load of 50% potassium acetate delivered in tanker	4,000	4.74	18,960.00
Custom Blends	80/20 (32% calcium chloride/WinterSentry Inhibitor) delivered to St. Charles	4,300	0.99	4,257.00
Harmony Salt Bri...	23% Salt brine delivered to St. Charles	4,500	0.55	2,475.00
Harmony Salt Bri...	Natural Salt Brine: 15% Sodium, 6.4% Calcium, 1.8 % magnesium	4,500	0.61	2,745.00

<b>Subtotal</b>	\$40,912.00
<b>Sales Tax (0.0%)</b>	\$0.00
<b>Total</b>	\$40,912.00

Phone #

630-621-7473

chrism@harmonydeicing.com

Anti-Icing Product Quote Tabulation  
 2017/18 Winter Season

	Traditional Anti-Icing	Chloride-free Anti Icing
Industrial Systems, Ltd.		
Lakemoor, IL	\$ 1.50	\$ 3.09
SNI Solutions		
Geneseo, IL	\$ 1.95	\$ 3.25
Harmoney Deicing Products		
St. Charles, IL	No Bid*	\$ 4.74

Price per gallon delivered to St. Charles Public Works Facility

\*Pricing was offered for salt brines and calcium chloride, but not for a traditional anti-icing blend with organics, calcium, corrosion inhibitor mix.

**REQUEST FOR WAIVING BID PROCEDURE**

We request the City Council to waive the bid procedure and accept the quotation (requiring two-thirds City Council vote) submitted by:

Industrial Systems, Ltd.  
112 West Route 120  
Lakemoor, IL

For the purchase of: Liquid Anti-Icing/De-Icing Chemicals

At a cost not to exceed: 40,000.00.

Reason for the request to waive the bid procedure: Liquid anti-icing and de-icing materials, while many of the materials used are very similar, the blends and "organic" components vary from manufacturer to manufacturer. To bid a specific product would result in a sole source or to bid a specific outcome may result in a less than desirable product that has adverse affects on the City's storage and distribution equipment, the raodways, or the environment. Staff met with area manufacturers and material providers and collected quotes for acceptable products.

Other Quotations Received: SNI Solutions & Harmony Deicing Products (see attached quote sheets and tabulation)

Date: November 27, 2017

Requested by: \_\_\_\_\_

Department Director: \_\_\_\_\_

Purchasing Manager: \_\_\_\_\_

**THIS REQUEST FORM MUST BE SIGNED BY ALL PARTIES PRIOR TO REQUESTING COMMITTEE APPROVAL FOR WAIVING OF THE BID PROCEDURE. REQUESTS FORWARDED DIRECTLY TO THE CITY COUNCIL (AND BYPASSING COMMITTEE) MUST BE SIGNED BY ALL PARTIES PRIOR TO REQUESTING CITY COUNCIL APPROVAL. SUCH REQUESTS ARE TO BE OF AN EMERGENCY NATURE WHERE TIME IS OF THE ESSENCE.**

# INFERNALMELT

## InfernalMelt Municipal Stockpile/Concentrate

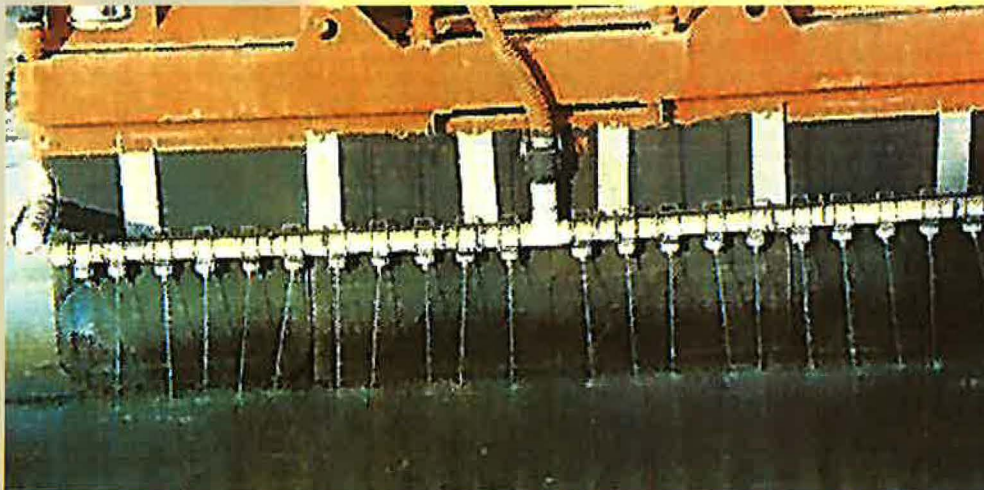
*Amp up your salt brine or rock salt stack with this powerful  
Organic Biopolymer additive*

**InfernalMelt Municipal Stockpile Concentrate liquid** is a premium engineered Biopolymer Organic liquid formulated from renewable resources. It has a dual use of either treating salt stockpiles or as an additive to your salt brine blends such as sodium chloride, calcium chloride or others.

**InfernalMelt MSC**, with its powerful Organic Biopolymer provides significant corrosion inhibition due to the high concentration of sugars and carbs. In addition to corrosion inhibition the plethora of sugars ensures your end product sticks tenaciously to the pavement. As a result anti-icing operations can be performed farther in advance with less chance of being washed or blown away than standard sodium brines.

When 20% of **InfernalMelt MSC** is added to 80% of a sodium chloride brine the finished product will give you performance that exceeds a standard 80-10-10 "Supermix" blend. This is because we have pre-loaded the calcium chloride into the product for your convenience. Typical dosage range is between 10% – 30% added to sodium chloride brine.

**The more InfernalMelt MSC you add to the sodium chloride brine the hotter and stickier the finished product is!**  
**InfernalMelt MSC** is unlike other InfernalMelt product in that it is formulated with **No Magnesium Chloride!**



### **InfernalMelt MSC in Salt Brines:**

**Anti-icing** – Use solid stream nozzles for roads and fan spray nozzles for parking lots since there is less spreading action due to vehicle tires in parking lots. Apply as early as practicable before an event. Anti-icing liquids prevent bonding of snow & ice to pavement which speeds up removal operations saving \$.

**De-icing** – Application rate is 40-80 gallons per lane mile. Rate can be adjusted based on accumulation. Use solid stream nozzles set at higher pressure to help increase penetration down to the pavement to undermine s& ice.

**Pre-Wetting** – Application rate is 5 -25 gallons per ton of rock salt at the auger / spinner or onto loader bucket when loading truck. *(For more precise dosage rates call us at number below for recommendations)*. 50% plus reduction in salt use when used at 20-25 gallons per ton of salt.

**InfernalMelt MSC is your best tool to meet the more stringent chloride reduction guidelines in many areas!**

**Stockpile Treating** - Application rate on stockpiles is 3-7 gallons per ton. Melting begins immediately - no waiting for salt to make its own brine.



**TYPICAL PROPERTIES**

Appearance.....Brown liquid  
Specific Gravity.....1.25 -1.27  
Freezing Point.....-27°F (-32°C)

Weight/gallon.....10.3 -10.8  
pH.....6.0 -8.0



*Ice-Melt-Products.com*

Industrial Systems Ltd. ○ 112 W. Rand Rd. ○ Lakemoor, IL. 60051  
(815) 344-5566 Office ○ (815) 344-5588 Fax ○ E-mail: [steve@isltd.us](mailto:steve@isltd.us)



# INFERNALMELT

## InfernaMelt NC

*Give your customers "Zero Tolerance" pavements and reduce slip & fall lawsuits with our line of HOT LIQUIDS!*

### DESCRIPTION & USES

**InfernaMelt NC** is a non chloride ice melting liquid. It is 100% bio-degradable and earth friendly. It has an extra low freeze point of **-32°F** and can be used for de-icing, anti-icing and pre-wetting rock salt. It melts more snow and ice than conventional chloride based liquids and brines at temperatures below 15°F. It is a perfect choice for environmentally sensitive areas or areas where corrosion may be a concern.

**InfernaMelt NC** is composed primarily of a proprietary liquid with no suspended solids that might clog sprayer heads. It is artfully blended for maximum melting performance. Because it is a non chloride product it is non corrosive being slightly less corrosive than tap water. It also is biologically stable unlike some organics on the market. It has a low BOD and toxicity to fish, mammals and vegetation. What this equates to is less incidental damage to landscaping and the environment.

### APPLICATION GUIDELINES

Liquids are your most valuable tool to get a "running water" parking lot. However, liquids are not meant to totally replace dry products. Liquids are most effective when applied to the pavement before an event (anti-icing) or applied to rock salt (pre-wetting). They can be applied to existing snow & ice (de-icing) but there are practical limits as to how much snow & ice liquids can melt after an event. (See section on de-icing). Because the product has a residual effect it can be applied further in advance of a storm than straight chlorides or salt brines since it lasts longer.

**Pre-wetting** – Application rate is 6 -12 gallons per ton of rock salt or other material at the auger / spinner or onto loader bucket when loading truck.

- ▶ 15% - 35% reduction in salt use due to reduced "bounce & scatter" and residual effect of the organic.
- ▶ Melting begins immediately - no waiting for salt to make its own brine.
- ▶ Lower salt consumption from pre-wetting is better for plantings & the environment in general.

**Anti-icing** – Application rate for anti-icing is  $\frac{3}{4}$  - 1 gallon per 1000 square feet (30-40 gallons per lane mile). For frost prevention use half that. Use solid stream nozzles for roads and fan spray nozzles for parking lots due to less spreading action due to vehicle tires in lots. Apply as soon as practicable before an event or once the event begins.

- ▶ Prevents bonding of snow and ice to pavement which speeds up removal operations which saves \$.
- ▶ Can be applied up to 2 days before an event due to the residual effect.
- ▶ Superior to dry salt for premium service to customers to reduce slip-and-fall accidents & liability.
- ▶ Prevents “black ice”.
- ▶ Starts working earlier & lasts longer than dry products.

**De-icing** – Application rate starts at 1 gallon per 1000 square feet (40 gallons per lane mile). Rate can be adjusted based on accumulation. Use solid stream nozzles set at higher pressure to help increase penetration down to the pavement to undermine snow & ice.

- ▶ Clear product won't track in stores and offices.
- ▶ Melting begins immediately upon application.
- ▶ **InfernalMelt NC** melts through up to 1/4” of dry packed snow down to the pavement, when using straight stream nozzles, where it will spread and break the bond between the ice & snow and the road allowing plows to remove it easily saving time and money.

### TYPICAL PROPERTIES

Freezing Point.....-32°F (-30°C)

Appearance.....Clear light violet liquid with mild odor

Specific Gravity.....1.18 – 1.19

Weight/gl.....9.7 – 10.03

pH.....9.5 – 11.05

BOD: 0.27 kg Oxygen/ kg fluid

COD: 0.38 kg Oxygen/kg fluid

## Industrial Systems Ltd.

112 W. Rand Rd. (Route 120), Lakemoor, IL 60051

P: 815.344.5566 F: 815.344.5588 • E-mail: [steve@isltd.us](mailto:steve@isltd.us)

Ice-Melt-Products.com

# INFERNALMELT

## *InfernalMelt NC with Residucron*

*Give your customers “Zero Tolerance” pavements and reduce slip & fall lawsuits with our line of HOT LIQUIDS!*

### DESCRIPTION & USES

**InfernalMelt NC with Residucron** is a non-chloride ice melting liquid with an added Clear Organic to help “glue the product to the pavement”. It is 100% bio-degradable and earth friendly. It has an extra low freeze point of **-28°F** and can be used for de-icing, anti-icing and pre-wetting rock salt. It melts more snow and ice than conventional chloride based liquids and brines at temperatures below 15°F. It is a perfect choice for environmentally sensitive areas or areas where corrosion may be a concern.

**InfernalMelt NC with Residucron** is composed primarily of a proprietary liquid with no suspended solids that might clog sprayer heads or settle out in you tank. It is artfully blended for maximum melting performance. Because it is a non chloride product it is non corrosive, being slightly less corrosive than tap water. It also is biologically stable unlike some organics on the market. It has a low BOD and toxicity to fish, mammals and vegetation. What this equates to is less incidental damage to landscaping and the environment.

### APPLICATION GUIDELINES

Liquids are your most valuable tool to get a “running water” parking lot. However, liquids are not meant to totally replace dry products. Liquids are most effective when applied to the pavement before an event (anti-icing) or applied to rock salt (pre-wetting). They can be applied to existing snow & ice (de-icing) but there are practical limits as to how much snow & ice liquids can melt after an event. (See section on de-icing). Because the product has a residual effect it can be applied further in advance of a storm than straight chlorides or salt brines since it lasts longer.

**Pre-wetting** – Application rate is 6 -12 gallons per ton of rock salt at the auger / spinner or onto loader bucket when loading truck.

- ▶ 15% - 35% reduction in salt use due to reduced “bounce & scatter” and residual effect of the organic.
- ▶ Melting begins immediately - no waiting for salt to make its own brine.
- ▶ Lower salt consumption from pre-wetting is better for plantings & the environment in general.

**Anti-icing** – Application rate for anti-icing is ¾ - 1 gallon per 1000 square feet (30-40 gallons per lane mile). For frost prevention use half that. Use solid stream nozzles for roads and fan spray nozzles for parking lots due to less spreading action due to vehicle tires in lots. Apply as soon as practicable before an event or once the event begins.

- ▶ Prevents bonding of snow and ice to pavement which speeds up removal operations which saves \$.
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### **TYPICAL PROPERTIES**

Appearance.....Clear light violet liquid with mild odor  
Specific Gravity.....1.15 – 1.18  
Weight/gl.....9.7 – 9.95  
pH.....6.5 – 9.5  
Freezing Point.....-28°F (-30°C)

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**Ice-Melt-Products.com**



**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 5.d

Title:

Recommendation to Approve Purchase Order with Von's Electric for Substation Emergency Generators

Presenter:

Tom Bruhl

Meeting: Government Services Committee

Date: November 27, 2017

Proposed Cost: \$35,397.20

Budgeted Amount: \$38,500

Not Budgeted:

**Executive Summary** *(if not budgeted please explain):*

Each City substation has a small, natural gas powered, emergency generator to maintain critical communications and control functions in the event of an outage to the ComEd feed to the substation or major internal problem at the substation.

In this fiscal year, the Electric Division needed to replace the existing generator at Dukane Drive and purchase a new unit for Legacy Substation. As the units were similar, they were combined onto a single bid. Purchasing went out for bids and received five bids. Von's Electric of St. Charles was the low bidder. Von's Electric did not take any exceptions to the bid specifications and their understanding of the requirements was validated by Electric Engineering staff.

**Attachments** *(please list):*

\* Bid Tabulation

**Recommendation/Suggested Action** *(briefly explain):*

Recommendation to Award Purchase Order with Von's Electric for Substation Generators in the Amount of \$35,397.20.

**Substation 5 and Substation 9 generator bids**

Bidder	Bee Liner Lean Services	Newcastle Electric	Continental Construction Co.	JRC Contracting LLC	Von's Electric
Base Bid	\$44,950.00	\$45,950.00	\$47,000.00	\$46,384.61	\$32,397.20
Contingency	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00
Total	<b>\$47,950.00</b>	<b>\$48,950.00</b>	<b>\$50,000.00</b>	<b>\$49,384.61</b>	<b>\$35,397.20</b>



**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 5.e

Title:

Recommendation to Approve Purchase Order with Border States for Substation Reclosers

Presenter:

Tom Bruhl

Meeting: Government Services Committee

Date: November 27, 2017

Proposed Cost: \$285,912

Budgeted Amount: \$300,000

Not Budgeted:

**Executive Summary** *(if not budgeted please explain):*

Substation reclosers are a key element in the City of St. Charles electric system. These devices sense problems on the system and will interrupt power for short periods of time, open and then “reclose”, as some problems are transient. The momentary interruptions on the City system are due to reclosers doing their job. For permanent faults that do not clear, the reclosers will make multiple attempts to restore power and then will stay open.

We have had a number of catastrophic failures of these devices from wildlife contact or mechanical issues over the last two years. Triggered by reliability statistics, a program was developed to modernize our recloser fleet, one of which turned 50 years old this year and numerous others are over 40 years old.

Purchasing went out for and received five bids, although one bid offered only an alternate control to the standard bid spec. This bid included the reclosers for the replacement program as well as the new devices for Legacy Substation. Border States bid met all bid requirements and no exceptions were taken.

