

COMMITTEE OF THE WHOLE MEETING

October 13 2020

7:30 P.M.

In light of the current COVID-19 public health emergency, Governor J.B. Pritzker's Gubernatorial Disaster Proclamation, and the Village's Continuation of Proclamation of Local Disaster Emergency in response thereto, the Village President has determined that an entirely in-person meeting is not practical or prudent because of the disaster. This meeting will be held remotely and in-person, but there will be a limit of twelve (12) in-person seats available for the public in the Village Board Room. The following information is being made available to the public for the purpose of public participation in the spirit of transparency and an open meeting process.

The complete Committee of the Whole packet is posted at the Algonquin Village Hall and may be viewed online via the Village Board's link on the Village's website, www.algonquin.org. If you would like to listen to the meeting, please go to <https://algonquin.zoom.us/j/96205549182> or dial in (312)626-6799 webinar ID **962 0554 9182**. If you wish to submit any public comment, please contact the Deputy Village Clerk in advance of the meeting at 847-658-5609 or meetingcomments@algonquin.org or during the to comment during the meeting public comment portion of the meeting after logging into the zoom meeting, please raise your hand and you will be called on, if you are dialing in, dial *9 to raise your hand. The Village will attempt to read such public comments during the public commentary portion of the meeting. Any comments received during the meeting but after the public commentary portion has ended will be provided in writing to the Village Board members after the meeting.

Remote meetings will be recorded for the purpose of accurate meeting minute

Trustee Steigert – Chairperson

Trustee Jasper

Trustee Brehmer

Trustee Glogowski

Trustee Spella

Acting President Sosine

- AGENDA -

1. **Roll Call – Establish Quorum**
2. **Public Comment – Audience Participation**
(Persons wishing to address the Committee must register with the Chair prior to roll call.)
3. **Community Development**
4. **General Administration**
 - A. Consider a Special Event – Halloween Drive-In Movie on October 29, Rain Date of October 30, 2020
 - B. Consider Amending Chapter 6 and Appendix B of the Algonquin Municipal Code
5. **Public Works & Safety**
 - A. Consider an Agreement with Christopher B. Burke LLC for the Geotechnical Analysis, Topographic Survey, and Engineering Work for the Phase I Engineering Services for the Broadmore an Stonegate Rehabilitation Project.
 - B. Consider an Agreement with Burke LLC for the MCCD Prairie Path Trailhead and Towne Park Kiosks
 - C. Consider an Agreement with Christopher B. Burke LLC for the Ratt Creek Reach 5 Utilities Relocation Engineering Plans
 - D. Consider a Resolution Committing Local Funding Participation in the Main Street Roundabout and Harrison Street Bike Lane Plan
 - E. Consider an Agreement with Burke, LLC for the Brick Paver Replacement Design Build in Manchester Lakes
6. **Executive Session**
7. **Other Business**
8. **Adjournment**



Village of Algonquin
The Gem of the Fox River Valley

M E M O R A N D U M

TO: Tim Schloneger, Village Manager
FROM: Katie Gock, Recreation Superintendent
DATE: September 16, 2020
SUBJECT: Halloween Drive In Movie

The Recreation Department is seeking approval for the following event to be held this October:

Date	Family Entertainment	Time	Location
October 29 (Rain date: 10/30)	Drive In Movie – Hocus Pocus	7:00-10:00p	Presidential Park

Pursuant to Section 31.04 of the Municipal Code, the Village Board must approve any public events in the Village, including concerts and musical performances.

If you agree, please forward this to the Village Board for their consideration at their next meeting. Please do not hesitate to contact me with any questions.

CC: Michael Kumbera
John Bucci



VILLAGE OF ALGONQUIN
GENERAL SERVICES ADMINISTRATION

- M E M O R A N D U M -

DATE: October 2, 2020

TO: Tim Schloneger, Village Manager

FROM: Michael Kumbera, Assistant Village Manager

SUBJECT: *Water and Sewer Rate Deferment*

As requested, attached is an ordinance that will defer the implementation of the 2016 Water and Sewer Rate Study for calendar year 2020. The COVID-19 pandemic has had widespread economic impacts globally, and both Algonquin business and residential customers are no exception. The ordinance as drafted will freeze current rates (Village: \$13.35/per 1,000 gallons, non-Village: \$26.70 per 1,000 gallons) through November 2021, at which time the implementation of the rate study will continue as originally approved.

Fiscal Impact

The Water and Sewer Operating Fund will have ample existing revenues to meet its current debt obligations, including Bond Series 2013 and loan service for the IEPA Low-Interest Loan program. Connection fee revenues have performed better than budgeted, and additionally, the Village was awarded an unanticipated grant, which both will partially offset the revenue loss. Current year capital projects are able to proceed as budgeted and any subsequent year capital improvement plans changes will be addressed and presented as part of the FY22 budget process.

I will be available prior to and at the meeting for any questions the Village Board may have.