**Attachments** *(please list):*

\* Bid Tabulation

**Recommendation/Suggested Action** *(briefly explain):*

Recommendation to Approve Purchase Order with Border States for Substation Reclosers in the amount of \$285,912

	Bidder	Power Line Supply	SEL	E-ESS (note 4)	ABB	Border States
1200A VSA	Bid price each	\$18,836.04		\$26,505.03	\$20,354.00	\$17,670.00
800A VSA	Bid price each	\$16,160.41		\$22,740.03	\$11,842.00	\$15,160.00
Controller	Bid price each	\$6,175.28	\$6,109.00	\$8,689.51	\$7,062.00	\$5,793.00
	<b>Number of items</b>					
800A VSA repl (note 1&3)	12	\$193,924.92	N/A	\$272,880.36	\$226,848.00	\$181,920.00
800A recloser sub 9 (note 2)	3	\$48,481.23	N/A	\$68,220.09	\$59,210.00	\$45,480.00
1200A VSA repl (note 3)	1	\$18,836.04	N/A	\$26,505.03	\$20,354.00	\$17,670.00
1200A main Sub 9 (note 2)	1	\$25,011.32	N/A	\$35,201.54	\$40,708.00	\$23,463.00
Controller (note 2)	3	\$18,525.84	\$18,327.00	\$26,068.53	\$35,310.00	\$17,379.00
		\$304,779.35		\$428,875.55	\$382,430.00	\$285,912.00

Notes:

- 1) ABB replacement includes controller as ABB recloser uses 24 pin control cable
- 2) For the ABB column spares are included in the cost (2 - 800A spare, 1- 1200A spare and 2 spare controllers)
- 3) Replacement of existing VSA reclosers with the ones offered by ABB would incur significant additional man hours
- 4) E-ESS (Eaton Engr Services) prices include on-site comissioning



**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 5.f

Title:

Recommendation to Approve Pole Attachment Agreement with MCImetro Access Transmission Service Corp. (Verizon)

Presenter:

Tom Bruhl

Meeting: Government Services Committee

Date: November 27, 2017

Proposed Cost: \$0

Budgeted Amount: \$0

Not Budgeted: **Executive Summary** *(if not budgeted please explain):*

The City has an existing pole attachment agreement with Wide Open West (WOW) for the purpose of communicating with the six Verizon mini-cell antennas. The City received notice that Verizon has negotiated with WOW to acquire those pole attachment rights from WOW.

Staff and the City Attorney developed a new pole attachment agreement with Verizon to effectively transfer the agreement. The revised document also incorporates updates consistent with the agreement that was just approved with Metronet. With approval of this new agreement with Verizon, the agreement with WOW will be terminated.

**Attachments** *(please list):*

\* Pole Attachment Agreement with MCImetro Access Transmission Service Corp

**Recommendation/Suggested Action** *(briefly explain):*

Recommendation to Authorize Mayor and City Clerk to Execute Pole Attachment Agreement with MCImetro Access Transmission Service Corp

JOINT USE POLE ATTACHMENT AGREEMENT

This Agreement made this \_\_\_\_\_ day \_\_\_\_\_, 2017, by and between THE CITY OF ST. CHARLES, a municipal corporation of the State of Illinois, hereinafter referred to as “Owner”, and MCImetro Access Transmission Service Corp., hereinafter referred to as “Licensee”.

W I T N E S S :

WHEREAS, the City of St. Charles and Licensee desire to establish joint use of poles owned by the City of St. Charles under the terms and conditions set forth below:

WHEREAS, among the purposes of this Agreement are to reduce the number of dual pole lines utilized by both parties and to provide better economy of service to customers of both parties; and

WHEREAS, the conditions determining such joint use shall depend upon the service requirements to be met by each party, including considerations of safety and economy.

WHEREAS, the City of St. Charles has consented to the transfer of all rights and obligations of Wide Open West, LLC pursuant to a Joint Use Pole Attachment Agreement dated February 15, 2015 by and between the City of St. Charles and Wide Open West, LLC to MCImetro Access Transmission Service Corp. with modifications as stated herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto, their successors and assigns, do hereby agree as follows:

Section 1. Scope of Agreement.

This Agreement covers all jointly-used poles within the corporate limits as now or hereafter existing of the City of St. Charles and/or its electrical service area as such corporate limits and/or electrical service areas may be amended from time to time. This Agreement includes all wood poles which are: (a) presently owned by the Owner, or (b) as hereafter erected by the Owner, or (c) as may be purchased from time to time by the Owner from the Licensee in accordance with the procedures hereinafter set forth. The Owner reserves the right to exclude from joint use such poles which, in the Owner’s judgment, are necessary for its sole use. This Agreement shall not exempt the Licensee from the requirements of the Owner’s Subdivision Control Ordinance or such ordinances that relate to subdivisions.

Section 2. Code Specifications.

The joint use, construction and maintenance of poles covered by this Agreement shall be in conformity with the Illinois Commerce Commission’s General Order 160 (1968), the National Electrical Safety Code (2017), and the National Electrical Code (2014). Any changes in said Codes shall be reviewed and mutually agreed to by the parties. The Owner shall not be bound by the jurisdiction of the Illinois Commerce Commission or any successor in interest thereto. Any

change in the Illinois Commerce Commission's General Order 160 affecting this Agreement, shall be tendered to the Owner by Licensee within thirty (30) days of the effective date of such change. Any joint use pole which does not conform to the most stringent standards as set forth above shall be brought to the attention of Owner by Licensee, or vice versa, as the case may be, and than sixty (60) days after notice of discovery of such non-conformity, Acts of God excepted. However, in the event Owner shall have scheduling conflicts, Owner shall be given such additional time as may be required, and shall set forth a proposed schedule therefor. If Licensee attachment creates the non-conformity with standards, Licensee shall be responsible for 100% of the cost to obtain conformance. Owner will only be responsible for costs related to conformance as if the Licensee was not attached to the pole. If the parties cannot resolve through good faith negotiations any disputes related to the costs of work related to standard conformity, Owner may require that Licensee remove the disputed attachment from the pole.

### Section 3. Placing, Transferring or Rearranging of Pole Attachments.

- A. Definitions. For the purposes of this Section, the following terms will have the meaning ascribed herein:
  - a. The term "Make Ready Costs" as used in this Agreement means the just and reasonable actual costs incurred performing work necessary to provide adequate space and pole strength for licensees proposed attachment per the National Electrical Safety Code (NESC), directly and exclusively associated with accommodating Licensee's attachments, and promptly following Licensee's written request, Owner shall provide to Licensee detail of such costs sufficient for Licensee to verify the reasonableness of the costs or charges.
  - b. The term "Make Ready Estimate" as used in this Agreement means Owner's estimate of Make Ready Costs prepared for Owner pursuant to Section 3.B below.
  - c. The term "Make Ready Work" means all work, as determined by Owner, required to accommodate licensee's attachments and to meet the National Electric Safety Code ("NESC") or other reasonable requirements of Owner, including rearrangements and/or transfer of existing facilities.
- B. Whenever the Licensee desires to reserve space on any pole which Licensee is not already using, Licensee shall make written application to the Owner specifying in such application (1) the location of the pole in question, (2) the number or kind of attachments which it desires to place thereon, (3) engineering calculations supporting the adequacy of the existing pole to support the attachments or the requirements for proposed changes to achieve structural adequacy, (4) any Make Ready Work proposed to complete such attachment in conformance with all NESC safety codes, and (5) the proposed completion date for any Make Ready Work. Licensee shall submit such application upon a form as depicted in Exhibit A. Within twenty (20) business days after receipt of such application, the Owner shall notify the Licensee, in writing, of its Make Ready Estimate.

- C. Upon notice that the Make Ready Estimate has been accepted by Licensee, Owner shall proceed with the Make Ready Work covered by the Make Ready Estimate. The Parties agree that Owner will perform Make Ready work within the power zone and work related to City fiber on the poles designated by Licensee, and Licensee will manage and perform Make Ready Work and adjustments and transfers necessary in the communications zone on such poles, other than such work related to City fiber. Owner shall undertake commercially reasonable efforts to complete its Make Ready Work by the estimated completion date. Nothing shall preclude the Parties from making other mutually agreeable arrangements for contracting for or otherwise accomplishing the necessary Make Ready Work. Upon completion of all Make Ready Work, Owner shall send to Licensee an itemized statement for the actual costs of the Make Ready Work. Owner shall provide an itemized invoice within thirty (30) days after completion of the Make Ready Work and Licensee shall pay such costs within forty-five (45) days from the date the invoice is received by Licensee, provided however that to the extent Licensee in good faith disputes the costs detailed in the invoice, Licensee will remit payment for the undisputed costs as set forth herein.

Upon completion of the Make Ready Work and payment of the Make Ready Costs, Owner shall advise Licensee that such poles are available for attachment.

- D. In the event that Owner determines that any pole has inadequate capacity to accommodate Licensee's attachments and must be replaced solely to make capacity for Licensee attachments, Licensee agrees to reimburse Owner for the (1) actual cost of the new pole; (2) the actual cost of transferring Owner's facilities to the new pole; and (3) any other actual costs incurred by Owner in such replacement, such as the expense of removing the old pole.
- E. Except as otherwise provided herein, Owner and Licensee shall each place, rearrange, transfer, remove and maintain its respective attachments, including any necessary tree trimming or cutting, at its own expense and shall at all times perform such work within sixty (60) days of notice by the other party, Acts of God excepted. Licensee shall be responsible for the costs of pole replacements related to pole breakage due to foreign object contact with only their facilities. For example if a tree falls and makes contact only with the Licensee facilities and such causes pole breakage, the Licensee shall be responsible for the entire cost the Owner incurs to restore with no depreciation credited. Should the contact be due to negligence, for example a garbage truck or dump truck driving over allowed height catches the Licensee cable causing pole/s to break, the Owner shall replace the poles, Licensee shall reimburse Owner for costs, and Licensee shall be responsible for recovering from the negligent party.
- F. Subject to resolving any safety, reliability or engineering concerns in advance, and without Licensee's prior approval but upon prior notice to Owner, Licensee may overlash facilities on its own attachments or the attachments of any third party that authorizes Licensee to overlash. Owner agrees that the overlashed cable is not

considered compensable additional attachments after Licensee is already paying to be attached to said pole.

- G. Without Owner’s prior written approval, Licensee may place service drops from the poles covered by this Agreement. Owner agrees that service drops are not considered compensable additional attachments after Licensee is already paying to be attached to said pole.
- H. Licensee shall place a marker/indicator identifying cable ownership near their attachment point at each pole, visible from the ground, for the purpose of positively identifying ownership during audits or emergencies. The marker should have the emergency contact phone number on it.

Section 4. Standard Space.

- A. For the purposes of this Agreement Licensee’s “standard space” shall be defined as that area of the poles reserved for Licensee’s attachments as set forth below. Note that third party attachments may already exist within the Licensee’s Standard Space. In the event that there is inadequate space within Licensee space due to existing attachments, and the pole needs to be replaced with a taller pole, the cost for this work shall be borne by the Licensee.

Pole Size	Setting Depth	Licensee’s Standard Space	Point of Beginning of Standard Space from Top of Pole
35’	6’	4’	13-1/3’
40’ (1)(5)	6’	4’	20-1/3’
45’ (1)	6-1/2’	4’	20-1/3’
40’ (2)(3)	6’	4’	13-1/3’
45’ (2)(3)	6-1/2’	4’	13-1/3’
40’ (4)	6’	2’	13-1/3’

- (1) Equipment pole for Owner.
  - (2) Non-equipment pole for Owner.
  - (3) Equipment pole for Third Party User
  - (4) Street crossing poles.
  - (5) For only poles accessible by pedestrian traffic, provided that at alley locations Licensee’s standard space shall commence 18-1/3 feet from the top of the pole.
- B. For the purposes of this Agreement, all other space upon any pole, other than Licensee’s standard space, shall be deemed Owner’s standard space.
  - C. Where existing equipment (as of the date of this Agreement) of either Owner or Licensee is located in the other’s standard space, it shall so remain until the

opportunity arises to relocate it without undue burden or expense. In the interim, any new or additional equipment shall be installed to conform with the location of existing equipment. When either party requires full use of its standard space for installation of new or replacement equipment, the infringing party will relocate its equipment at the earliest possible time and do so without question. Such relocation in all cases shall be accomplished in a maximum of forty-five (45) days after the request. In emergency service situations, the infringing party shall be required to relocate on shorter notice.

- D. Owner retains and shall have the unrestricted right to use or license Owner's standard space, provided such use complies with the provisions of Section 2 herein.
- E. In the event of third party attachments to poles covered by this Agreement, communication attachments shall be required to be made above the standard space of Licensee and such attachments shall maintain a minimum one foot (1') clearance from other Licensee's facilities and shall be on the same side of pole as other Licensee's facilities, unless specifically authorized by Owner.
- F. From and after the date of this Agreement, any subsequent third party attaching to a joint use pole shall reimburse Owner or Licensee their respective costs for changing the location of their facilities, erecting or replacing poles, or relocating or readjusting their facilities in order to accommodate said third party's facilities. Provided, however, where either Owner or Licensee are then in violation of any Code or Order under Section 2 herein at the time of said third party attachment, Owner or Licensee shall relocate that portion of their non-conforming facility without charge.

#### Section 5. Erecting, Replacing or Relocating Poles.

- A. Whenever it is necessary to change the location of a jointly-used pole, by reason of any State, Municipal, or other governmental requirement, or the requirements of a private property owner, the Owner first shall give written notice thereof to Licensee, specifying when the relocated pole is available for attachment. The Licensee at its expense, shall, at the time so specified, transfer its attachments to the newly-located pole.
- B. Whenever the Licensee is in the need of a new pole or poles, within the territory covered by this Agreement, either as an additional pole line, or as an extension of an existing pole line, or as replacement of existing pole(s), Licensee shall first notify the Owner, in writing (at least forty-five days prior to such need), with written plans showing the proposed location and character of the new poles. Licensee shall be responsible for the costs of the new pole or poles and said shall be payable prior to commencement of the work. Owner is not required to erect additional poles or extending pole lines that do not benefit Owner.

- C. The cost of erecting new or replacement joint use poles related to normal maintenance, relocation, or end of life, shall be borne by the Owner. However, each party shall place, at its sole expense, its own attachments on the new joint use poles and place any necessary supports to sustain any unbalanced loads caused by their respective attachments. In cases of replacement of existing joint use poles Licensee shall, within sixty (60) days after receipt of written notice from Owner, transfer its facilities. In case of emergency or immediate need, Licensee may be required to transfer on shorter notice. Should the Licensee fail to relocate to a replaced pole within the 60 days (subject to delays caused by Owner, a third party or force majeure events), a penalty of \$50 per day shall be assessed by the Owner to the Licensee. Accrued penalty charges shall be billed by the Owner to the Licensee after the attachment is relocated, and remittance shall be due to the Owner consistent with Section 9, paragraph C.
- D. Whenever the Licensee requires a change in location of a jointly-used pole, the Licensee shall first give written notice to Owner specifying the time requirements of such proposed relocation, and the Owner shall, if it does not wish to discontinue the existing pole from joint use as herein provided, relocate such pole by the date specified or within (180) days thereafter in the application for relocation. The cost of relocating such pole by the Owner and the transfer of Owner's attachments thereon shall be at the sole expense of Licensee. In the event of emergency situations, the provisions calling for written notification may be waived, by the Director of Public Works or his delegated nominee, provided prior verbal notice is given to the Director of Public Works.
- E. Whenever it is necessary to replace a defective pole, the procedures set forth in paragraph A of this Section 5 shall be employed.
- F. A replacement pole shall be set by the Owner, in the original position, within reasonable distance of the original pole position, or in the position agreed upon between the Owner and the Licensee.
- G. Whenever it is necessary to change a location of a jointly-used pole, or to erect a new pole, or to relocate or readjust Owner's or Licensee's facilities upon these poles due to the requirements of a subsequent Licensee's needs or third party need, Owner and Licensee shall bill their respective costs therefore (rearrangement costs, plant loss, net removal costs, transfer cost, etc.) to said new Licensee or third party. Owner shall give Licensee sixty (60) days' notice of such relocation. Licensee transfer to any new pole set due to relocation for subsequent licensee or third party will be subject to paragraph C of this Section 5.

#### Section 6. Right of Way for Licensee's Attachments.

Licensee hereby acknowledges and agrees that Owner has tendered no assurance, guarantee or warranty as to Licensee's legal right, title or interest to be located within any easement or right of way area upon which joint use poles are located; and, in the event,

objections are made to Licensee's use of said poles, and Licensee is unable to resolve said objections within a reasonable time, the Owner may, upon thirty (30) days' written notice to Licensee, or in the event of emergency, on shorter written or verbal notice followed by written notice, require Licensees to remove its attachments from the subject poles at Licensee's sole expense. However, on any new additions or extensions of pole lines, the Owner shall: (1) attempt to secure right-of-way permits applicable to both parties, or (2) notify the Licensee that the Owner is unable to obtain joint right-of-way, but Owner shall not be required to utilize power of eminent domain.

#### Section 7. Maintenance of Poles and Attachments.

Licensee shall, at its own expense, maintain its attachments upon joint use poles in a safe and serviceable condition. Licensee further agrees that it shall maintain and repair its attachments so as not to interfere with Owner's use or maintenance of said poles. Moreover, in the event that Owner determines that any of Licensee's facilities are in an unsafe condition, Licensee, at its own expense, shall relocate or replace said facilities, or transfer them to substituted poles, or perform such other work in connection with said facilities that may be required to place them in a safe condition. However, in the case of emergencies, Owner may temporarily relocate Licensee's facilities to substituted poles, and the cost of such relocation, shall be reimbursed by the Licensee to Owner.