ORDINANCE NO. 2020 - O -

An Ordinance Amending Chapter 6A Water and Sewer Department, and Appendix B of the Algonquin Municipal Code Regarding Water and Sewer Charges

WHEREAS, the Village of Algonquin, McHenry and Kane counties, Illinois, is a home rule municipality as contemplated under Article VII, Section 6, of the Constitution of the State of Illinois, and the passage of this Ordinance constitutes an exercise of the Village's home rule powers and functions as granted in the Constitution of the State of Illinois.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the VILLAGE OF ALGONQUIN, McHenry and Kane counties, Illinois, as follows:

SECTION 1: Section 6A.28-A of the Algonquin Municipal Code shall be amended to read as follows:

A. There shall be and there are hereby established rates or charges for the use of and for the service supplied by the Village water and sanitary sewer facilities based on the amount of water consumed. Those rates can be found in Appendix B of this Code. Beginning with the first bills sent out on or after November 1, 2023, and annually on November thereafter, water and sewer user charges shall increase by the All Items Consumer Price Index ("CPI") for Urban Consumers (1982-84 = 100) for the Chicago Consolidated Metropolitan Statistical Area. An electronic billing rebate is available to those users who make an automated clearing house (ACH) payment. The amount of the rebate is listed in Appendix B of this Code.

SECTION 2: The chart for Section 6A.28-A in Appendix B of the Algonquin Municipal Code shall be amended to read as follows:

Section 6A.28-A:

Beginning with the first bills sent out on or after November of	Combined water and sanitary sewer charge, per 1,000 gallons	Water only users, per 1,000 gallons	Sanitary sewer only users who have a metered private water supply, per 1,000 gallons	Water fixed monthly fee	Sewer fixed monthly fee	Water e-billing (ACH) monthly rebate	Sewer e-billing (ACH) monthly rebate
2016	\$8.08	\$4.00	\$4.08	\$5.00	\$5.00	\$0.50	\$0.50
2017	\$9.60	\$4.57	\$5.03	\$5.00	\$5.00	\$0.50	\$0.50
2018	\$11.35	\$5.18	\$6.17	\$5.00	\$5.00	\$0.50	\$0.50
2019	\$13.35	\$5.81	\$7.54	\$5.00	\$5.00	\$0.50	\$0.50
2021	\$15.26	\$6.52	\$8.74	\$5.00	\$5.00	\$0.50	\$0.50
2022	\$16.94	\$7.30	\$9.64	\$5.00	\$5.00	\$0.50	\$0.50

SECTION 3: If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any Court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain and continue in full force and effect.

SECTION 4: All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 5: This Ordinance shall be in full force and effect upon its passage, approval and publication in pamphlet form (which publication is hereby authorized) as provided by law.

Voting Aye:

Voting Nay:

Abstain:

Absent:

APPROVED:

Acting Village President Debby Sosine

(SEAL)

ATTEST: _____
Deputy Village Clerk Michelle Weber

Passed:

Approved:

Published:



VILLAGE OF ALGONQUIN
PUBLIC WORKS DEPARTMENT

– M E M O R A N D U M –

DATE: October 1, 2020

TO: Tim Schloneger, Village Manager
Committee of the Whole

FROM: Robert G. Mitchard, Public Works Director

SUBJECT: Broadsmore and Stonegate Road Rehabilitation, Phase I Engineering

Tim, attached you will find the Master Agreement Work Order Form for Consulting Engineering Services from Christopher B. Burke LLC for the provision of Phase I engineering services for the Broadsmore and Stonegate Road Rehabilitation project. The cost for this geotechnical analysis, topographic survey, and engineering work totals \$79,375.00.

The overall construction project involves spot curb and gutter replacement, sidewalk replacement, base and driving surface repair of the asphalt roadway, and sundry utility repair and rehabilitation, as necessary. This roadway was designated as a biggest bang for the buck project in our IMS Road Condition survey conducted 6 years ago due to its high traffic counts and various factors affecting the declining condition of the pavement.

Currently, in the Capital Improvement Budgets within the Street Improvement Fund, we have \$60,000.00 budgeted for this engineering project. Also, we have \$50,000.00 budgeted for the Joint Salt Dome project with McHenry County that has not seemed to garner enough political support and funding as originally thought, so we intend to use a portion of that budget item to cover the additional \$20,000.00 necessary to complete this work.

We recommend that the Committee of the Whole take the necessary action on the contract with Christopher B. Burke, LLC in the amount of \$79,375.00 and move that motion on to the Village Board of Trustees for approval.

Work will begin as soon as the agreement is approved. The work is anticipated to be completed by the end of the fiscal year, if not sooner. We will then provide additional budget amounts in next fiscal year to complete the Phase II engineering to prepare biddable plans and specifications.

Consulting Engineering
Master Agreement Work Order Form

I. Incorporation of Master Agreement

All terms and conditions contained within the Village Engineer Master Agreement executed between the parties shall be applicable to the work to be performed under this Work Order and shall be deemed to be fully incorporated as if fully set forth herein.

II. Project Understanding

A. General Understanding/Assumptions

The project includes street rehabilitation (resurfacing, partial reconstruction or full reconstruction) to the following streets:

- Broadsmore Drive – Randall Road to Stonegate Road (1,000 ft.)
- Stonegate Road – Longmeadow Parkway to Grandview Drive (2,800 ft.)

The project will also include spot curb and gutter replacement, sidewalk replacement and utility rehabilitation. CBBEL will recommend improvements to the west leg of Broadsmore at the intersection of Randall Road due to traffic entering the wrong direction. We understand that the Village will televise the existing sewer and provide their analysis of its condition. The Village will also provide the break history of the water main within the project limits.

B. Design Criteria
Village/IDOT

III. Scope of Services

A. Surveying and Geotechnical Services

Task A.1 – Topographic Survey for the Special ADA Design

The Topographic Survey of thirty six (36) street corners for Special ADA ramp design will be performed at the Broadsmore Drive & Randall Road intersection; the Longmeadow Parkway, Tracy Lane, Loop Road, Sandy Creek Drive, Shade Tree Court, Broadsmore Drive, Rose Hill Courts & Grandview Drive intersections with Stonegate Road; and within the project limits.

The survey for special ADA ramps shall include an area from the street right-of-way to the adjacent edge of pavement of subject street as shown on the attached (Typical Quadrant Survey Criteria for ADA Ramps Design) and 25 feet overlap with crossing streets right-of-way. The survey shall include the following specific tasks:

Horizontal and Vertical Control: Utilizing state plane coordinates, CBBEL will set recoverable primary control utilizing state of the art GPS equipment.

Topographic Survey: CBBEL will field locate all pavements, driveways, curb and gutters (curb, gutter flow line, and edge of pavement/ face of curb), pavement markings, signs, Manholes or Utility Vaults on sidewalks and parkways and within 10 feet of pavement area adjacent to the curb, drainage structures, driveway culverts, cross road culverts, Fences, Traffic Signals, Signs, traffic cameras, parking meters, and pay boxes, Trees (including DBH) & Bushes, Light and Power Poles , Sidewalks (back and face of sidewalks) and pavement . Elevations every approximately 10 feet along sidewalks, curbs, gutters, building or property line, doorway stoops or steps as applicable and shown on the attached shall be taken. Elevations of roadway 5 feet from edge of pavement to be included.

Base Mapping: All of the above information will be compiled into one base map representative of existing conditions of the project corridor for use in engineering work.

Task A.2 – JULIE Coordination

CBBEL will coordinate with JULIE to retrieve atlas information for all applicable underground utilities including water main, gas, electric, cable, etc. CBBEL will compile all Utility Atlas information into the base map. Locations of existing utilities /obstructions / systems shown on the base map are the compilation of available utility plans provided by utility owners and JULIE Utility Coordination. All utilities /obstructions / systems may not be shown. Contractor shall be responsible for locating and protecting all underground utilities /obstructions / systems whether or not shown on base map. JULIE Utility Coordination Atlas information is typically isolated to Public Right-of-Way (off-site) & limited areas adjacent to Public Right-of-Way. Identification & location of all private subsurface utilities within project area (on-site) is the responsibility of the client.

Task A.3 – Geotechnical Investigation

A Geotechnical Investigation will be performed by CBBEL's subconsultant, Rubino Engineering. The Geotechnical Investigation will include four (4) pavement cores to determine the existing structure of the pavement and condition of subgrade materials. This assumes no flagmen are required to take the cores.

The objectives of the boring study are to determine whether the associated laboratory analysis provide a basis for Rubino to sign IEPA Form LPC-663, Unincorporated Soil Certification by a Licensed Professional Engineer. A summary report will be prepared which describes the sampling procedures followed and presents results of the analytical laboratory testing. If all analytical results meet their respective MACs, Form LPC-663 will be filled out and signed by a Licensed Professional Engineer or Geologist. The report will be included.

B. Engineering Services

Task B.1 – Field Reconnaissance

CBBEL Staff will perform a Field Reconnaissance of the streets included in the street program with Village staff. The purpose of the Field Reconnaissance will be to verify the method of rehabilitation/reconstruction, and determine the limits and estimate the quantity of drainage structure, curb and gutter, and sidewalk removal and replacement. Additionally, CBBEL will determine the location of substandard radii and other geometric inadequacies. The results of the Field Reconnaissance will be included in the Preliminary Plans. The results of the Field Reconnaissance will be reviewed with the Department of Public Works and compared to previous estimates to determine their impact on the estimated construction cost.

Task B.2 – Phase I Report

CBBEL will prepare a Phase I Report which will consist of the following:

- Preliminary Typical Sections
- Preliminary Plans
 - Showing roadway improvements
 - Curb and gutter removal and replacement
 - Sidewalk removal and replacement
 - Water main replacement
 - Sanitary sewer replacement and or lining
 - Storm structure replacements
 - Improvements on west leg of Broadsmore Drive at intersection with Randall Road
- Sidewalk Replacement per Village policy including ADA assessment
- Estimate of Construction Cost
- Construction Schedule
- Pavement Cores and Soil Analysis
- QA/QC Plan
- Identify Necessary Permits and begin discussions with County regarding Highway permit.