#### Section 8. Abandonment of Jointly-Used Poles.

- A. Licensee may abandon the use of a jointly-used pole at any time by first giving written notice thereof to the Owner and thereafter removing Licensee's attachments within ninety (90) days of said written notice. Written notice shall be in the form shown in Exhibit B.
- B. In the event that Owner intends to remove all of its attachments and to terminate joint use of any pole, Owner shall first give Licensee written notice thereof and shall thereafter remove such attachments within ninety (90) days of said written notice. In such event, at the sole discretion of the Owner, if Owner desires to sell said pole or poles, and if Licensee wishes to purchase them, Licensee shall pay the Owner \$1.00 per pole. Transfer of ownership will be by means of a Bill of Sale, in the format of Exhibit C attached hereto, and shall be deemed completed when Owner has removed all Owner facilities from the pole and transmits Bill of Sale to Licensee. When bill of sale is completed, Licensee takes complete ownership and responsibility for said pole, except that Owner will be responsible for any events and occurrences relating to each pole prior to the date of sale. Owner has the right to not sell any pole and to request Licensee to remove their attachment from a pole that the Owner wishes to permanently remove. Such removal request shall be issued from Owner to Licensee with at least 180 days notice. Licensee attachments which continue to exist on such poles after 180 days notice shall be subject to the same \$50/pole/day penalty as noted in Section 5C.

#### Section 9. Rentals and Other Payments.



- A. There shall be a rental fee for each pole attached to or reserved by the Licensee. The rental period for joint use poles shall be one (1) year. The Owner shall, before January 10<sup>th</sup> each year, issue a report showing the number of poles to which Licensee has made attachments or reserved therefore as of January 1 of the existing year. Unless Licensee establishes a different number within twenty (20) calendar days after receiving such report, payment for such number shall be due forty-five (45) days following the issuance of the statement by the Owner. In the event of a disagreement. Licensee shall specifically designate, in writing, the locations under dispute and until resolved, such disputed pole quantities will be exempt from rental payment until resolved and then payment shall be processed immediately. However, failure to give the report prior to the date mentioned shall not deprive Owner of rental. All poles not under dispute shall be paid for at the annual fee.
- B. The amount of the annual rental fee for pole attachments shall be \$13 per pole in the first year of this agreement. Subsequent years pole attachment fees will escalate from the \$13 per pole per year fee at a rate of 2% per year.
- C. Payments for other amounts due under this Agreement shall be invoiced upon completion of the work and payable by the Licensee within forty-five (45) days' receipt thereof and shall accrue a late payment penalty of 1-1/2% per month on the unpaid balance from the billing date for any late payment.

#### Section 10. Defaults.

If Licensee shall default in any of its obligations under this contract and such default continues thirty (30) days after notice thereof in writing from Owner, all rights of Licensee hereunder shall be suspended, including its right to occupy jointly-used poles. If such default shall continue for a period of thirty (30) days after such suspension, the Owner hereunder may forthwith terminate this Agreement. Such termination shall not extinguish Licensee's obligation to pay for liability already incurred.

#### Section 11. Indemnification.

The Licensee shall, at its own expense, defend all suits that may be brought against the Owner on account of or in connection with the violation by the Licensee of any of the obligations hereby imposed upon or assumed by it, or by reason of or in connection with any damage to life, limb or property as a result of any of the structures constructed or maintained by it under or by virtue of this Agreement, and shall save and keep harmless the Owner from any and all damages, judgments, losses, costs and expenses (including attorneys' fees), of every kind, that may arise out of its construction or use of poles pursuant to this Agreement; provided, that notice in writing shall be immediately given to the Licensee of any claim or suit against the Owner which, by the terms hereof, the Licensee shall be obligated to defend, or against which the Licensee has hereby agreed to save and keep harmless the Owner and provided further that the Owner shall furnish to the Licensee all information in its possession relating to said claim or

suit, and cooperate with the Licensee in the defense of said claim or suit. The governing body of the Owner may, if it so desires, assist in defending any such claim or suit, but solely under the direction of the Licensee or its attorneys and the Licensee shall not be required to reimburse the Owner for expenses incurred by it in case of the election so to assist.

Contractors performing work on behalf of the Licensee shall provide the Owner with a Certificate of Insurance to cover all locations of the work being done on behalf of the Licensee, and shall name the City of St. Charles as additional insured. Certificates of Insurance shall be filed no later than 10 days prior to commencement of work. Policies shall contain a non-cancellation clause provision preventing cancellation without 30 days written prior notice to City. Certificates of Insurance shall be completed on the ACCORD 25-S form.

The Owner requires the Licensee to provide and maintain insurance consistent with Exhibit D.

Section 12. Service of Notices.

All written notices required under this Agreement shall be given by posting the same in first class mail to Owner as follows:

Director of Public Works  
City of St. Charles  
2 East Main Street  
St. Charles, Illinois 60174

and to Licensee as follows:

MCImetro Access Transmission Services Corp.  
400 International Parkway, 2C  
Richardson, TX USA 75081  
Attention: Contract Management Group

With a copy to:

MCImetro Access Transmission Services Corp.  
1320 N. Courthouse Rd, 9<sup>th</sup> Floor  
Arlington, VA USA 22201  
Attention: Legal Department

or to such address as the parties hereto may from time to time specify.

Section 13. Term of Agreement.

Subject to the provisions of Section 10 herein, this Agreement may be terminated, as to new joint use poles, after the first day of January, 2020, upon one (1) year's notice in writing to

the other party. If not so terminated, this Agreement shall continue in force thereafter until terminated by either party at any time upon one (1) year's notice in writing to the other party as aforesaid and provided further that notwithstanding such termination, this Agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination.

#### Section 14. Assignment of Rights.

Except as otherwise provided in this Agreement, Licensee shall not assign any of its rights or interests hereunder, or in any of the jointly used poles or attachments covered by this Agreement, to any firm, corporation, or individual, without the written consent of Owner. However, nothing herein contained shall prevent or limit the right of Licensee to mortgage any or all of its property, rights, privileges, and franchises, or lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of Licensee, or enter any merger or consolidation and, in the case of the foreclosing of such mortgage or in the case of such lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by the purchaser on foreclosure, the transferee, lessee, assignee, merging or consolidating company, as the case may be. Subject to all of the terms and conditions of this Agreement, Licensee may permit any corporation or company conducting a business of the same general character as that of Licensee and owned, operated, leased, and controlled by it, associated or affiliated with it in interest, or connected with it, to all or any part of the space allotted hereunder on any pole covered by this Agreement for the attachments used by Licensee, in the conduct of its said business. All such attachments maintained on any such pole shall be considered as the attachments of Licensee, and the rights, obligations and liabilities of such assignee under this Agreement, with respect to such attachments, shall be the same if it were the actual owner thereof. Notwithstanding any of the provisions in this section, Licensee shall not be released from any of its obligations hereunder.

#### Section 15. Scope of Right of Licensee.

No use by Licensee of Owner's poles under the terms of this Agreement, however extended, shall create or vest in Licensee any ownership or property rights in said poles, but Licensee's rights herein shall be and remain a mere license. For poles upon which Licensee has reserved space, nothing herein contained shall be construed to compel Owner to maintain any of such poles for any period longer than demanded by Owner's own service requirements.

Further, the terms and conditions of this Agreement shall not apply to any pole solely owned and used by Licensee.

#### Section 16. Waiver of Terms or Conditions.

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, and the same shall be and remain at all times in full force and effect.

Section 17. Existing Contracts or Agreements.

Any existing agreements between these parties, whether verbal or written, covering the joint use or joint ownership of poles are by mutual consent, hereby abrogated and annulled.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed effective as of the effective date shown on the first page of this Agreement.

Witness:

**THE CITY OF ST. CHARLES**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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

Witness:

**MCImetro ACCESS TRANSMISSION**

**SERVICES CORP.**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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

**EXHIBIT A**

POLE ATTACHMENT APPLICATION AND PERMIT

Permit No. \_\_\_\_\_

Date \_\_\_\_\_

Mr. \_\_\_\_\_

CITY OF ST. CHARLES MUNICIPAL ELECTRIC UTILITY

\_\_\_\_\_

In accordance with the terms and conditions of the agreement between our respective companies dated \_\_\_\_\_, application is hereby requested for permission to make attachments to \_\_\_\_\_ City poles as indicated on the sketch attached hereto.

By \_\_\_\_\_

\_\_\_\_\_

PERMIT

Permission is hereby granted to make the attachments described in the above application subject to all terms and conditions referred to above and in said agreement, and further subject to acceptance by the applicant of the obligation to pay the amount shown below for changes or rearrangements of poles or equipment as indicated below or on a statement attached hereto, and the applicable rental charges for the present year in progress:

Estimated amount to be paid for above charges \$ \_\_\_\_\_ W.O. No. \_\_\_\_\_

Rental charge for year in progress: \_\_\_\_\_ by \_\_\_\_\_ = \$ \_\_\_\_\_

No. of City Poles

Rate

Rental Charge

The cost of rearrangements provided is an estimate based on preliminary engineering. Such cost shall be reconciled upon completion of the job to establish the actual cost for the work performed by the City. Applicant is responsible for the actual cost and will be issued a refund within 60 days of reconciliation of the job, if the estimated cost exceeded the actual cost. Should the actual cost exceed the estimated cost, Applicant shall be issued a bill with explanation of the actual costs and the reason or reasons that the actual cost was greater than the estimate. Such bill shall be payable , in accordance with Section 9, Paragraph C.

Above charges accepted:

\_\_\_\_\_ CITY OF ST. CHARLES MUNICIPAL ELECTRIC UTILITY

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

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

\_\_\_\_\_ APPLICANT

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

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

PERPETUAL INVENTORY RECORD

City poles in use to date \_\_\_\_\_

City poles added by this permit \_\_\_\_\_

Total City poles in use \_\_\_\_\_

**EXHIBIT B**

**NOTIFICATION OF POLE ATTACHMENT REMOVAL**

Removal Notice No. \_\_\_\_\_

Date \_\_\_\_\_

Mr. \_\_\_\_\_

CITY OF ST. CHARLES MUNICIPAL ELECTRIC UTILITY

\_\_\_\_\_

In accordance with the terms and conditions of the agreement between our respective companies dated \_\_\_\_\_, notification of removal of attachments to \_\_\_\_\_ City poles on the City of \_\_\_\_\_ as indicated on the sketch hereto is hereby given:

By \_\_\_\_\_

Date \_\_\_\_\_

Notice of Acknowledged

Date \_\_\_\_\_ City of ST. CHARLES

By \_\_\_\_\_

**INVENTORY**

City poles in use to date \_\_\_\_\_

City poles discontinued by this notice- \_\_\_\_\_

Total City poles in use \_\_\_\_\_



**EXHIBIT C**

BILL OF SALE FOR POLE

DATE: \_\_\_\_\_

COMPANY, in consideration of payment of:

\$ \_\_\_\_\_

has taken ownership of the pole/poles identified on the attached drawing.

City of St. Charles certifies that all electric utility and other licensee attachments have been removed from said pole/poles and hereby relinquishes ownership.

\_\_\_\_\_ CITY OF ST. CHARLES MUNICIPAL ELECTRIC UTILITY

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

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

\_\_\_\_\_ COMPANY

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

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

PERPETUAL INVENTORY RECORD

City poles in use to date \_\_\_\_\_

City poles deleted by this sale \_\_\_\_\_

Total City poles in use \_\_\_\_\_





City of St. Charles  
Certificate of Insurance Requirements

All Contractors, Manufacturers/Distributors, and Suppliers shall be required to carry and evidence insurance coverage with a standard Acord Certificate of Insurance with minimum limits applicable. Sample attached.

1. Minimum Insurance Requirements and Limits

	<i>Coverage</i>		<i>Limits</i>
A.	Automobile Liability	\$1,000,000	Combined single limit
B.	Commercial General Liability	\$1,000,000	Per occurrence
		\$2,000,000	General aggregate

All Commercial General Liability policies must include Blanket Contractual coverage and Broad Form Vendors' Liability coverage.

C.	Workers' Compensation (Employers' Liability)	\$500,000	Per accident
		\$500,000	Disease limit
		\$500,000	Each Disease
D.	Umbrella Liability	\$5,000,000	Limit

2. Cancellation or Alteration

The policies of insurance required by this exhibit shall provide that they cannot be cancelled or altered in any way changing coverage except after 30 days' prior written notice by certified mail to owner.

3. Workers' Compensation and General Liability Waiver of Subrogation in favor of the City.

4. Insurance Certificates

- A. Must be submitted ten (10) days prior to any work being performed to allow review of certificates.
- B. Certificates not meeting requirements must be revised and resubmitted within fifteen (15) days or the subcontractor will not be allowed on the jobsite.

5. Additional Insured and Broad Form Vendors' Liability in favor of the City.

The City must be named as an Additional Insured with the following wording appearing on the Certificate of Insurance: "The City of St. Charles and any official, trustee, director, officer, or employee of the City (plus any holder or mortgage as designated by the City) as to any and all projects, as an Additional Insured for the Commercial General Liability as respects any and all projects for any work being performed and this coverage will be primary and noncontributory."

6. Minimum Insurance Carrier

All contractors, manufacturers/distributors, and suppliers' insurance carriers must comply with the minimum A.M Best rating of A-VI for all insurance carriers.





**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 5.g

Title:

Recommendation to Terminate Pole Attachment Agreement with Wide Open West LLC (WOW)

Presenter:

Tom Bruhl

Meeting: Government Services Committee

Date: November 27, 2017

Proposed Cost: \$0

Budgeted Amount: \$0

Not Budgeted:

**Executive Summary** *(if not budgeted please explain):*

The City has an existing pole attachment agreement with Wide Open West (WOW) for the purpose of communicating with the six Verizon mini-cell antennas. The City received notice that Verizon has negotiated with WOW to acquire those pole attachment rights from WOW.

Staff and the City Attorney developed a new pole attachment agreement with Verizon to effectively transfer the agreement. With approval of the new agreement with Verizon, the agreement with WOW can be terminated. The attached agreement was crafted by the City Attorney and WOW Attorney.

**Attachments** *(please list):*

\* Pole Attachment Termination Agreement

**Recommendation/Suggested Action** *(briefly explain):*

Recommendation to Authorize Mayor and City Clerk to Execute Pole Attachment Termination Agreement with Wide Open West LLC.

**TERMINATION AGREEMENT**

This TERMINATION AGREEMENT (this “Agreement”) is made as of \_\_\_\_\_, 2017, by and among The City of St. Charles, a municipal corporation of the State of Illinois (the “City”), WideOpenWest Illinois, LLC, a Delaware limited liability company (“WOW Illinois”), and Sigecom, LLC, an Indiana limited liability company (“Sigecom” and together with WOW Illinois, “WOW”), and shall be effective as of, and subject to the occurrence of, the Closing (as defined below).

WHEREAS, the City, WOW Illinois and Sigecom are parties to that certain Joint Use Pole Attachment Agreement, dated as of February 2, 2015 (the “Agreement”);

WHEREAS, pursuant to that certain Asset Purchase Agreement, dated as of August 1, 2017 (the “APA”), by and between WideOpenWest, Inc., a Delaware corporation (“WOW Inc.”), and MCImetro Access Transmission Services Corp., a Delaware corporation (“Verizon”), Verizon agreed to acquire certain assets, and to assume certain liabilities, from WOW Inc. that are related to its fiber network in the area of Chicago, Illinois (the “Transaction”);

WHEREAS, WOW Inc. is a parent company of each of WOW Illinois and Sigecom;

WHEREAS, at the closing of the transactions contemplated by the APA (the “Closing”), WOW agreed to assign to Verizon, and Verizon agreed to assume from WOW, all of WOW’s rights and obligations arising on or after the Closing under the Agreement (the “Assignment”);

WHEREAS, the City has proposed, and WOW Inc. and Verizon have agreed, that (a) Verizon shall enter into a new pole attachment agreement with the City, which agreement will provide Verizon with the rights contemplated by the Assignment, and (b) the Agreement be terminated, in each case, effective as of, and subject to the occurrence of, the Closing; and

WHEREAS, the City has consented to the transfer of WOW’s rights to Verizon and agreed that WOW shall have no further obligations arising at or after the Closing under the Agreement.

NOW, THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Termination of the Agreement. The parties hereto agree to terminate the Agreement in its entirety and agree that the Agreement shall no longer be of any force or effect and that all rights and obligations thereunder shall cease upon the occurrence of the Closing; provided, nothing herein shall relieve the parties hereto of any of their respective obligations under the Agreement arising prior to the Closing.
2. Acknowledgements. As of the date hereof, each of the City and WOW acknowledge and agree that (i) there are no outstanding and unpaid rental fees pursuant to Section 9 of the Agreement, and (ii) neither the Assignment nor the consummation of the Transaction shall be deemed to constitute a breach or entitle the City to any payments or compensation under the Agreement.

3. Miscellaneous.

- (a) *Successors.* This Agreement and all the obligations and benefits hereunder shall inure to the successors and assigns of the parties hereto.
- (b) *Amendment and Waiver.* The provisions of this Agreement may be amended and waived only with the prior written consent of the parties hereto.
- (c) *Severability.* Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.
- (d) *Governing Law.* ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY AND INTERPRETATION OF THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE DOMESTIC LAWS OF THE STATE OF ILLINOIS, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE STATE OF ILLINOIS OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF ILLINOIS.
- (e) *Counterparts.* This Agreement may be executed in counterparts, each of which may contain the signature of only one party, but each such counterpart will be deemed an original and all such counterparts taken together will constitute one and the same Agreement.
- (f) *No Strict Construction.* The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.
- (g) *Miscellaneous.* Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in either the masculine, the feminine or the neuter gender shall include the masculine, feminine and neuter.