C. Meetings/Coordination

2 Meetings with Village, 1 Public Information Meeting
CBBEL will provide letter; Village will perform mailing.

D. Deliverables

3 copies of the Final Phase I Report
1 copy of exhibits for Public Information Meeting

E. Services by Others

4 Pavement cores by Rubino Engineering.

F. Information to be Provided by Client

Existing plans

Water main break history
Village analysis of the existing sewer condition

G. Not included in Work Order

IV. Man-Hour & Fee Summary

A. Survey

Task A.1 ADA Ramp Survey (28 CORS)			
Survey V	6 hrs x \$165/hr	=	\$ 990
Survey IV	16 hrs x \$160/hr	=	\$ 2,560
Survey III	20 hrs x \$155/hr	=	\$ 3,100
Survey II	96 hrs x \$115/hr	=	\$11,040
Survey I	96 hrs x \$90/hr	=	\$ 8,640
CAD Manager	48 hrs x \$160/hr	=	\$ 7,680
			<u>\$34,010</u>
Task A.2 JULIE Utilities			
Survey II	40 hrs x \$115/hr	=	\$ 4,600
Task A.3 Geotechnical Investigation			
Rubino Engineering		=	\$ 5,500
	Subtotal Task A		\$44,140

B. Engineering Services

Field Reconnaissance & Tape Review			
Engineer V	10 hrs x \$175/hr	=	\$ 1,750
Engineer III	40 hrs x \$125/hr	=	\$ 5,000
			<u>\$ 6,750</u>
Phase I Report			
Engineer V	10 hrs x \$175/hr	=	\$ 1,750
Engineer III	120 hrs x \$125/hr	=	\$15,000
CAD II	45 hrs x \$125/hr	=	\$ 5,625
			<u>\$22,375</u>
Estimate of Construction Cost			
Engineer V	4 hrs x \$175/hr	=	\$ 700
Engineer III	10 hrs x \$125/hr	=	\$ 1,250
			<u>\$ 1,950</u>
	Subtotal Task B		\$31,075

Meetings/Coordination

Engineer VI	4 hrs x \$190/ hr	=	\$ 760
Engineer V	8 hrs x \$175/hr	=	\$ 1,400
Engineer III	8 hrs x \$125/hr	=	<u>\$ 1,000</u>
			\$ 3,160

Subtotal			\$78,375
Direct Costs			<u>\$ 1,000</u>
Not-to Exceed Fee	=		\$79,375

Direct Costs

A. Survey Expenses:

(Itemization)

B. Engineering Expenses:

6 copies of Phase I Report x \$100/Report = \$600
10 color exhibits for Public Hearing x \$40/exhibit = \$400

C. Meetings/Coordination:

(Itemization)

VILLAGE OF ALGONQUIN

Accepted by: _____

Title: _____

Date: _____

CHRISTOPHER B. BURKE ENGINEERING, LTD.

Accepted by:  _____

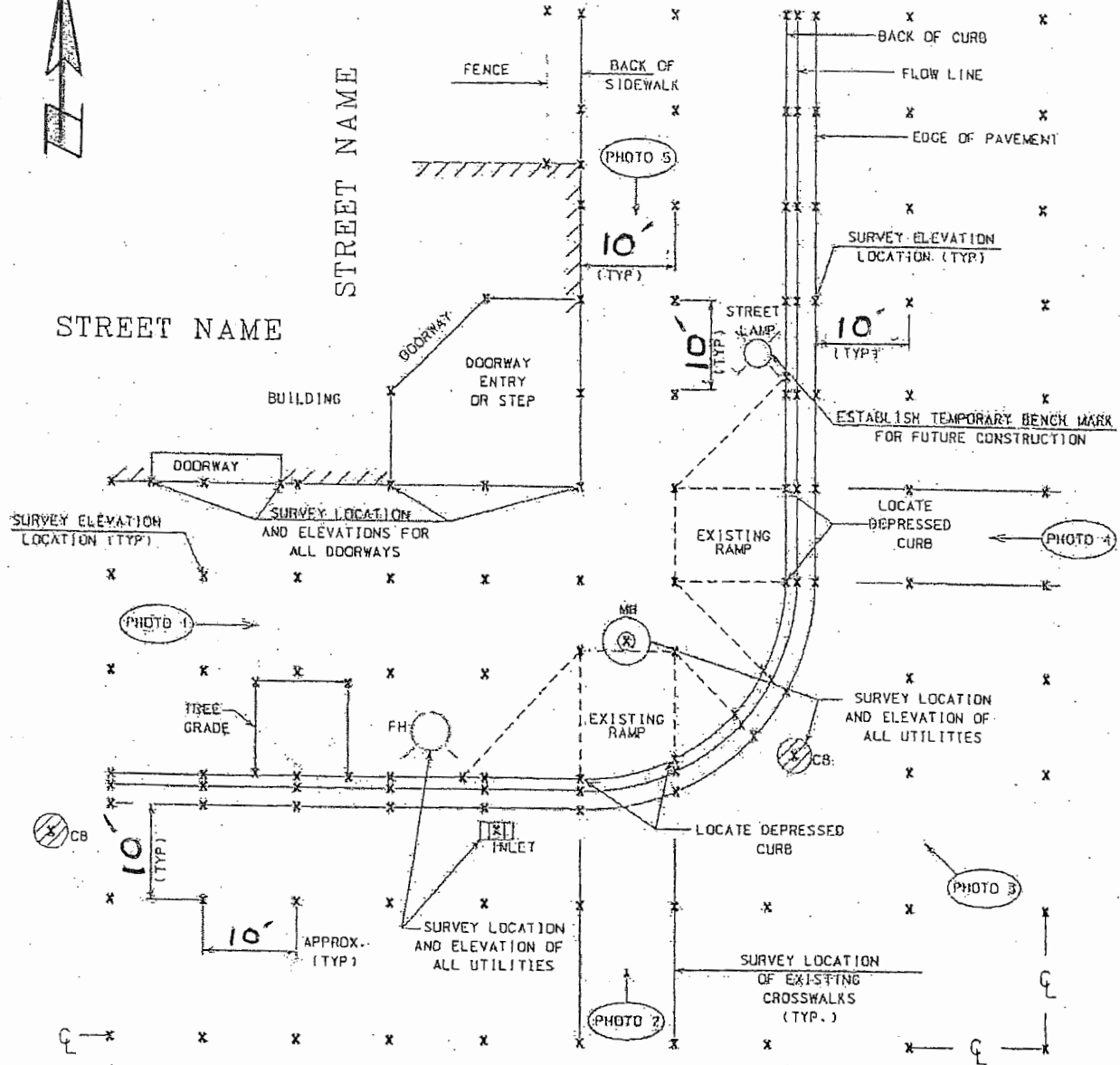
Title: President

Date: 9/9/2020

CHRISTOPHER B. BURKE ENGINEERING, LTD.
STANDARD CHARGES FOR PROFESSIONAL SERVICES

<u>Personnel</u>	<u>Charges</u> <u>(\$/Hr)</u>
Principal.....	210
Engineer VI.....	190
Engineer V.....	175
Engineer IV.....	145
Engineer III.....	125
Engineer I/II.....	100
Survey V.....	165
Survey IV.....	160
Survey III.....	155
Survey II.....	115
Survey I.....	90
Engineering Technician V.....	160
Engineering Technician IV.....	130
Engineering Technician III.....	140
Engineering Technician I/II.....	87
CAD Manager.....	160
Assistant CAD Manager.....	135
CAD II.....	125
GIS Specialist III.....	130
GIS Specialist I/II.....	85
Landscape Architect.....	150
Environmental Resource Specialist V.....	160
Environmental Resource Specialist IV.....	140
Environmental Resource Specialist III.....	110
Environmental Resource Specialist II.....	85
Environmental Resource Technician.....	100
Administrative.....	95
Engineering Intern.....	46

Updated January 8, 2020



TYPICAL QUADRANT SURVEY CRITERIA
FOR
ADA RAMP DESIGN



VILLAGE OF ALGONQUIN
PUBLIC WORKS DEPARTMENT

– M E M O R A N D U M –

DATE: October 1, 2020

TO: Tim Schloneger, Village Manager
Committee of the Whole

FROM: Robert G. Mitchard, Public Works Director

SUBJECT: MCCD Prairie Path Trailhead and Towne Park Kiosks

Tim, attached you will find the Design-Build Guaranteed Maximum Price and Standard Form of At-Risk Management Contractor for Designer-Led Design-Build Project for construction of MCCD Prairie Path Trailhead and Towne Park Kiosks. The contract covers work to install two electronic interactive kiosks, including 27-inch work-hardened touch-screen monitors, that will be wirelessly connected to the Village's network allowing us to push out unlimited information about special events, directions, downtown business offerings, menus, etc. to the users of the downtown and the regional bike path.

The design-build concept is a recommendation that I am making in order to bring this project in on time, within budget (as stated), and within the high expectation of the Board of Trustees, stakeholders, and our residents and businesses. Burke, LLC will be handling all design, bidding, contractor selection (with our approval), and project construction management under the Guaranteed Maximum Price of \$136,464.00.

The most attractive part of this delivery method is the fact that the Village of Algonquin, as owner will be teaming with Burke, LLC and the contractors to deliver a quality project. In traditional design-bid-build delivery, the Village would be attempting to manage, at least, five separate contracts, five different contractors, and their sub-contractors in this very tight and restrictive construction site. The design-build option allows us to funnel all construction contracts and related activities through Burke, LLC, making to overall management of the contract much more streamlined, comprehensive and coordinated. Any construction savings realized through the design-build team effort will be shared equally between Burke, LLC and the Village of Algonquin, as owner.

Currently, in the Capital Improvement Budgets, we have \$550,000.00 budgeted in the Street Improvement Fund for the Phase 1 Engineering of Lake Braewood that we don't anticipate utilizing in total during this fiscal year due to the need for significant public forum discussions prior to design. We plan use a portion of that money for this project, and then roll the remainder into the next fiscal year, and budget additional funds, for the initial Phase 1 design work on Lake Braewood.

We recommend that the Committee of the Whole take the necessary action on the contract with Burke, LLC in the amount of \$136,464.00 and move that motion on to the Village Board of Trustees for approval. Work will begin as soon as the contract is approved and bids for services can be collected and considered by Burke, LLC. The work is anticipated to be completed by the winter of 2020, if not sooner.