\* \* \* \*

IN WITNESS WHEREOF, the parties hereto have executed this Termination Agreement as of the day and year first above written.

Witness:

**THE CITY OF ST. CHARLES**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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

Witness:

**WIDEOPENWEST ILLINOIS, LLC**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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

Witness:

**SIGECOM, LLC**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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



**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 5.h

Title:

Recommendation to Approve Master Services Agreement between the City of St. Charles and EX2 Technology LLC

Presenter:

Tom Bruhl

Meeting: Government Services Committee

Date: November 27, 2017

Proposed Cost: \$0

Budgeted Amount: \$0

Not Budgeted: **Executive Summary** *(if not budgeted please explain):*

The City has a fairly extensive fiber network that extends to City buildings, electric substations, wastewater treatment facilities, well buildings, D303 schools, TriCom, and three Kane County buildings. While we have not had any major outages that City staff could not handle since installing the fiber in 1999, City resources are limited and would likely not be able to focus on fiber during a major event. City Staff investigated possible options with regard to emergency response support. A number of other communities also have fiber assets and there is a possibility of using our Mutual Aid Agreement through the Illinois Municipal Utilities Association. Additionally, Batavia shared their experience with EX2 during the discussions with them. Batavia has used EX2 for projects and has had very positive experiences. EX2 extended their Master Service Agreement (MSA) that was negotiated with Batavia to St. Charles. City Staff and the City Attorney negotiated minor changes and customizations of the Batavia agreement to fit St. Charles. There is no commitment to use the vendor, but execution of this MSA is part of our emergency preparedness and establishes a framework in the event we needed them for an emergency, or issue that City staff couldn't handle.

**Attachments** *(please list):*

\* Master Services Agreement

**Recommendation/Suggested Action** *(briefly explain):*

Recommendation to Authorize Mayor and City Clerk to Execute Master Services Agreement with EX2 Technology LLC.

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by the CITY OF St. Charles, Two East Main Street, St. Charles, IL 60174, hereinafter called the CITY, and eX<sup>2</sup> Technology LLC, 1044 North 115<sup>th</sup> Street, Suite 200, Omaha, NE 68154, hereinafter called the CONSULTANT.

WITNESSETH: That in consideration of the mutual covenants and agreements herein contained, the parties hereto do mutually agree as follows:

1. ENGAGEMENT OF CONSULTANT: The CITY, acting pursuant to its vested authority, does hereby hire the CONSULTANT and the CONSULTANT agrees to perform professional engineering, surveying, environmental science and management services as requested by the CITY as more fully described and on the terms provided herein below. City contact person name or designated representative, will act as the liaison for the CITY and Joel Mulder, or designated representative, will act as liaison for the CONSULTANT for administration of this Agreement. This Agreement for Professional services can only be amended or revised by a written agreement signed by both parties.

The relationship of the CONSULTANT to the CITY shall be that of an independent CONSULTANT rendering professional services. The CONSULTANT shall have no authority to execute contracts or to make commitments on behalf of the CITY and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between the CITY and the CONSULTANT.

2. CHARACTER AND EXTENT OF SERVICES: The CONSULTANT shall perform certain professional engineering, surveying, environmental science and management services as requested. Such services to include, but not limited to, the following types of work:
  - Engineering and surveying tasks for various municipal infrastructure projects
  - Emergency response and restoration of fiber optic infrastructure
  - Development of studies, plans and reports
  - Design plans and specifications and contract documents
  - Resident engineering services during construction
  - Assistance with matters related to streams and wetlands
  - Reviews of various engineering plans on behalf of the city for both public and private improvements.

The CONSULTANT shall at all times observe and comply with all laws, ordinances, and regulations of the federal, state, and local governments, which

may in any manner affect the preparation of proposals or the performance of the Agreement. The CONSULTANT shall obtain, at its own expense, all permits and licenses, if any, that may be required to operate the business of the CONSULTANT by federal, state, and local regulations and laws.

3. TASK ORDERS/SPECIFIC HOURLY RATE BASIS: Prior to commencement of any service to be performed through a task order, the CITY and CONSULTANT shall mutually agree upon and execute a task order for the specified service utilizing the general form of task order attached hereto as Exhibit "B" and by this reference incorporated herein. The task order shall describe the services to be provided, the time for performance of the service, the fee provisions for the services, and any provisions additional to this agreement. Execution by the CITY and CONSULTANT of subsequent task orders shall incorporate such subsequent task orders into this agreement.

Services to be performed on a specific hourly rate basis shall not require a task order, but shall only be performed upon authorization from the Public Works Director or his designee.

4. ITEMS TO BE FURNISHED AND RESPONSIBILITY OF CITY: The CITY will provide or perform the following:
  - a. Provide full information as to CITY requirements of the Project.
  - b. Assist the CONSULTANT by placing at his disposal all available information pertinent to the site of the Project including previous reports, calculations, drawings, plats, reports, surveys, utility records, and any other data relative to design and construction of the Project.
  - c. Examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by the CONSULTANT and render in writing decisions pertaining thereto within a reasonable time so as not to delay the work of the CONSULTANT.
  - d. Advertise for hearings and proposals for bidders, open the proposals at the appointed time and place, and pay for all costs incidental thereto.
  - e. Obtain approval of all governmental authorities having jurisdiction over the Project and such approvals and consents from such other individuals or bodies as may be necessary for completion of the Project.

5. COMPLETION TIMES: The services called for under the various phases of Section 2 of this Agreement shall be completed as follows:

Services required for these tasks shall be completed within the times mutually determined by the CITY and the CONSULTANT as outlined in the applicable Task Order.

6. PROFESSIONAL FEES: For the services furnished by the CONSULTANT as described under Section 2 and Section 3 of this Agreement, the CITY agrees to pay the CONSULTANT the fees as set forth herein:

According to Exhibit A - Schedule of Hourly Rates on a time spent basis plus reimbursement for direct non-salary expenses such as laboratory testing, soil reports, reproduction expenses, out of town travel costs, long distance telephone calls, and outside consultants. Outside subconsultant's billings shall be marked up by a factor of \_15% of the subconsultant billing.

7. PAYMENT: Monthly payments, payable according to Section 8 of this Agreement, based on the documented amount due.
8. CITY PAYMENT SCHEDULE: The CITY will process for payment all statements received by the 10th day of each month for work done from the 1st day of the prior month. The City shall have 30 days to pay approved invoices. Invoices not paid within 30 days shall accrue a late payment penalty of 1-1/2% per month on the unpaid balance from the billing date for any late payment.
9. FACILITIES TO BE FURNISHED BY THE CONSULTANT: The CONSULTANT shall furnish and maintain a central office, drafting space, and equipment suitable and adequate for the prosecution of the work that is normal to the functioning of an established consulting engineering and surveying practice.
10. TERMINATION: The CITY or CONSULTANT may terminate this Agreement by giving thirty (30) days written notice to the other party. In such event, the CITY shall forthwith pay the CONSULTANT in full for all work previously authorized and performed prior to notice of termination. In the event of termination, the CONSULTANT agrees to cooperate reasonably with any consulting engineer thereafter retained by the CITY in making available information developed as the result of work previously performed by the CONSULTANT. If no notice of termination is given, relationships and obligations created by this Agreement, unless otherwise expressly provided, shall be terminated upon completion of all applicable requirements of the Agreement.

The City may, at any time by written order, require the CONSULTANT to stop all or part of the services required by this Agreement. Upon receipt of such an order the CONSULTANT shall immediately comply with its terms and take all steps to minimize the occurrence of costs allocable to the services covered by the order. The City will pay for costs associated with suspension provided, they are deemed reasonable by the City.

The City reserves the right to terminate the whole or any part of this Agreement, upon ten (10) calendar day's written notice to the CONSULTANT if the City is dissatisfied with the services of the CONSULTANT, provided that the City has previously notified the CONSULTANT of its dissatisfaction in writing stating the reasons therefor and allowing the CONSULTANT a minimum of thirty (30) days to adjust and meet the City's expectations. The City further reserves the right to cancel the whole or part of the Agreement immediately for cause, if the CONSULTANT fails to perform any of the provisions in the Agreement or fails to make delivery within the time stated, provided that notice is given in writing to the CONSULTANT of the default, and the CONSULTANT is given ten (10) days to cure the default or to begin curing the default and diligently continues to cure the default, if the default is of the nature that cannot be cured in such time. The CONSULTANT will not be liable to perform if situations arise by reason of acts of God or public enemy, acts of City, fires, floods or similar acts or occurrences beyond the control of CONSULTANT.

Should any of the key personnel become unavailable to work on the project, and no permanent substitute personnel reasonably satisfactory to the City is provided by the CONSULTANT within thirty (30) days, and/or no temporary replacement personnel is provided by the CONSULTANT immediately following the commencement of the subject Key Personnel's unavailability, the City may, at its election, declare such contract terminated and at an end, reserve the right to maintain and action to recover damages arising due to breach of contract

The City reserves the right to terminate in whole or any part of this Agreement, upon written notice to the CONSULTANT, in the event of default by the CONSULTANT. Default is defined as failure of the CONSULTANT to perform any of the material provisions of this contract or failure to make sufficient progress so as to endanger performance of this contract in accordance with its terms. In the event of default and termination, the City may procure, upon such terms and in such manner as the City may deem appropriate, supplies or services similar to those so terminated.

The CONSULTANT shall be liable to the City for all excess costs for such similar supplies or service unless evidence is submitted to the City that in the sole opinion of the City clearly proves that failure to perform the contract was due to causes beyond the control and without the fault or negligence of the CONSULTANT.

Upon termination, the CONSULTANT shall cause to be delivered to the City all surveys, reports, permits, agreements, calculations, drawings, specifications, partially and completed estimates, and data, as well as products of computer aided drafting, design, and writing that have been paid for by the City. Cost of termination incurred by the CONSULTANT before the termination date will be reimbursed by the City only, if prior to the effective termination date, the City receives from the CONSULTANT a list of actions necessary to accomplish

termination and the City agrees in writing that those actions be taken. Upon receipt of the termination notice, the CONSULTANT shall stop all work until said Agreement is reached.

11. ARBITRATION: All claims, disputes, and other matters in question arising out of, or related to, this Agreement or the breach thereof, shall be decided by arbitration in accordance with the Rules of the American Arbitration Association. This agreement so to arbitrate shall be specifically enforceable under the prevailing arbitration law.

Notice of the demand for arbitration shall be filed in writing with the other party of this Agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event shall the demand for arbitration be made after institution of legal or equitable proceedings based upon such claim, dispute, or other matter in question would be barred by applicable statute of limitations.

The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in any court having jurisdiction.

In the event of a claim, jurisdiction and venue shall be in KANE County, ILLINOIS.

12. INDEMNIFICATION: The CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, agents and employees, from and against any and all claims, losses or liability, or any portion thereof, arising from injury or death to persons or damage to property occasioned by the negligent act, omission, or failure of the CONSULTANT, its officers, agents and employees, in performing the work required by this Agreement. CONSULTANT shall not be liable for the negligent acts, omissions or failures of the City.

The CONSULTANT shall secure and maintain in force throughout the duration of this Agreement, Comprehensive General Liability including Products Liability/Completed Operations insurance naming the City as an additional insured written on an occurrence basis with a minimum coverage of \$1,000,000 per occurrence and \$2,000,000 policy limit, including Broad Form Contractual Liability insurance, in an amount not less than \$1,000,000 per occurrence and \$2,000,000 policy limit subject to the terms and conditions of the policy.

The CONSULTANT shall secure and maintain in force throughout the duration of this Agreement, Automobile Liability insurance in an amount not less than \$1,000,000 combined single limit. Said insurance is to be extended to cover hired and non-owned vehicles.

The CONSULTANT shall secure and maintain in force throughout the duration of this Agreement, Umbrella or Excess Liability coverage of \$2,000,000.

The CONSULTANT shall secure and maintain in force throughout the duration of this Agreement, Workers' Compensation insurance, as required by statute, by an insurance company licensed to write worker's compensation in the State of Illinois. Additionally, the CONSULTANT shall maintain liability insurance consistent with City standards as shown in Exhibit C.

The insurance provided by CONSULTANT shall be primary, and not contributory to any insurance purchased by the City. All insurance policies required by this contract shall be underwritten by insurance companies with a minimum A.M. Best rating of A. The certificate of insurance shall provide that it will not be canceled, reduced, or materially changed without providing the City thirty (30) days advance notice, via certified mail.

The CONSULTANT shall not commence work under this contract until they have obtained all insurance required and such insurance has been approved by the City, nor shall the CONSULTANT allow any subcontractors (hereafter Subs) to commence work on their subcontract until the same insurance has been obtained by the Sub. The CONSULTANT and their Subs shall maintain all insurance for not less than one (1) year after completion of this contract.

If the CONSULTANT is providing architectural, engineering, or surveying services, CONSULTANT shall also file a certificate of insurance for professional liability, errors and omissions coverage subject to final acceptance by the City of said coverage.

In the event the CITY requires contractors or subcontractors working on CITY projects to acquire and provide proof of insurance covering public liability, death, and property damage naming the CITY as an insured, the CITY shall require said contractors or subcontractors to name the CONSULTANT as an additional insured.

13. ASSIGNMENT: The CONSULTANT shall not assign this Agreement, or any of the work or services covered by this Agreement, without the express written consent of the CITY.
14. STANDARD FOR PERFORMANCE: The CONSULTANT shall perform its services in accordance with generally accepted engineering and consultant standards and shall be responsible for the professional and technical soundness and accuracy of all work and services furnished pursuant to this Agreement. The CONSULTANT warrants that it is technically qualified and entirely conversant with the requirements of the work to be provided pursuant to this Agreement; and that it has sufficient properly trained, organized, and experienced personnel and/or subcontractors to perform the services enumerated herein.

15. OPINIONS OF COST: The CONSULTANT has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or other competitive bidding or market conditions, and its opinions of probable project or construction costs are to be made on the basis of its experience and qualifications and represents its judgment as an experienced and qualified professional, familiar with the construction industry. However, the CONSULTANT cannot and does not guarantee that proposals, bids, or actual project or construction costs will not vary from the opinions of probable costs prepared by it.
16. CONSTRUCTION AND SAFETY: The CONSULTANT shall not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by contractors or the safety precautions and programs incidental to work of contractors. It is the intent that the construction contractors will be held responsible for means and methods of construction and all safety issues.
17. SUBMITTAL REVIEW: Review of proposed contractor substitutions of materials and equipment by CONSULTANT is only for general conformance with the design concept of the Project and general compliance with the information given in the Contract Documents. The review does not affect the contractor's responsibility to perform all contract requirements.
18. OWNERSHIP AND REUSE OF DOCUMENTS: The originals of all documents, including drawings and specifications, prepared by CONSULTANT pursuant to this Agreement shall remain the property of CONSULTANT and are instruments of service in respect of the Project. The CONSULTANT shall provide the CITY with reproducible copies of all documents, drawings, specifications, and other work products that shall be the property of the CITY. Such documents, drawings, and specifications are not intended nor represented by the CONSULTANT to be suitable for reuse by the CITY or others on extensions of the services provided for the intended project or on any other project. The basic survey notes and sketches, charts, computations, and other data prepared or obtained by the CONSULTANT pursuant to the Agreement will be made available, upon request, to the City without cost and without restriction or limitations as to their use. All field notes, test records, and reports shall be available to the City upon request.

Any reuse without written verification or adaptation by the CONSULTANT for the specific purpose intended will be at the CITY's sole risk and without liability or legal exposure to the CONSULTANT, and the CITY shall indemnify and hold harmless the CONSULTANT from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom.

The above provisions also apply to electronic media files. The CONSULTANT shall provide the CITY with "AutoCAD drawing (dwg)" and "pdf" files of work performed for and paid for by the CITY at the request of the CITY, with the following provisions:



- a. The documents are protected by the rules and regulations of U.S. Copyright Laws.
  - b. The use or reuse of original or altered electronic files by the CITY or others the CITY has released these files to, except for the City's purposes stated herein, will be at the CITY's own risk and liability.
  - c. The CONSULTANT shall be indemnified and held harmless by the CITY to the fullest extent of the law from any and all claims, suit, liability, demands, or costs arising out of the use or release of the information contained on the files except for the City's purposes stated herein.
  - d. The CONSULTANTS shall perform its services in accordance with generally accepted engineering and consultant standards within the consulting engineering industry and shall be responsible for the professional and technical soundness and accuracy of all work and services furnished pursuant to this agreement.
19. CITY-PROVIDED INFORMATION: CONSULTANT is entitled to rely on all information furnished or to be furnished by CITY. CITY agrees to hold harmless and indemnify CONSULTANT, its officers, agents, and employees from any and all claims of any kind arising out of or relating to any claims caused by an error or omissions in information provided by the CITY which were the cause of the claim for damages and provided, further, that the CONSULTANT's reliance on such information was reasonable under the circumstances. All information, worksheets, reports, design calculations, plans, and specifications as provided by the City shall be the sole property of the City unless otherwise specified in this agreement.
  20. THIRD-PARTY BENEFICIARIES: It is recognized that the services performed by CONSULTANT are for the benefit of the CITY and no other party. There are no third party beneficiaries to this Agreement.
  21. ACCESS TO RECORDS CLAUSE: The CITY and other authorized representatives of the state and federal governments shall have access to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to this Agreement for the purposes of making audits, examination, excerpt, and transcriptions.