VILLAGE OF ALGONQUIN
PUBLIC WORKS DEPARTMENT

– M E M O R A N D U M –

DATE: October 5, 2020

TO: Bob Mitchard, Public Works Director

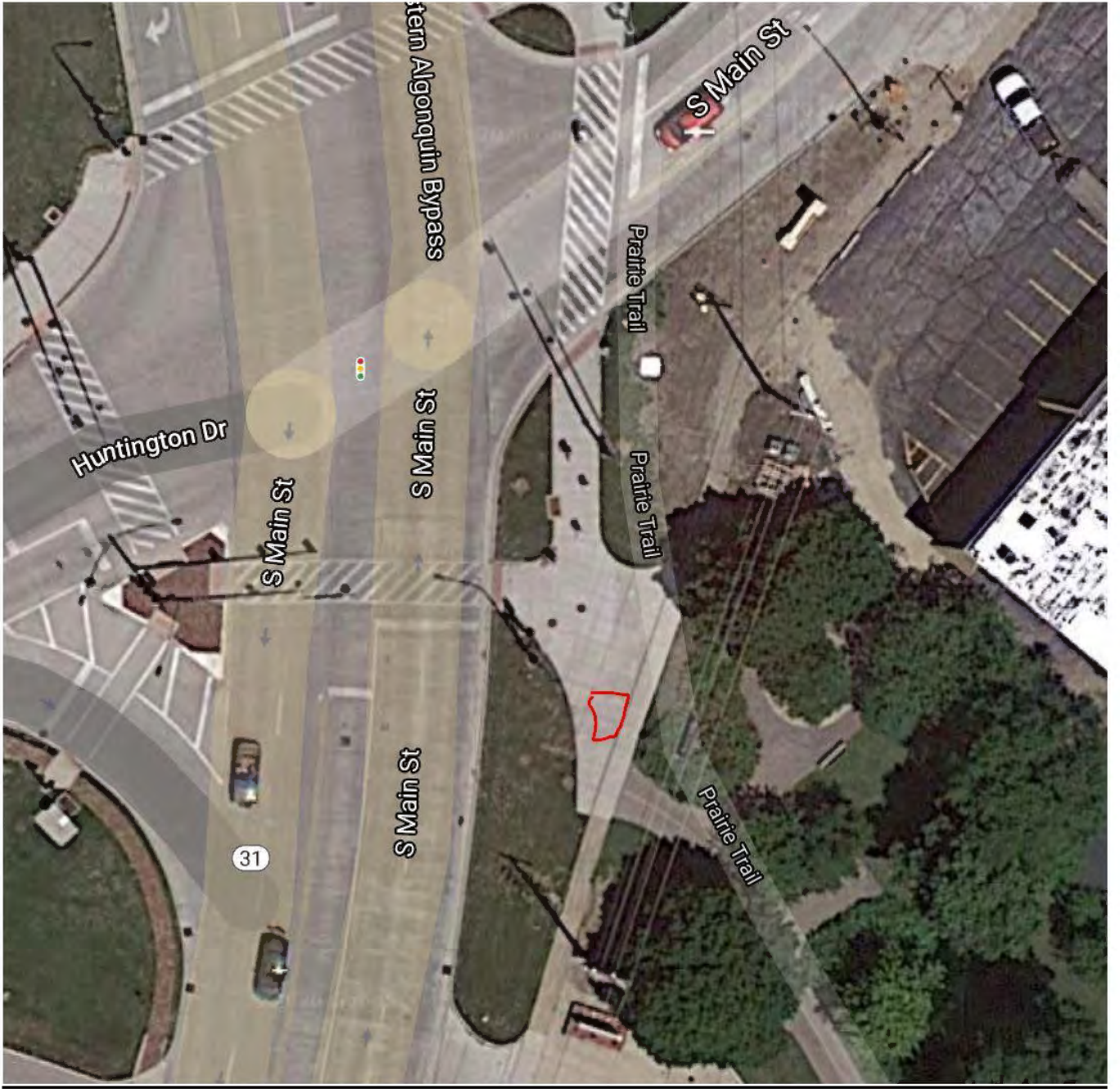
FROM: Steve Ludwig, General Services Superintendent

SUBJECT: Downtown Digital Directional/Informational Kiosk Design/Build Proposal

Attached is the design build proposal for the two (2) downtown wayfinding/informational digital kiosks to be located at the new arbor at the MCCD trailhead, and near the parking area/MCCD trail in Towne Park.

The project includes the construction of two kiosks (renderings attached), with materials to match other materials at the existing sites. The kiosks will have interactive, programmable digital touch screens, which will allow users to navigate to the many opportunities the downtown area provides. These units can provide virtually anything you can render on a computer. The primary use will be mapping and locating of local businesses and park locations. They can also serve many other purposes, including special event notifications and commercial advertising. The screen manufacturer information can be found at their website at <https://www.meridiankiosks.com/kiosks/>.