All such records and all other records pertinent to this Agreement and work undertaken under this Agreement shall be retained by the CONSULTANT for a period of three years after the completion of the CITY's project, unless a longer period is required to resolve audit findings or litigation. In such cases, the CITY shall request a longer period for record retention.



27. BINDING EFFECT: This Agreement shall be binding upon the partners, heirs, successors, executors, administrators, and assigns of all the parties hereto.
28. LAW AND VENUE: This Agreement shall be construed in accordance with the laws of the State of Illinois. Venue for any litigation arising from this Agreement shall be limited to the Courts of the Sixteenth Judicial Circuit, Kane County, Illinois.
29. ILLINOIS PREVAILING WAGES: To the extent the proposed contract calls for the construction of a “public work,” within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/.01 et seq. (“the Act”), Contractor shall not pay less than the prevailing rates of wages to all laborers, workmen, and mechanics performing work under this contract, and shall comply with the requirements of the Illinois Wages of Employees on Public Works Act 820 ILCS 130/1-12, to the extent they are applicable, including, without limitation, the submission of certified monthly payroll reports as required by 820 ILCS 130/5. The contractor is advised that failure to timely submit such reports shall be cause for the withholding of payments otherwise due the contractor until compliance with the reporting requirements is achieved. The current Illinois Department of Labor Prevailing Wage Rates for the County of Kane are available at their website <http://www.state.il.us/agency/idol/>. Prevailing wage rates are subject to revision monthly. Copies of the current prevailing wage rates are also available at the Kane County Purchasing Department, 719 Batavia Avenue, Geneva, Illinois.

Any bond furnished under this contract shall include such provisions as will guarantee the faithful performance of such prevailing wage clause as provided by the contract.

The Contractor and each of his Sub-Contractors shall pay each of his employees engaged in work on the project under this Contract in full (less deductions made mandatory by law) not less often than once each week.

If a contractor or subcontractor deems the work is not subject to the Act, the contractor or subcontractor shall then submit to the City, a letter indicating receipt of this notice and their determination that the Act does not apply. If the contractor or subcontractor believes the work is not subject to the Prevailing Wage Act, and it is later determined by the Illinois Department of Labor or a court of competent jurisdiction that prevailing wages should have been paid, the contractor shall indemnify and hold the City harmless therein for all costs and penalties incurred by the City related to the violation, including reasonable attorney’s fees incurred by the City to defend such an action.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF ST. CHARLES

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
(SEAL)

eX<sup>2</sup> Technology, LLC

\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
(SEAL)

EXHIBIT "A"

SCHEDULE OF RATES  
FOR  
eX<sup>2</sup> Technology LLC

**EXHIBIT "A"**

**SCHEDULE OF RATES  
FOR  
EX2 TECHNOLOGY, LLC**

**LABOR RATES**

<b>Labor Classification</b>	<b>Straight Time</b>	<b>Overtime</b>	<b>Double Time</b>
Project Manager	\$ 110.00	\$ 110.00	\$ 110.00
Construction Manager	\$ 100.00	\$ 100.00	\$ 100.00
Professional Engineer	\$ 150.00	\$ 150.00	\$ 150.00
Engineering Manager	\$ 105.00	\$ 105.00	\$ 105.00
Network Engineer	\$ 150.00	\$ 150.00	\$ 150.00
System Engineer	\$ 104.00	\$ 104.00	\$ 104.00
Superintendent	\$ 92.00	\$ 92.00	\$ 92.00
OSP Engineer	\$ 76.00	\$ 114.00	\$ 114.00
Locator	\$ 54.50	\$ 75.00	\$ 75.00
CADD Operator	\$ 60.00	\$ 60.00	\$ 60.00
General Foreman	\$ 186.00	\$ 279.00	\$ 372.00
Foreman	\$ 152.00	\$ 228.00	\$ 304.00
Splicer	\$ 103.00	\$ 154.50	\$ 206.00
Operator	\$ 150.00	\$ 225.00	\$ 300.00
Laborer	\$ 127.00	\$ 190.50	\$ 254.00
Journeyman	\$ 150.00	\$ 225.00	\$ 300.00
Groundman III	\$ 83.00	\$ 124.50	\$ 166.00
Groundman II	\$ 71.00	\$ 106.50	\$ 142.00

**EQUIPMENT RATES:**

<b>Equipment Classification</b>	<b>Hourly Rate</b>
Pickup Truck	\$ 22.10
Bucket Truck	\$ 50.25
Water Truck	\$ 86.70
Dump Truck	\$ 86.70
Equipment Trailer	\$ 23.85
Splicing Trailer	\$ 34.20
Reel Trailer	\$ 13.24
Splicing Machine	\$ 18.30
OTDR	\$ 13.50
Power Meter	\$ 14.40
Fiber Blowing Machine	\$ 59.70
Mid-Assist Cap Stand	\$ 48.30
Manhole Kit	\$ 12.60
3" Pump	\$ 12.50
Air Compressor	\$ 27.75
Generator	\$ 22.25
Safety & Traffic Control Equipment	\$ 41.65
Backhoe	\$ 118.05
Mini Excavator	\$ 45.40
Skid Steer	\$ 56.35
Trencher	\$ 114.85
Directional Boring Machine	\$ 257.40

**MATERIAL MARKUP:**

The cost of any materials provided by EX2 Technology shall be markup by 15%. Cost shall be defined as the actual cost of the material plus shipping and tax. EX2 shall provide copies of invoices to document all material charges.

NOTES:

1. THE RATES LISTED ABOVE ARE VALID UNTIL MAY 31, 2018.
2. THE RATES FOR REIMBURSABLES SUCH AS POSTAGE, DOCUMENT FEES AND IN-HOUSE PRINTINGS/DISCS ARE APPLIED BASED ON THE NORMAL ON-GOING CHARGES.
3. THE ABOVE RATES DO NOT INCLUDE THE SERVICES OF OTHER PROFESSIONALS OR COMPANIES REQUIRED TO PERFORM WORK TO ASSIST eX<sup>2</sup> Technology LLC IN THE PERFORMANCE OF A TASK ORDER.

EXHIBIT "B"

TASK ORDER NO. \_\_\_\_\_

REGARDING GENERAL AGREEMENT BETWEEN CITY OF St. Charles

AND

eX<sup>2</sup> Technology LLC

Project Description:

Scope of Services:

Time of Performance:

Estimated Fee for Services:

Proposed: \_\_\_\_\_

Date

Approved:

City of St. Charles  
City Approver

Date





City of St. Charles  
Certificate of Insurance Requirements

All Contractors, Manufacturers/Distributors, and Suppliers shall be required to carry and evidence insurance coverage with a standard Acord Certificate of Insurance with minimum limits applicable. Sample attached.

1. Minimum Insurance Requirements and Limits

	<i>Coverage</i>		<i>Limits</i>
A.	Automobile Liability	\$1,000,000	Combined single limit
B.	Commercial General Liability	\$1,000,000	Per occurrence
		\$2,000,000	General aggregate

All Commercial General Liability policies must include Blanket Contractual coverage and Broad Form Vendors' Liability coverage.

C.	Workers' Compensation (Employers' Liability)	\$500,000	Per accident
		\$500,000	Disease limit
		\$500,000	Each Disease
D.	Umbrella Liability	\$5,000,000	Limit

2. Cancellation or Alteration

The policies of insurance required by this exhibit shall provide that they cannot be cancelled or altered in any way changing coverage except after 30 days' prior written notice by certified mail to owner.

3. Workers' Compensation and General Liability Waiver of Subrogation in favor of the City.

4. Insurance Certificates

- A. Must be submitted ten (10) days prior to any work being performed to allow review of certificates.
- B. Certificates not meeting requirements must be revised and resubmitted within fifteen (15) days or the subcontractor will not be allowed on the jobsite.

5. Additional Insured and Broad Form Vendors' Liability in favor of the City.

The City must be named as an Additional Insured with the following wording appearing on the Certificate of Insurance: "The City of St. Charles and any official, trustee, director, officer, or employee of the City (plus any holder or mortgage as designated by the City) as to any and all projects, as an Additional Insured for the Commercial General Liability as respects any and all projects for any work being performed and this coverage will be primary and noncontributory."

6. Minimum Insurance Carrier

All contractors, manufacturers/distributors, and suppliers' insurance carriers must comply with the minimum A.M Best rating of A-VI for all insurance carriers.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)

**PRODUCER**

Arthur J. Gallagher & Co.  
The Gallagher Centre  
Two Pierce Place  
Itasca, IL 60143-3141

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURERS AFFORDING COVERAGE****INSURED**

ABC Subcontractors  
739 High Street  
Small Town, IL 48970

INSURER A:

INSURER B:

INSURER C:

INSURER D:

INSURER E:

**COVERAGES**

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

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS								
	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> BROAD FORM VENDORS <input checked="" type="checkbox"/> UNDERGROUND EXPLOSION AND COLLAPSE HAZARD GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC				EACH OCCURRENCE	\$ 1,000,000							
					FIRE DAMAGE (Any one fire)	\$ 50,000							
					MED EXP (Any one person)	\$ 5,000							
					PERSONAL & ADV INJURY	\$ 1,000,000							
					GENERAL AGGREGATE	\$ 2,000,000							
					PRODUCTS - COMP/OP AGG	\$ 1,000,000							
						\$							
	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NONOWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000							
					BODILY INJURY (Per person)	\$							
					BODILY INJURY (Per accident)	\$							
					PROPERTY DAMAGE (Per accident)	\$							
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$							
					OTHER THAN AUTO ONLY: EA ACCT	\$							
					AGG	\$							
	<b>EXCESS LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE	\$ 5,000,000							
					AGGREGATE	\$ 5,000,000							
						\$							
						\$							
	<b>WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY</b>				<table border="1"> <tr> <td>WC STATUTORY LIMITS</td> <td>OTHER</td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$ 500,000</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$ 500,000</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$ 500,000</td> </tr> </table>	WC STATUTORY LIMITS	OTHER	E.L. EACH ACCIDENT	\$ 500,000	E.L. DISEASE - EA EMPLOYEE	\$ 500,000	E.L. DISEASE - POLICY LIMIT	\$ 500,000
WC STATUTORY LIMITS	OTHER												
E.L. EACH ACCIDENT	\$ 500,000												
E.L. DISEASE - EA EMPLOYEE	\$ 500,000												
E.L. DISEASE - POLICY LIMIT	\$ 500,000												
	<b>OTHER</b>												

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS**

The City of St. Charles and any official, trustee, director, officer, or employee of the City (plus any holder or mortgage as designated by the City) as to any and all projects, as an Additional Insured for the Commercial General Liability as respects any and all projects for any work being performed and this coverage will be primary and noncontributory.

**CERTIFICATE HOLDER**

ADDITIONAL INSURED; INSURER LETTER:

**CANCELLATION**

City of St. Charles  
2 E. Main St.  
St. Charles, IL 60174

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES  
AUTHORIZED REPRESENTATIVE



**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 5.i

Title:

Recommendation to Approve Amendment to the Pole Attachment Agreement between the City of St. Charles and ComEd

Presenter:

Tom Bruhl

Meeting: Government Services Committee

Date: November 27, 2017

Proposed Cost: \$0

Budgeted Amount: \$0

Not Budgeted:

**Executive Summary** *(if not budgeted please explain):*

The City has an existing pole attachment agreement with ComEd for the purpose of maintaining fiber cables that extend beyond City boundaries to D303 schools. The City has a Fiber Maintenance Agreement with D303 accounting for the pole attachment costs with ComEd to be a pass through expense that D303 reimburses the City for.

In recent work on pole attachment agreements, City staff realized that the pole attachment cost terms in the ComEd agreement from 2001 were not consistent with industry norms. City staff, with the help of our ComEd Senior Account Manager Mike Staples, drafted a revised pole attachment cost structure that saves D303 approximately \$6,000 per year.

**Attachments** *(please list):*

\* Pole Attachment Amendment

**Recommendation/Suggested Action** *(briefly explain):*

Recommendation to Authorize Mayor and City Clerk to Execute Pole Attachment Agreement Amendment with ComEd.

## AMENDMENT TO POLE ATTACHMENT AGREEMENT

THIS AMENDMENT TO POLE ATTACHMENT AGREEMENT ("Amendment"), is made and entered into as of this \_\_\_ day of December 2017, is by and between Commonwealth Edison Company ("ComEd"), having a mailing address of 3 Lincoln Centre 4th Floor, Oakbrook Terrace, IL 60181 and the City of St. Charles, Illinois, having a mailing address of 2 E. Main Street, St. Charles, Illinois, 60174 ("Licensee").

WHEREAS, ComEd and Licensee entered into a Pole Attachment Agreement dated September 21, 2001 (the "Agreement"), whereby ComEd granted a license to Licensee to use specific poles for Licensee's Equipment in a manner more specifically set forth in the Agreement; and

WHEREAS, ComEd and Licensee desire to amend the Agreement to modify the "Compensation" section.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ComEd and Licensee agree as follows:

1. Definitions. All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.
2. Amendment to Agreement. Section 12.1.2 Subsequent Years shall be deleted in its entirety and replaced with the following:

12.1.2 Subsequent Years. Thereafter, for so long as the Agreement is in effect, Licensee shall pay to ComEd, when billed, an annual fee for each Facility and for each Power Supply attached to a ComEd Pole calculated pursuant to the then-current regulatory formula applicable to such attachment. Should no formula exist or if no such formula applies to category of attachment, then Licensee agrees to negotiate and pay a fee for such attachments with Licensor no later than sixty (60) days' following such time when the prior formula no longer exists or becomes inapplicable to one or more types or categories of attachment.
3. Other Terms and Conditions Remain. In the event of any inconsistencies between the Agreement and this Amendment, the terms of this Amendment shall control. Except as expressly set forth in this Amendment, the Agreement and Amendment otherwise are unmodified and remain in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this Amendment.

SIGNATURES APPEAR ON THE NEXT PAGE

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Amendment on the dates set forth below.

**"COMED"**

Commonwealth Edison Company,  
an Illinois corporation

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

Printed Name: \_\_\_\_\_

Date:

Title:

**"LICENSEE"**

**Mayor**, City of St. Charles, Illinois:

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

Printed Name: \_\_\_\_\_

Date:

Title: Mayor

**City Clerk**, City of St. Charles, Illinois:

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

Printed Name: \_\_\_\_\_

Date:

Title: City Clerk

**LICENSEE ACKNOWLEDGEMENT**

STATE OF ILLINOIS     )  
  )  
COUNTY OF \_\_\_\_\_ )

I CERTIFY that on \_\_\_\_\_, 2017, \_\_\_\_\_ personally came before me and acknowledged under oath that he:

- (a) is \_\_Mayor\_\_ for the City of St. Charles, Illinois, the Licensee named in the attached instrument,
- (b) was authorized to execute this instrument on behalf of the City of St. Charles; and
- (c) executed the instrument as the act of the City of St. Charles.

\_\_\_\_\_  
Notary Public

My Commission Expires:

**LICENSEE ACKNOWLEDGEMENT**

STATE OF ILLINOIS     )  
  )  
COUNTY OF \_\_\_\_\_ )

I CERTIFY that on \_\_\_\_\_, 2017, \_\_\_\_\_ personally came before me and acknowledged under oath that he:

- (a) is \_\_City Clerk\_\_ for the City of St. Charles, Illinois, the Licensee named in the attached instrument,
- (b) was authorized to execute this instrument on behalf of the City of St. Charles; and
- (c) executed the instrument as the act of the City of St. Charles.

\_\_\_\_\_  
Notary Public

My Commission Expires:

COMED ACKNOWLEDGEMENT

**CORPORATE ACKNOWLEDGEMENT**

STATE OF ILLINOIS     )  
  )  
COUNTY OF DUPAGE    )

I CERTIFY that on \_\_\_\_\_, 2017, \_\_\_\_\_ personally came before me and acknowledged under oath that he or she:

- (a) is the \_\_\_\_\_ of Commonwealth Edison Company, the corporation named in the attached instrument,
- (b) was authorized to execute this instrument on behalf of the corporation; and
- (c) executed the instrument as the act of the corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:



**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 5.j

Title:

Recommendation to Approve Acceptance of Electric Easement at 875 Country Club Road

Presenter:

Tom Bruhl

Meeting: Government Services Committee

Date: November 27, 2017

Proposed Cost: \$0

Budgeted Amount: \$0

Not Budgeted:

**Executive Summary** *(if not budgeted please explain):*

The Electric Utility recently extended the City's electrical system onto customer property. The owner has provided an easement for the new underground lines and equipment to give the City the right to own and operate the utility infrastructure.

**Attachments** *(please list):*

\* Plat of Easement

**Recommendation/Suggested Action** *(briefly explain):*

Recommendation to Authorize Mayor and City Clerk to Execute Electric Utility Easement at 875 Country Club Road



PLAT OF EASEMENT  
PART OF THE NORTHEAST QUARTER OF SECTION 22, T40N-R8E, 3rd PM  
CITY OF ST. CHARLES KANE COUNTY ILLINOIS

Country Club Road

Center line of Country Club Road

N

SCALE  
1"=40'

NOTE: This property commonly known as 875 Country Club Road.