This project will continue to support the customer experience of our new downtown improvements by providing more data and information to our visitors. I therefore recommend Burke, LLC of Rosemont, IL. be awarded this project in the amount of \$136,464.







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

OWNER: Village of Algonquin, Illinois
2200 Harnish Dr
Algonquin, IL 60102

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

PROJECT: MCCD Prairie Path and Towne Park Kiosks

CONTRACT DATE:

GUARANTEED MAXIMUM
PRICE: \$136,464.00

SUBSTANTIAL COMPLETION DATE: TBD

ARTICLE 1 - RELATIONSHIP OF THE PARTIES

1.1 Relationship. The Relationship between the Owner and the Construction Manager with regard to the Project shall be one of good faith and fair dealing. The Construction Manager agrees to provide the design, construction, management and administration services as set forth in greater detail below.

1.2 Engineer. The Engineer for the Project is Christopher B. Burke Engineering, Ltd., a separate company and legal entity closely affiliated with the Construction Manager. The Owner, Engineer and Construction Manager had previously jointly entered into a Price and Schedule Guarantee for the Project. When fully executed, this Contract shall supersede the Owner's and Construction Manager's obligations in the Price and Schedule Guarantee, which merges into this Contract and is no longer separately enforceable.

ARTICLE 2 - DEFINITIONS

2.1 Contract Documents. The Contract Documents consist of:

.1 Change Orders and written amendments to this Contract signed by both the Owner and Construction Manager;

.2 This Contract;

.3 The exhibits prepared by Christopher B Burke Engineering, Ltd dated and attached hereto as Exhibit B.

.4 Village of Algonquin Standard Certifications
a. Business Organization
b. Certification of Eligibility
c. Equal Employment Opportunity
d. Illinois Prevailing Wage Act
e. Contractor's Certification
f. Apprenticeship and Training Program Certification

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

2.2 Day. A "Day" shall mean one calendar day.

2.3 Hazardous Material. A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or cleanup.

2.4 Owner. The Owner for the purposes of this Contract is the Village of Algonquin, Illinois, an Illinois municipal corporation.

2.5 Not Used.

2.6 Subcontractor. A Subcontractor is a person or entity who has an agreement with the Construction Manager to perform any portion of the Work, and includes vendors or material suppliers but does not include the Engineer, any separate contractor employed by the Owner or any separate contractor's subcontractor.

2.7 Substantial Completion. The Owner shall determine substantial completion of the Work, or of a designated portion of the Work, occurs on the date when construction is sufficiently complete in accordance with the Contract Documents so that the Owner can begin to occupy or utilize the Project, or the designated portion, for the use for which it is intended.

2.8 Subsubcontractor. A Subsubcontractor is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's work.

2.9 The Work. The Work consists of all the construction, procurement and administration services to be performed by the Construction Manager and the Subcontractors under this Contract, as well as any other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

ARTICLE 3 - CONSTRUCTION MANAGER'S RESPONSIBILITIES

3.1 Commencement. The Construction Manager may commence the Work upon execution of this Contract. The parties contemplate that by mutual agreement, the Construction Manager may commence certain portions of the Work, such as procurement of long lead-time items, design and site preparation, prior to execution of this Contract in reliance on the Price/Schedule Guarantee.

3.2 General Requirements. The Construction Manager shall perform those portions of the Work that the Construction Manager customarily performs with its own personnel. All other portions of the Work shall be performed by Subcontractors or under other appropriate agreements with the Construction Manager. The Subcontractor selection process shall be as set forth in Article 4. The Construction Manager shall exercise reasonable skill and judgment in the performance of the Work. The Construction Manager shall give all notices and comply with all laws and ordinances legally enacted at the date of execution of this Contract which govern performance of the Work. Construction Manager is responsible for the performance of all design, design management, construction and construction management services, and providing all facilities, supplies, material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the plans and specifications.

3.3 Schedule. The Construction Manager shall maintain in written form a schedule of the Work. The schedule shall indicate the dates for the start and completion of various stages of the construction and shall be revised as required by the conditions of the Work. The schedule may contain dates when information, decisions and approvals are required from the Owner; and both the Owner and the Construction Manager agree to use their best efforts to comply with the time requirements of the schedule.

3.4 Reports. The Construction Manager shall provide monthly written reports to the Owner on the progress of the Work which shall include the current status of the Work in relation to the construction schedule as well as adjustments to the construction schedule

necessary to meet the Substantial Completion date. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner upon reasonable advance notice.

3.5 Cost Control. The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities and progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner in the monthly written reports.

3.6 Permits. The Construction Manager shall assist the Owner in securing the permits necessary for construction of the Project.

3.7 Safety. The Construction Manager shall take necessary precautions for the safety of its employees on the Project and shall comply with all applicable provisions of federal, state and local safety laws and regulations to prevent accidents or injuries to persons on or adjacent to the Project site. The Construction Manager, directly or through its Subcontractors, shall erect and properly maintain necessary safeguards for the protection of workers and the public. However, the Construction Manager shall not be responsible for the elimination or abatement of safety hazards created or otherwise resulting from any work at the Project site being performed by someone other than the Construction Manager, a Subcontractor or Subsubcontractor. The Engineer shall have no responsibility for safety programs or precautions in connection with the Work and shall not be in charge of or have any control over any construction means, methods, techniques, sequences or procedures.