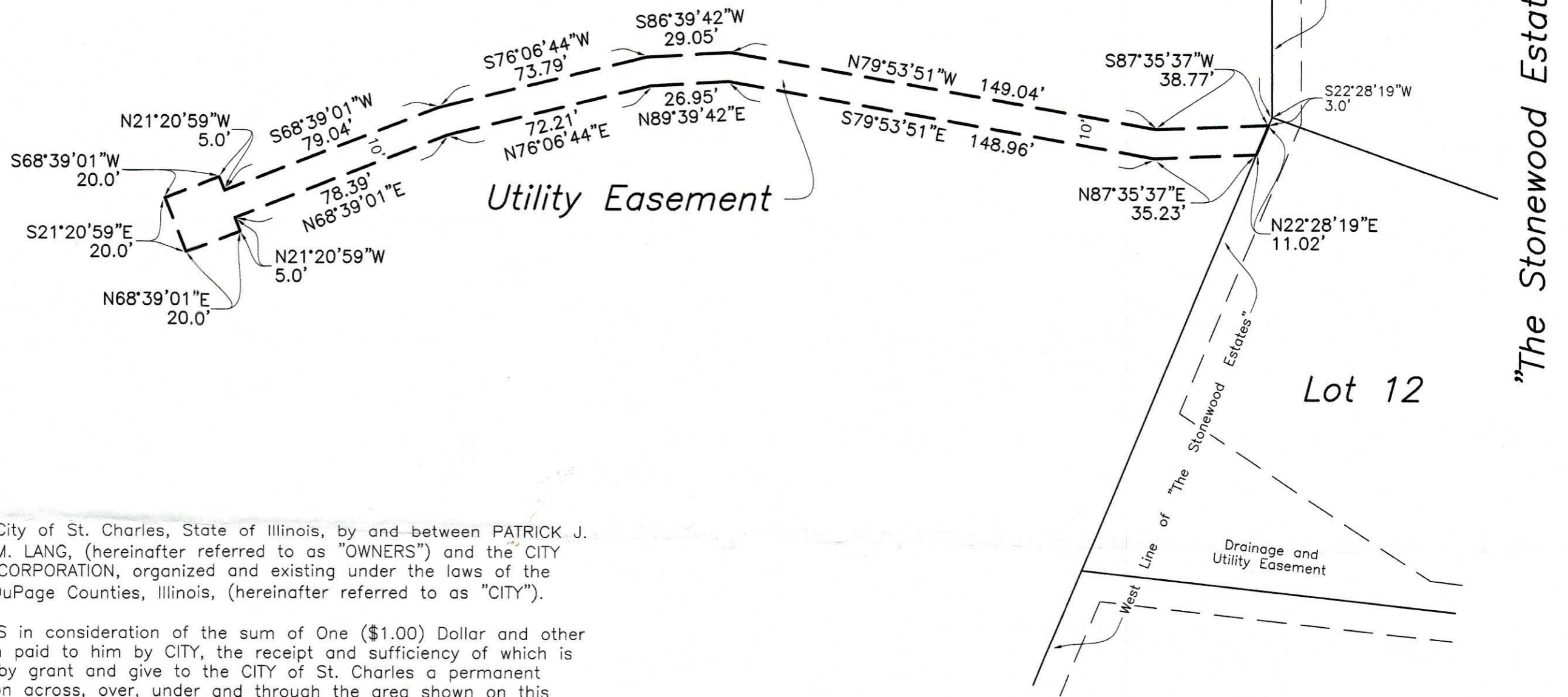
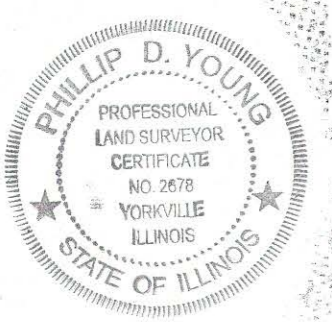
State of Illinois )  
County of Kendall ) SS

I, Phillip D. Young, an Illinois Professional Land Surveyor and an officer of Phillip D. Young and Associates, Inc., state that I have surveyed the attached described tract as shown by the plat hereon drawn. Field work was completed August 18, 2017.

Dated October 9, 2017 at Yorkville, Illinois

*Phillip D. Young*  
Phillip D. Young

Illinois Professional Land Surveyor No. 2678 (Expires 11/30/18)



BY OWNERS  
CITY OF ST. CHARLES, ILLINOIS  
UTILITY EASEMENT

THIS INDENTURE, made in the City of St. Charles, State of Illinois, by and between PATRICK J. O'RAHILLY, Sr. and CATHERINE M. LANG, (hereinafter referred to as "OWNERS") and the CITY OF ST. CHARLES, a MUNICIPAL CORPORATION, organized and existing under the laws of the State of Illinois, of Kane and DuPage Counties, Illinois, (hereinafter referred to as "CITY").

WITNESSETH: That OWNERS in consideration of the sum of One (\$1.00) Dollar and other good and valuable consideration paid to him by CITY, the receipt and sufficiency of which is hereby acknowledged does hereby grant and give to the CITY of St. Charles a permanent non-exclusive easement in, upon across, over, under and through the area shown on this Plat for the purpose of installing, construction, inspecting, operating, replacing, renewing, altering and maintaining underground "type" electrical and communication utility lines and equipment and within limitation, such other installations, some of which may be above grade, as may be required to furnish public utility service to adjacent areas together with the right of access across the real estate herein for the necessary personnel and equipment to make any or all of the above work. This right is also hereby granted to said grantees to cut down, trim, or remove any trees, shrubs, or other plants that interfere with the operation of or access to said utility lines, or without limitation, utility installations in, on, upon, across, under, or through said easement. No permanent buildings or trees shall be placed on said easements, but the easement area may be used for gardens, shrubs, landscaping, paving, fences, sidewalks, curbing, and other purposes that do not interfere with the aforesaid uses and rights.

THAT PART OF THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF "PHASE NO. ONE, THE STONEWOOD ESTATES, ST. CHARLES, KANE COUNTY, ILLINOIS" ACCORDING TO THE PLAT THEREOF RECORDED JUNE 4, 1980 AS DOCUMENT NO. 1544908; THENCE SOUTH 00°22'50" EAST, ALONG THE WEST LINE OF SAID "THE STONEWOOD ESTATES", 415.0 FEET TO AN ANGLE POINT IN SAID WEST LINE; THENCE SOUTH 22°28'19" WEST, ALONG SAID WEST LINE, 3.0 FEET FOR THE POINT OF BEGINNING; THENCE SOUTH 87°35'37" WEST, 38.77 FEET; THENCE NORTH 79°53'51" WEST, 149.04 FEET; THENCE SOUTH 86°39'42" WEST, 29.05 FEET; THENCE SOUTH 76°06'44" WEST, 73.79 FEET; THENCE SOUTH 68°39'01" WEST, 79.04 FEET; THENCE NORTH 21°20'59" WEST, 5.0 FEET; THENCE SOUTH 68°39'01" WEST, 20.0 FEET; THENCE SOUTH 21°20'59" EAST, 20.0 FEET; THENCE NORTH 68°39'01" EAST, 20.0 FEET; THENCE NORTH 21°20'59" WEST, 5.0 FEET; THENCE NORTH 68°39'01" EAST, 78.39 FEET; THENCE NORTH 76°06'44" EAST, 72.21 FEET; THENCE NORTH 89°39'42" EAST, 26.95 FEET; THENCE SOUTH 79°53'51" EAST, 148.96 FEET; THENCE NORTH 87°35'37" EAST, 35.23 FEET TO SAID WEST LINE OF "THE STONEWOOD ESTATES"; THENCE NORTH 22°28'19" EAST, ALONG SAID WEST LINE, 11.02 FEET TO THE POINT OF BEGINNING, IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS.

Said easement premises are depicted on the attached Plat.

The OWNERS hereby retain the right to enjoy said easement and right-of-way for its own purposes, provided that such purposes shall not interfere with the uses and right-of-way granted to the CITY herein. All construction by the CITY shall be done in a good, workmanlike manner, and the CITY also agrees that the premises will be left in a neat and presentable condition.

WITNESS our hands and seals this 9th day of November, 2017.

PATRICK J. O'RAHILLY, Sr.

RAYMOND P. ROGINA, MAYOR

CATHERINE M. LANG  
875 Country Club Road  
St. Charles, Illinois 60174

CHARLES AMENTA, CITY CLERK

STATE OF ILLINOIS )  
COUNTY OF KANE ) SS

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that PATRICK J. O'RAHILLY, Sr. and CATHERINE M. LANG, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged the execution of the annexed plat as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal this 9th day of November, 2017.

*Eileen M. Buck*  
NOTARY PUBLIC



STATE OF ILLINOIS )  
COUNTY OF KANE ) SS

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that RAYMOND P. ROGINA, personally known to me to be the Mayor of the City of St. Charles, a municipal corporation, and CHARLES AMENTA, the City Clerk, personally known to me to be the City Clerk of the City of St. Charles, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Mayor and City Clerk of said corporation, they caused their signatures to be affixed thereto, and caused the corporate seal of said corporation to be affixed thereto, pursuant to the authority given by the Council of the City of St. Charles as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and seal this \_\_\_ day of \_\_\_\_\_, 20\_\_\_.

NOTARY PUBLIC

JOB NO.	17250
JOB NAME	O'RAHILLY
DWG FILE	17250

Phillip D. Young and Associates, Inc.  
LAND SURVEYING - TOPOGRAPHIC MAPPING - Lic.#184-002775

1107B South Bridge Street  
Yorkville, Illinois 60560  
Telephone (630)553-1580



**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 5.k

Title:

Recommendation to Award Bid for Wild Rose Valley Siphon Rehabilitation

Presenter:

Tim Wilson

Meeting: Government Services Committee

Date: November 27, 2017

Proposed Cost: \$72,930

Budgeted Amount: \$125,000

Not Budgeted:

**Executive Summary** (if not budgeted please explain):

The proposed improvement will consist of the rehabilitation of a dual sanitary sewer siphon under Ferson Creek by cleaning, televising, testing, possible lining and final landscaping. The project is located within the Ferson Creek Valley between Wild Rose Road and Wild Rose Springs Drive. The sewer siphon serves about 1,150 people including the subdivisions of the Reserves, Crane Road Estates, Wild Rose and St Charles North High School.

Bid documents were publicly posted and sent directly to twelve firms. A pre-bid meeting was held on October 8, 2017, with three firms attending. The bid opening was conducted on October 18, 2017, with only one company, Marc Kresmery Construction, bidding on the project. The Environmental Services division followed up with the others firms that did not bid and they revealed the size and remote location of the project was an issue for most of the firms.

The Environmental Services Division recommends Marc Kresmery Construction be awarded the bid. They have completed three other siphon cleaning and maintenance projects and the City has been pleased with their work. In addition, they are a reputable company having worked with several other Water and Wastewater Utilities within the Fox Valley area.

**Attachments** (please list):

\* Bid Proposal \* Location Map

**Recommendation/Suggested Action** (briefly explain):

Recommendation to award bid to Marc Kresmery Construction for Wild Rose Valley Siphon Rehabilitation in the amount of \$72,930.

## PROPOSAL

TO: CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS

1. Proposal of MARC KRESMERY CONSTRUCTION LLC MARC KRESMERY CONSTRUCTION LLC  
1725 WELD RD.  
ELGIN, IL. 60123  
(Name and Address of Bidder)  
ELGIN, IL. 60123

for the improvement, designated City of St. Charles, Kane County, Illinois "Wild Rose Valley Siphon Rehabilitation" of sanitary sewer siphon cleaning, televising, testing, replacement of equipment and appurtenant work necessary to complete the proposed project, in the City of St. Charles, Kane County, Illinois.

1. The plans for the proposed improvement are those prepared by GERALD L. HEINZ & ASSOCIATES, INC, Consulting Engineers, 206 North River Street, East Dundee, Illinois, which plans are designated as City of St. Charles, Kane County, Illinois "Sanitary Sewer Siphon" and which cover the work described generally in paragraph 1 above.
2. The specifications herein referred to are the "Standard Specifications for Road and Bridge Construction" adopted April 1, 2016 by the Illinois Department of Transportation (IDOT), the "Supplemental Specifications and Recurring Special Provisions" adopted January 1, 2017 by the IDOT, and the Standard Specifications for Water & Sewer Construction in Illinois, 7<sup>th</sup> Edition.
4. The undersigned agrees to accept, as part of the contract, the applicable Special Provisions indicated on the "Check Sheet for Supplemental Specifications and Recurring Special Provisions" contained in this proposal.
5. The undersigned agrees to complete the work on this project by **March 31, 2018 (including landscaping)** unless additional time is granted in accordance with the specifications.
6. In submitting this proposal, the undersigned declares that the only persons or parties interested in the proposal as principals are those named herein, and that the proposal is made without collusion with any person, firm or corporation.
7. The undersigned further declares that he has carefully examined the proposal, plans, specifications, form of contract and contract bond included in the specifications, and special provisions and that he has inspected in detail the site of the proposed work, and that he has familiarized himself with all of the local conditions affecting the contract and the detailed requirements of construction, and understands that in making this proposal, he waives all right to plead any misunderstanding regarding the same.
8. The undersigned further understands and agrees that, if this proposal is accepted, he is to furnish and provide all necessary machinery, tools, apparatus and other means of construction, and to do all of the work, and to furnish all of the materials specified in the contract, except such materials as are to be furnished by the City in the manner and at the time therein prescribed, and in accordance with the requirements therein set forth.

9. The undersigned declares that he understands that the quantities mentioned are approximate only and that they are subject to increase or decrease; that he will take in full payment therefore the amount and the summation of the actual quantities, as finally determined, multiplied by the unit prices shown in the schedule of prices contained herein.
10. Each pay item should have a unit price and a total price. If no total price is shown or if there is a discrepancy between the product of the unit price multiplied by the quantity, the unit price shall govern. If a unit price is omitted, the total price will be divided by the quantity in order to establish a unit price.
11. A bid will be declared unacceptable if neither a unit price nor a total price is shown.
12. The undersigned further agrees that, if the City decides to extend or shorten the improvement, or otherwise alter it by extras or deductions, including the elimination of any one or more of the items, as provided in the specifications, he will perform the work as altered, increased or decreased at the contract unit prices.
13. The undersigned further agrees to execute a contract for this work and present the same to the City within fifteen (15) days after the date of notice of award of the contract to him.
14. The undersigned further agrees that he and his surety will execute and present within fifteen (15) days after the date of notice of the award of contract, a contract bond satisfactory to and in the form prescribed to the City, in the penal sum of the full amount of the contract, guaranteeing the faithful performance of the work in accordance with the terms of the contract.
15. The undersigned further agrees to begin work no later than ten (10) days after the execution and approval of the contract and contract bond, unless otherwise authorized or directed by the City, and to prosecute the work in such manner and with sufficient materials, equipment, and labor as will insure its completion within the time limit specified herein, it being understood and agreed that the completion within the time limit is an essential part of the contract.
16. If this proposal is accepted and the undersigned fails to execute the contract and contract bond as required, it is hereby agreed that the Bid Bond or check shall be forfeited to the City.
17. The undersigned submits herewith this schedule of prices covering the work to be performed under this contract.

## SCHEDULE OF PRICES

Item No.	Description	Quantity	Unit	Unit Price	Total Price
1	Mobilization		Lump Sum	1600.00	1600.00
2	Perimeter Erosion Barrier	140	Lin.Ft.	7.00	980.00
3	Clean & Televis 6" CIP	95	Lin.Ft.	165.00	15,675.00
4	Clean & Televis 10" CIP	95	Lin.Ft.	165.00	15,675.00
5	Pressure Test 6" CIP	1	Each	2,200.00	2,200.00
6	Pressure Test 10" CIP	1	Each	2,200.00	2,200.00
7	Remove Existing Cone Section & Replace with Concrete Flat Slab Top	2	Each	7,500.00	15,000.00
8	Remove Existing Flap Gate Valve, 6"	1	Each	3,400.00	3,400.00
9	Remove Existing Flap Gate Valve, 10"	1	Each	3,400.00	3,400.00
10	Remove Existing Plug Valve, 6"	1	Each	3,400.00	3,400.00
11	Remove Existing Plug Valve, 10"	1	Each	3,400.00	3,400.00
12	Lining Sanitary Sewer, 6" CIP	95	Lin.Ft.	NO BID - SEE NOTE #1	
13	Lining Sanitary Sewer, 10" CIP	95	Lin.Ft.	NO BID - SEE NOTE #1	
14	Site Restoration	2	Each	3,000.00	6,000.00

TOTAL BID PROPOSAL: \$72,930.00 (NOTE #2)

NOTE #2 - Total bid proposal excluded Lines #12 & #13, See Note #1 for explanation,

**Note #1**

Marc Kresmery is unable to submit a bid for Line Items #12 & #13. We have contacted the primary vendors for this work: Visu Sewer Inc and Insituform. Both suppliers would not provide us with a quote for this work.

**SIGNATURES**

(If an Individual) Signature of Bidder: \_\_\_\_\_  
Business Address: \_\_\_\_\_

(If a Partnership) Firm Name: \_\_\_\_\_  
Signed By: \_\_\_\_\_  
Business Address: \_\_\_\_\_

(Insert names and addresses of all Partners of the Firm)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



MARC KRESMERY  
CONSTRUCTION LLC

Corporate Name: \_\_\_\_\_  
Signed by: \_\_\_\_\_  
Business Address: \_\_\_\_\_

*Marc Kresmery, Manager*

MARC KRESMERY CONSTRUCTION LLC  
1725 WELD RD.  
ELGIN, IL. 60123

(Insert Names of Officers)  
President: *manager* \_\_\_\_\_  
Secretary: \_\_\_\_\_  
Treasurer: \_\_\_\_\_

*Marc Kresmery*

ATTEST: *DAVENTA*  
*ORR Manager*



**Illinois Department of Transportation**

Bureau of Construction  
2300 South Dirksen Parkway/Room 322  
Springfield, Illinois 62764

**Affidavit of Availability  
For the Letting of Wild Rose**

(Letting date)

**Instructions:** Complete this form by either typing or using black ink. "Authorization to Bid" will not be issued unless both sides of this form are completed in detail. Use additional forms as needed to list all work.

**Part I. Work Under Contract**

List below all work you have under contract as either a prime contractor or a subcontractor. It is required to include all pending low bids not yet awarded or rejected. In a joint venture, list only that portion of the work which is the responsibility of your company. The uncompleted dollar value is to be based upon the most recent engineer's or owners estimate, and must include work subcontracted to others. If no work is contracted, show **NONE**.

	1	2	3	4	Awards Pending	
Contract Number	Columbaria	2017 LS	Taly Park	LS#9	Louis St	
Contract With	Dundee	NMWRD	FRWRD	Wauconda	Mt Prospect	
Estimated Completion Date	DEC 2017	APRIL 2018	Jan 2018	DEC 2017	DEC 2017	
Total Contract Price	497,914.00	331,800.00	274,200.00	194,040.00	178,450.00	Accumulated Totals
Uncompleted Dollar Value if Firm is the Prime Contractor	44,500.00	316,800.00	236,200.00	174,040.00	178,450.00	949,990.00
Uncompleted Dollar Value if Firm is the Subcontractor						0.00
<b>Total Value of All Work</b>						<b>949,990.00</b>

**Part II. Awards Pending and Uncompleted Work to be done with your own forces.**

List below the uncompleted dollar value of work for each contract and awards pending to be completed with your own forces. All work subcontracted to others will be listed on the reverse of this form. In a joint venture, list only that portion of the work to be done by your company. If no work is contracted, show **NONE**.

						Accumulated Totals
Earthwork						0.00
Portland Cement Concrete Paving						0.00
HMA Plant Mix						0.00
HMA Paving						0.00
Clean & Seal Cracks/Joints						0.00
Aggregate Bases & Surfaces						0.00
Highway,R.R. and Waterway Structures						0.00
Drainage	15,500.00	316,800.00	236,200.00	174,040.00	163,950.00	906,490.00
Electrical						0.00
Cover and Seal Coats						0.00
Concrete Construction						0.00
Landscaping						0.00
Fencing						0.00
Guardrail						0.00
Painting						0.00
Signing						0.00
Cold Milling, Planning & Rotomilling						0.00
Demolition						0.00
Pavement Markings (Paint)						0.00
Other Construction (List)						0.00
						0.00
						0.00
<b>Totals</b>	<b>15,500.00</b>	<b>316,800.00</b>	<b>236,200.00</b>	<b>174,040.00</b>	<b>163,950.00</b>	<b>906,490.00</b>

Disclosure of this information is **REQUIRED** to accomplish the statutory purpose as outlined in the "Illinois Procurement Code". Failure to comply will result in non-issuance of an "Authorization To Bid." This form has been approved by the State Forms Management Center.



**Illinois Department  
of Transportation**

Bureau of Construction  
2300 South Dirksen Parkway/Room 322  
Springfield, Illinois 62764

**Affidavit of Availability  
For the Letting of \_\_\_\_\_**

(Letting date)

**Instructions:** Complete this form by either typing or using black ink. "Authorization to Bid" will not be issued unless both sides of this form are completed in detail. Use additional forms as needed to list all work.

**Part I. Work Under Contract**

List below all work you have under contract as either a prime contractor or a subcontractor. It is required to include all pending low bids not yet awarded or rejected. In a joint venture, list only that portion of the work which is the responsibility of your company. The uncompleted dollar value is to be based upon the most recent engineer's or owners estimate, and must include work subcontracted to others. If no work is contracted, show NONE.

	1	2	3	4	Awards Pending	
Contract Number	Carrolwood					
Contract With	Naperville					
Estimated Completion Date	Dec 2017					
Total Contract Price	233,855.00					<b>Accumulated Totals</b>
Uncompleted Dollar Value if Firm is the Prime Contractor	208,855.00					1,158,845.00
Uncompleted Dollar Value if Firm is the Subcontractor						0.00
<b>Total Value of All Work</b>						<b>1,158,845.00</b>

**Part II. Awards Pending and Uncompleted Work to be done with your own forces.**

List below the uncompleted dollar value of work for each contract and awards pending to be completed with your own forces. All work subcontracted to others will be listed on the reverse of this form. In a joint venture, list only that portion of the work to be done by your company. If no work is contracted, show NONE.

						<b>Accumulated Totals</b>
Earthwork						0.00
Portland Cement Concrete Paving						0.00
HMA Plant Mix						0.00
HMA Paving						0.00
Clean & Seal Cracks/Joints						0.00
Aggregate Bases & Surfaces						0.00
Highway, R.R. and Waterway Structures						0.00
Drainage	190,355.00					1,096,845.00
Electrical						0.00
Cover and Seal Coats						0.00
Concrete Construction						0.00
Landscaping						0.00
Fencing						0.00
Guardrail						0.00
Painting						0.00
Signing						0.00
Cold Milling, Planning & Rotomilling						0.00
Demolition						0.00
Pavement Markings (Paint)						0.00
Other Construction (List)						0.00
						0.00
<b>Totals</b>	<b>190,355.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>1,096,845.00</b>

Disclosure of this information is **REQUIRED** to accomplish the statutory purpose as outlined in the "Illinois Procurement Code". Failure to comply will result in non-issuance of an "Authorization To Bid." This form has been approved by the State Forms Management Center.



**Part III. Work Subcontracted to Others**

For each contract described in Part I, list all the work you have subcontracted to others.

	1	2	3	4	Awards Pending
Subcontractor	Pederson				Spectrum
Type of Work	Landscaping				painting
Subcontract Price	191,530.00				14,500.00
Amount Uncompleted	29,000.00				14,500.00
Subcontractor					
Type of Work					
Subcontract Price					
Amount Uncompleted					
Subcontractor					
Type of Work					
Subcontract Price					
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Amount Uncompleted					
Subcontractor					
Type of Work					
Subcontract Price					
Amount Uncompleted					
<b>Total Uncompleted</b>	<b>29,000.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>14,500.00</b>

I, being duly sworn, do hereby declare this affidavit is a true and correct statement relating to ALL uncompleted contracts of the undersigned for Federal, State, County, City and private work, including ALL subcontract work, ALL pending low bids not yet awarded or rejected and ALL estimated completion dates

Subscribed and sworn to before me

this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

*See Next Page*

Type or Print Name \_\_\_\_\_  
 Officer or Director \_\_\_\_\_ Title \_\_\_\_\_

\_\_\_\_\_  
 Notary Public

Signed \_\_\_\_\_

My commission expires: \_\_\_\_\_

Company \_\_\_\_\_

(Notary Seal)

Address \_\_\_\_\_

**Part III. Work Subcontracted to Others**

For each contract described in Part I, list all the work you have subcontracted to others.

	1	2	3	4	Awards Pending
Subcontractor	Spectrum				
Type of Work	painting				
Subcontract Price	18,500.00				
Amount Uncompleted	18,500.00				
Subcontractor					
Type of Work					
Subcontract Price					
Amount Uncompleted					
Subcontractor					
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Amount Uncompleted					
Subcontractor					
Type of Work					
Subcontract Price					
Amount Uncompleted					
<b>Total Uncompleted</b>	<b>18,500.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>

I, being duly sworn, do hereby declare this affidavit is a true and correct statement relating to ALL uncompleted contracts of the undersigned for Federal, State, County, City and private work, including ALL subcontract work, ALL pending low bids not yet awarded or rejected and ALL estimated completion dates

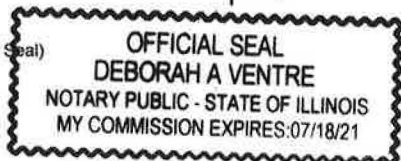
Subscribed and sworn to before me

this 18<sup>th</sup> day of October, 2017.

DAVENTRE  
Notary Public

My commission expires: 7/18/21

(Notary Seal)



Type or Print Name

Marc Kresmery, Manager  
Officer or Director Title

Signed

[Signature]

Company

MARC KRESMERY CONSTRUCTION LLC

Address

1725 WELD RD.  
ELGIN, IL. 60123

# CERTIFICATE OF NONDISCRIMINATION

This is to certify that this firm does not and will not discriminate in any of its employment practices against persons because of their race, color, religion, sex or place of national origin, or ancestry.

The undersigned will take all necessary affirmative action as may be required by all applicable Federal, State and Local laws, ordinances, rules, regulations and orders to ensure that applicants are employed and that employees are treated, during employment, without regard to their race, color, religion, sex or national origin or ancestry.

MARC KRESMERY  
CONSTRUCTION LLC

Firm: \_\_\_\_\_

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

Title: Marc Kresmery, manager

Date: 10/18/17

STATE OF ILLINOIS )  
 )  
COUNTY OF KANE & DUPAGE )

### AFFIDAVIT OF NONCOLLUSION

The undersigned, who has herewith submitted a bid to provide,

City of St. Charles

(describe nature of service or product)

in accordance with plans and specifications furnished by the City of St Charles for

WILD Rose Valley Siphon Rehabilitation  
(describe project)

does hereby affirm that said undersigned person and/or firm into any agreement, understanding, or arrangement with any other bidder or prospective bidder or with any other person, firm, or corporation relating to the price named in said proposal, nor has said undersigned person and/or firm entered into any agreement, understanding, or arrangement under which any person, firm, or corporation is to refrain from bidding, nor any agreement, understanding, or arrangement for any act or omission in restraint of free competition among bidders.

The undersigned further affirms that said undersigned person and/or firm is not disqualified by law from contracting with the City of St Charles; and that said undersigned person and/or firm has not disclosed to any person, firm, or corporation the terms of this proposal or the price named herein.

WILD ROSE Valley Siphon Rehabilitation

Bid for

10/18/17  
Date

MARC KRESMERY CONSTRUCTION LLC

Company 1725 WELD RD.  
ELGIN, IL. 60123

Address

[Signature]  
Duly authorized agent or officer

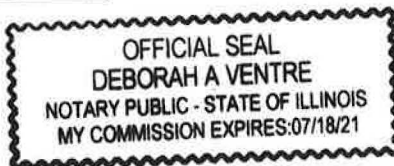
Marc Kresmery, manager

Subscribed and sworn to me

this 18<sup>th</sup> day of October, A.D. 20 17

DA Ventre

Notary Public



**CERTIFICATE OF COMPLIANCE  
WITH STATE OF ILLINOIS  
PREVAILING WAGE RATES**

This contract calls for the construction of a "public work," within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/.01 *et seq.* ("the Act"). The Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the current "prevailing rate of wages" (hourly cash wages plus amount for fringe benefits) in the county where the work is performed.

The Department publishes the prevailing wage rates on its website at <http://www.state.il.us/agency/idol/rates/rates.htm>. The Department revises the prevailing wage rates and the contractor/subcontractor has an obligation to check the Department's website for revisions to prevailing wage rates. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor's website. All contractors and subcontractors rendering services under this contract must comply with all requirements of the Act, *including but not limited to*, all wage requirements and notice and record keeping duties.

The undersigned will take all necessary action and be responsible for full compliance with the State of Illinois laws and Illinois Department of Transportation Special Provision with regard to this issue. The Special Provision is included in these documents for your information. If the Company believes the Act does not apply to them, then in lieu of certified payroll, the Company will provide a certified statement, in letter form, setting forth the basis upon which they have concluded the Act does not apply.

---

Company **MARC KRESMERY CONSTRUCTION LLC**  
1725 WELD RD.  
ELGIN, IL. 60123

---

Address

10/18/17

---

Date

---

Duly Authorized Agent of Officer  
*Marc Kresmery, manager*



Local Agency Proposal Bid Bond

Route Wild Rose Valley Siphon
County Kane
Local Agency St. Charles
Section N/A

RETURN WITH BID

PAPER BID BOND

WE Marc Kresmery Construction LLC as PRINCIPAL,
and The Ohio Casualty Insurance Company as SURETY,

are held jointly, severally and firmly bound unto the above Local Agency (hereafter referred to as "LA") in the penal sum of 5% of the total bid price, or for the amount specified in the proposal documents in effect on the date of invitation for bids whichever is the lesser sum. We bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly pay to the LA this sum under the conditions of this instrument.

WHEREAS THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH that, the said PRINCIPAL is submitting a written proposal to the LA acting through its awarding authority for the construction of the work designated as the above section.

THEREFORE if the proposal is accepted and a contract awarded to the PRINCIPAL by the LA for the above designated section and the PRINCIPAL shall within fifteen (15) days after award enter into a formal contract, furnish surety guaranteeing the faithful performance of the work, and furnish evidence of the required insurance coverage, all as provided in the "Standard Specifications for Road and Bridge Construction" and applicable Supplemental Specifications, then this obligation shall become void; otherwise it shall remain in full force and effect.

IN THE EVENT the LA determines the PRINCIPAL has failed to enter into a formal contract in compliance with any requirements set forth in the preceding paragraph, then the LA acting through its awarding authority shall immediately be entitled to recover the full penal sum set out above, together with all court costs, all attorney fees, and any other expense of recovery.

IN TESTIMONY WHEREOF, the said PRINCIPAL and the said SURETY have caused this instrument to be signed by their respective officers this 18 day of October 2017

Principal

Marc Kresmery Construction LLC (Company Name)
By: Marc Kresmery, Manager (Signature and Title)
(If PRINCIPLE is a joint venture of two or more contractors, the company names, and authorized signatures of each contractor must be affixed.)

Surety

The Ohio Casualty Insurance Company (Name of Surety)
By: Kevin Cryer (Signature of Attorney-in-Fact)

STATE OF ILLINOIS,

COUNTY OF Kane

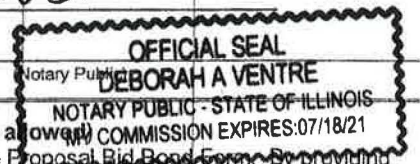
I, Deborah Aventure, a Notary Public in and for said county, do hereby certify that Marc Kresmery & Kevin Cryer

(Insert names of individuals signing on behalf of PRINCIPAL & SURETY)

who are each personally known to me to be the same persons whose names are subscribed to the foregoing instrument on behalf of PRINCIPAL and SURETY, appeared before me this day in person and acknowledged respectively, that they signed and delivered said instruments as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 18th day of October

My commission expires 7/18/21 DAVentre



ELECTRONIC BID BOND

Electronic bid bond is allowed (box must be checked by LA if electronic bid bond is allowed) The Principal may submit an electronic bid bond, in lieu of completing the above section of the Proposal Bid Bond Form. By providing an electronic bid bond ID code and signing below, the Principal is ensuring the identified electronic bid bond has been executed and the Principal and Surety are firmly bound unto the LA under the conditions of the bid bond as shown above. (If PRINCIPAL is a joint venture of two or more contractors, an electronic bid bond ID code, company/Bidder name title and date must be affixed for each contractor in the venture.)

Electronic Bid Bond ID Code

(Company/Bidder Name)
(Signature and Title)
Date

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.**

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 7007157

American Fire and Casualty Company  
The Ohio Casualty Insurance Company

Liberty Mutual Insurance Company  
West American Insurance Company

**POWER OF ATTORNEY**

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Francis M. Bartsch; Jim Drost; Kevin Cryer; Lucianne Bischoff; Michael J. Rabe; Richard J. Waters

all of the city of Crystal Lake, state of IL each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 3rd day of June, 2015.



American Fire and Casualty Company  
The Ohio Casualty Insurance Company  
Liberty Mutual Insurance Company  
West American Insurance Company

By: David M. Carey  
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss  
COUNTY OF MONTGOMERY

On this 3rd day of June, 2015, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Teresa Pastella, Notary Public  
Plymouth Twp., Montgomery County  
My Commission Expires March 28, 2017  
Member, Pennsylvania Association of Notaries

By: Teresa Pastella  
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

**ARTICLE IV – OFFICERS** – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

**ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings.** Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation** – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization** – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Gregory W. Davenport, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

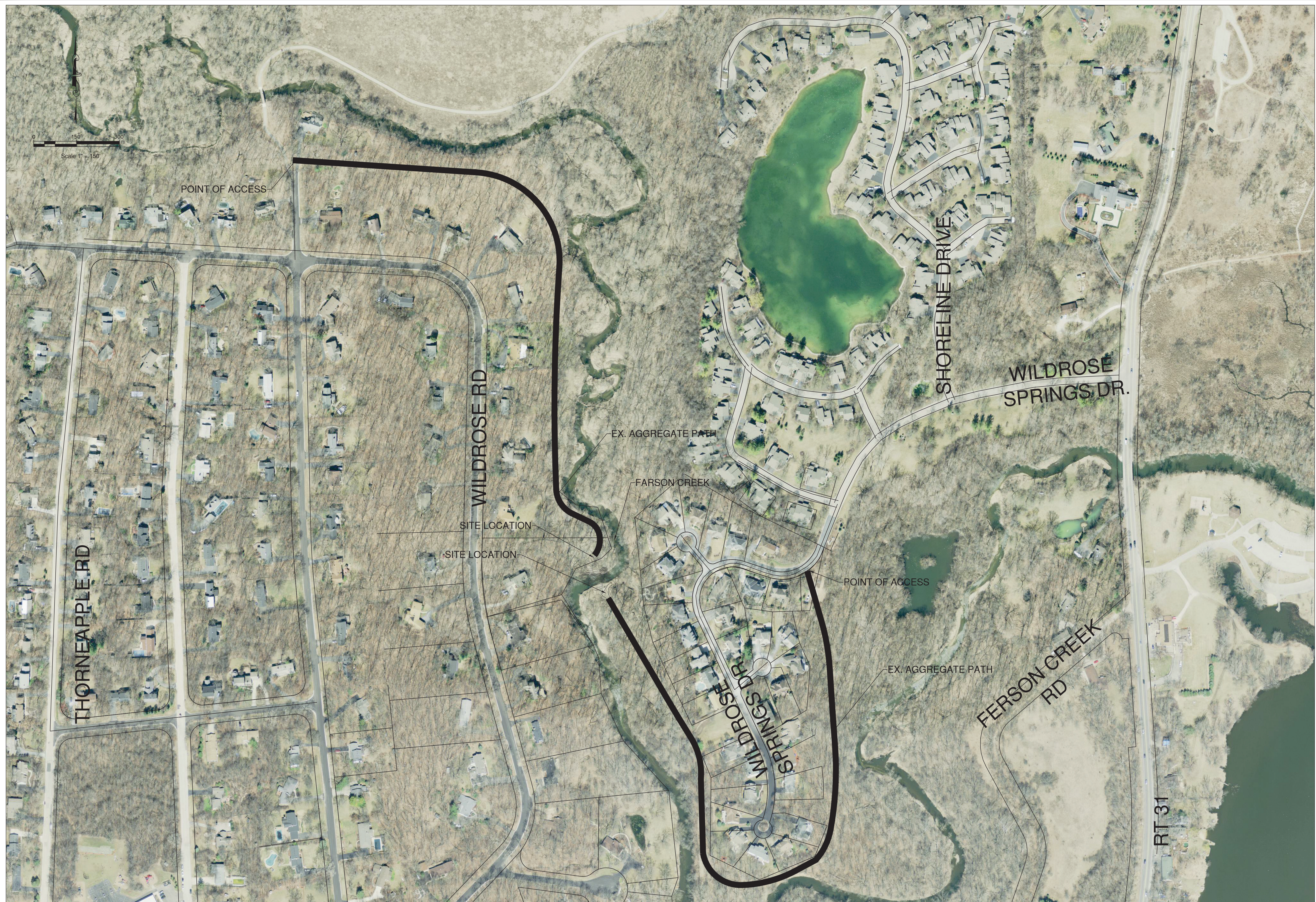
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 16 day of October, 2017.



By: Gregory W. Davenport  
Gregory W. Davenport, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



GERALD L. HEINZ & ASSOCIATES, INC.  
 CONSULTING ENGINEERS & LAND SURVEYORS  
 206 NORTH RIVER STREET  
 EAST DUNDEE, ILLINOIS 60118

NO.	DATE	REVISIONS	NO.	DATE	REVISIONS

CONSTRUCTION SITE ACCESS PLAN

Wild Rose Valley Sanitary Sewer Siphon  
 ST. CHARLES, ILLINOIS

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DATE:	08/21/2017
JOB NO.:	E-2342
SCALE:	1"=150'
SHEET	4 OF 6





**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 5.1

Title: Recommendation to Approve Budget Addition to the 7<sup>th</sup> Avenue Creek Project

Presenter: Karen Young

Meeting: Government Services Committee

Date: November 27, 2017

Proposed Cost: \$40,000

Budgeted Amount: \$0

Not Budgeted:

**Executive Summary** *(if not budgeted please explain):*

The following properties are being proposed for acquisition as part of the 7<sup>th</sup> Avenue Creek Project:

- Pin #09-27-479-005 – Vacant Lot 5 in Block 2- G.W. Minards’ Resubdivision
- Pin #09-27-479-006 - Vacant Lot 6 in Block 2- G.W. Minards’ Resubdivision

Current available funding includes \$0, with the total cost to purchase the properties above at \$40,000 for a total budget addition of \$40,000.

**Attachments** *(please list):*

\* Budget Addition Form

**Recommendation/Suggested Action** *(briefly explain):*

Recommendation to approve a Budget Addition for the 7<sup>th</sup> Avenue Creek Project in the amount of \$40,000 for property acquisition.





**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 5.m

Title:

Recommendation to Approve Real Estate Purchase Agreement for Lots 5 & 6 in Block 2 G.W. Minards' Resubdivision located at the southeast corner of East Main Street and South 9<sup>th</sup> Avenue

Presenter:

Karen Young

Meeting: Government Services Committee

Date: November 27, 2017

Proposed Cost: \$40,000

Budgeted Amount: \$0

Not Budgeted:

**Executive Summary** *(if not budgeted please explain):*

Recommendation to purchase of the property located at the southeast corner of E. Main Street and S. 9<sup>th</sup> Avenue for the purpose of the 7<sup>th</sup> Avenue Creek Project, known as Lots 5 (Pin #09-27-479-005) & Lot 6 (Pin # 09-27-479-006 ) in Block 2 G.W. Minards' Resubdivision. City ownership of this property would allow for the future improvements of the storm water conveyance in this area and the potential for modification of the 7<sup>th</sup> Avenue Creek to improve overall flood control. This land to be used as either open space or enhancement adjacent to the 7<sup>th</sup> Avenue Creek. This property is located within the 7<sup>th</sup> Avenue Creek project limits and the proposed Federal Emergency Management Association (FEMA) Floodplain map modifications.

The cost for the purchase of this property is \$40,000, not including closing costs. The closing costs are estimated at \$1,200 - \$1,500.

**Attachments** *(please list):*

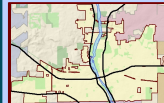
\* Property Location Map

**Recommendation/Suggested Action** *(briefly explain):*

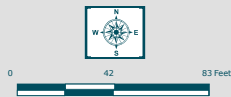
Recommendation to approve Real Estate Agreement for Lots 5 (Pin #09-27-479-005) & Lot 6 (Pin # 09-27-479-006 ) in Block 2 G.W. Minards' Resubdivision to the City of St. Charles in the amount of \$40,000 with Lorna Meiresonne with the Public Works Director authorized to execute all appropriate documents.



Lot 5, PIN 09-27-479-005, Area 5000 SF  
 Lot 6, PIN 09-27-479-006, Area 5000 SF



Data Source:  
 City of St. Charles, Illinois  
 Kane County, Illinois  
 DuPage County, Illinois  
 Projection: Transverse Mercator  
 Coordinate System: Illinois State Plane East  
 North American Datum 1983  
 Printed on: July 28, 2017 04:17 PM



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**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 5.n

Title:

Recommendation to award the Bid for Roof Replacement on George's Sports Building to Schramm Construction

Presenter:

Peter Suhr

Meeting: Government Services Committee

Date: November 27, 2017

Proposed Cost: \$56,744

Budgeted Amount: \$60,000

Not Budgeted:

**Executive Summary** *(if not budgeted please explain):*

The City purchased the property at 107-109 Main Street otherwise known as the former George's Sport Building in 2012 with intent to utilize the building or land as a compliment to the adjacent Arcada Theatre. In 2012, the building was in fair condition, however has slowly continued to deteriorate over time. The Public Works Department is responsible for the care and maintenance of City owned buildings including George's Sport.

Over the past year, the City has considered several options for the George's Sport Building including demolition, complete weathertight re-construction and sale; however, in more recent discussions demolition and sale of the property are not currently being considered. Therefore, recognizing the current poor condition of the roof and anticipated winter weather, staff is recommending replacing the roof soon.

Staff hired Schramm Construction to help us manage the bidding and coordination of the roof work. Schramm received five (5) competitive bids and are recommending Langlois Roofing to do the work based on their availability and lowest overall bid. While the Langlois base bid for roofing was slightly higher than DuSable Roofing, their deck removal and replacement costs are lower. Anticipating about 30% of the wood deck needing to be removed and replaced, Langlois Roofing has provided the lowest overall bid.

**Attachments** *(please list):*

\* Schramm Construction Roof Replacement Proposal \* Langlois Roofing Proposal

**Recommendation/Suggested Action** *(briefly explain):*

Recommendation to award the Bid for Roof Replacement on George's Sports Building at 107-109 Main Street to Schramm Construction.

City of St. Charles  
2E Main Street  
St Charles, Illinois 60174  
RE: 109 E Main Street

**ROOF REPLACEMENT Proposal**

Peter Suhr / Public Works Director

Dear Peter

We have received (5) proposals for the roofing at 109 E Main Street, St Charles "Georges Sports".

**The (5) proposals are from union roofing contractors:**

- Malcor Roofing \$65,960.00
- DuSable Roofing \$33,500.00 (not available to install in 2017)
- Langlois Roofing \$37,500.00
- Weatherguard Roofing \$56,000.00
- Mortenson Roofing \$88,200.00

**Deck Removal /Replacement**

- Malcor \$115.00/hour per man plus materials
- DuSable \$6.00/SF minimum of 32 SF or 4x8 x ¾" plywood
- Langlois \$3.00/SF 1x decking replacement
- Weatherguard \$7.00/SF
- Mortonson \$7.70/SF

### **Gutter & Downspouts Removal / Replacement**

- Malcor included in bid
- DuSable \$4,500.00
- Langlois \$2,700.00
- Weatherguard No Bid Gutter and DS to remain
- Mortenson \$4,300.00

### **Remove (2) existing skylights and frame opening s make ready for roofing**

- Schramm \$7,160.00

### **Scope of work**

1. Tear off existing roofing down to the wood deck haul off all materials
2. Furnish and install (2) layers of 2.6" ISO insulation R-30
3. Mechanically attach white .060 mil TPO Firestone roof
4. Encapsulate the parapet walls
5. Caulk all flashings per manufacturers warrantied specifications
6. Furnish and install 24 gauge kynar finished coping
7. Furnish and Install 24 gauge Kynar finished drip edge
8. Furnish 20 manufacturer warranty
9. Provide adequate supervision for all of the work
10. Apply for and procure the permit/ Permit fees to be paid by the owner

### **Total Cost for work if managed by Schramm**

- Langlois Roofing- \$37,500.00
- Remove Skylights \$7,160.00
- R & R Gutter /DS \$2,700.00
- SCC Supervision \$2,280.00
- SCC Fee \$7,104.00

**Total \$56,744.00**

**Alternate Deduct (\$13,000.00)**

- Overlay existing roof with a 1" layer of ISO
- Mechanically attach .060 mil TPO Firestone roof
- 20 year warranty
- Insulation would need to be added beneath the roof decking during the buildout to meet energy code (not included)

If this meets with your approval please let me know and we will draft an official proposal and prepare a submittal packet for approval.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'Fred Schramm', with a long horizontal flourish extending to the right.

Fred Schramm

Schramm Construction 630-524-6024

CC: Chris Williams, Mark Koenen





Since 1962  
1850 Grinnell Road  
P.O. Box 2448 • Kankakee, IL 60901  
(815) 933-8040 • fax (815) 933-2816

Attn: City of St. Charles  
Via: Fred Schramm

Date: November 13, 2017

Re: ROOFING PROPOSAL- MECHANICALLY-ATTACHED TPO  
Georges- 109 E. Main St.  
St. Charles, IL

**PROPOSAL**

**All Labor and Materials as follows for roofing and sheet metal:**

- Tear off existing roofing system down to wood deck
- Install (2) two layers of 2.6" ISO (R-30)
- Mechanically-attach white .060 mil Thermoplastic Polyolefin (TPO) roofing system from Firestone Building Products
- Encapsulate parapet walls at front of building
- Caulk all flashings per manufacturer's warranted specifications
- Supply and install prefinished 24-gauge coping cap
- Supply and install prefinished 24-gauge drip edge
- Remove all roofing debris from jobsite
- Furnish standard, manufacturers 20-year warranty

**\*\*\*EXCLUSIONS\*\*\***

- Demolition, supplying, or installing of sky lights
- Any other item not specifically mentioned above

**Total Contracted Price.....\$37,500.00**  
**(THIRTY-SEVEN THOUSAND FIVE HUNDRED AND 00/100 DOLLARS)**

**“WE’RE ON TOP OF OUR WORK”**

[www.langloisroofing.com](http://www.langloisroofing.com)

**\*\*\* ALTERNATE (ADD TO CONTRACTED PRICE) \*\*\***

- Add to contracted price:

- Supply and install prefinished 24-gauge gutter, downspouts, and accessories.....\$2,700.00

**(TWO THOUSAND SEVEN HUNDRED AND 00/100 DOLLARS)**

**\*\*\* IN ADDITION TO CONTRACTED PRICE \*\*\***

- REPLACE BAD 1X6 WOOD DECKING.....\$3.00/SQ FT

Accepted by: \_\_\_\_\_

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

Sincerely,



Andrew Langlois  
Estimator  
Langlois Roofing Inc.



**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 6.a

Title:

Recommendation to approve an Ordinance Extending the Residential Sprinkler Moratorium until December 31, 2019

Presenter:

Fire Chief Joseph Schelstreet

Meeting: Government Services Committee

Date: November 27, 2017

Proposed Cost: \$0

Budgeted Amount: \$0

Not Budgeted: **Executive Summary** *(if not budgeted please explain):*

On January 1, 2012, the residential building code requirement for the installation of fire sprinklers in all newly constructed 1 and 2-family residential structures within the City of St. Charles went in to effect. This occurred in accordance with the provisions of the 2009 editions of the International Residential Code and the National Fire Protection Association Life Safety Code as adopted by the City Council on July 19, 2010. At the time of adoption, the City Council implemented a temporary moratorium on the residential fire sprinkler provision due to the economic climate. Since that time, the City Council has adopted the updated 2015 edition of the International Residential Code.

Additionally, the Fire Department continues to communicate with the Fire Departments in Geneva and Batavia in an attempt to entertain like language on this issue in all three communities. Staff believes that all three communities are adopting a similar approach and will temporarily delay implementation of this requirement until sustained economic conditions are more favorable. Staff requests that Council extend the current moratorium on the residential sprinkler requirement until December 31, 2019 in order to further evaluate opportunities and offer additional information.

**Attachments** *(please list):*

\* Proposed ordinance extending the residential sprinkler moratorium until December 31, 2019

**Recommendation/Suggested Action** *(briefly explain):*

Recommendation to approve the ordinance extending the residential sprinkler moratorium until December 31, 2019.

**City of St. Charles**

**Ordinance No. \_\_\_\_\_**

**An Ordinance Amending the St. Charles Municipal Code – Title 15,  
“Buildings and Construction”, Chapter 15.04 “Building Code”, Section  
15.04.020 "One-Family and Two-Family Residences”**

**WHEREAS**, the City of St. Charles has adopted by reference the 2015 International Residential Code for One and Two Family Dwellings, by International Code Council, Inc., with certain modifications thereto; and

**WHEREAS**, the City Council found it to be in the interest of the City of St. Charles and the local building community to defer implementation of the requirement for residential fire sprinklers until December 31, 2019, and

**WHEREAS**, the City Council now finds it to be in the interest of City of St. Charles to further determine what the outcome and impact of implementation of residential sprinklers will be to the City of St. Charles;

**NOW THEREFORE, BE IT ORDAINED**, by the City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, to defer implementation of the requirement for residential fire sprinklers in One and Two-Family Residences as outlined in Section 15.04.020 of the City of St. Charles Municipal Code until December 31, 2019.

That after the adoption and approval hereof the Ordinance shall (A) be printed or published in book or pamphlet form, published by the authority of the City Council, or (B) within thirty (30) days after the adoption and approval hereof, be published in a newspaper in and with a general circulation within the City of St. Charles.

**Presented** to the City Council of the City of St. Charles, Illinois this \_\_\_\_ day of \_\_\_\_\_, 2017.

**Passed** by the City Council of the City of St. Charles, Illinois this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**Approved** by the Mayor of the City of St. Charles, Illinois this \_\_\_\_ day of \_\_\_\_\_, 2017.

**Ordinance No. 2017\_M-\_\_\_\_\_**

**Page**

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Mayor

Attest:

---

City Clerk

Approved as to Form:

---

City Attorney

Council Vote:

Ayes: \_\_\_\_\_

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

Abstain: \_\_\_\_\_

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

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