Construction Manager shall take reasonable precautions for safety and shall provide reasonable protection to prevent damage, injury or loss to other property at the site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, foundations and foundation tiebacks and utilities not designated for removal, relocation or replacement in the course of construction, as well as the Work and materials and equipment on site to be incorporated into the Work.

Construction Manager assumes direct liability for all damages to private property arising from the execution of the Work by the Construction Manager or any of its Subcontractors, and agrees to promptly resolve all claims directly with the property owners.

Construction Manager agrees that Owner has the right at any time or times to withhold from any payment that may be or become due Construction Manager such amount as may reasonably appear necessary to compensate the Owner for any claims by adjacent land owner for property damage arising from the execution of the Work, and to defend and hold Owner harmless from such claims.

Construction Manager shall not be liable for existing infrastructure deficiencies on private property. It is understood by the Owner that unforeseen upgrades to existing infrastructure will be required to construct the improvements and that the Construction Manager will be paid for these upgrades either at the unit prices in the contract or on a time and materials basis. The Owner and Construction Manager will work jointly to identify, coordinate and

obtain permission for all work on private property. The Owner, with input from the construction Manager, will have the final say on what is an existing condition and what occurs as a result of the Construction Manager's actions.

3.8 Cleanup. The Construction Manager shall keep the site of the Work free from debris and waste materials resulting from the Work. At the completion of the Work, the Construction Manager or its Subcontractors shall remove from the site of the Work all construction equipment, tools, surplus materials, waste materials and debris.

3.9 Hazardous Materials. If the Construction Manager 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 encountered on the site of the Work by the Construction Manager, the Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing. Upon receipt of the Construction Manager's written notice, the Owner shall investigate and proceed pursuant to the law and applicable regulations. Upon providing a copy of the Construction Manager's written notice, the Construction Manager will be permitted to continue to suspend performance of the Construction Manager's services in the affected area provided, however, that Construction Manager shall return to work at Owner's discretion and declaration either that the material encountered does not require remediation or that it has been addressed in accordance with the law. If the Construction Manager suspends services to longer than 21 days, the Owner may terminate this Agreement, and the Construction Manager shall be compensated for services performed prior to the suspension of Construction Manager's services. Under no circumstances, unless required by law, shall the Construction Manager report the existence of any hazardous materials or substances to any other governmental entity or agency without the Owner's prior written consent. Unless otherwise provided in the Contract Documents to be part of the Work, Construction Manager is not responsible for any unforeseen hazardous materials or substances encountered at the site, provided, however, Owner is not responsible for any hazardous material or substance releases or spills introduced to the site by Construction Manager, subcontractor or anyone for whose acts they may be liable.

3.10 Intellectual Property. The Construction Manager shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Construction Manager and incorporated in the Work. The Construction Manager shall defend, indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to defend, indemnify and hold the Construction Manager harmless from any suits or claims of infringement of any patent rights arising out of any patented materials, methods or systems required or specified by the Owner.

3.11 Completion. At or promptly after the date of Substantial Completion, the Construction Manager shall secure required certificates of inspection, testing or approval and deliver them to the Owner; collect all written warranties and equipment manuals and deliver them to the Owner; with the assistance of the Owner's maintenance personnel, direct the checkout of utilities and operations of systems and equipment for readiness, and assist in their initial start-up and testing; provide the Owner with a set of record drawings which the Construction

Manager shall have maintained throughout the Project; and prepare and forward to the Owner a punch list of items of Work yet to be completed.

3.12 Indemnification. To the fullest extent permitted by law, the Construction Manager shall defend, indemnify and hold the Owner from all claims for bodily injury and property damage (other than to the Work itself and other property insured under the Owner's builder's risk or other property insurance) and all other claims, damages, losses, costs and expenses, whether direct, indirect or consequential, including but not limited to the negligent or willful acts or omissions by the Construction Manager, Subcontractors, Subsubcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Notwithstanding any of the foregoing, nothing contained in this paragraph shall require the Contractor to indemnify the Owner, their officials, agents and employees for their own negligent acts or omissions. The terms of this indemnification shall survive completion or termination of this Contract. Construction Manager shall indemnify and save Owner harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this Contract.

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

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

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

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

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

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

- .1 That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental handicap or unfavorable discharge from military service, and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- .2 That, if it hires additional employees in order to perform this Contract or any portion hereof, it will determine the availability of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- .3 That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, national origin, ancestry, age, martial status, physical or mental handicap or unfavorable discharge from military service.
- .4 That it will send to each labor organization or representative of workers with which it has or is bound by collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Construction Manager's obligations under the Illinois Human Rights Act and the Owner's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Construction Manager in its efforts to comply with such Act and Rules and Regulations, the Construction Manager will promptly notify the Illinois Department of Human Rights and the Owner and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
- .5 That it will submit reports as required by the Owner of Human Rights Rules and Regulations, furnish all relevant information as may from time to time be requested by the Owner or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Owner's Rules and Regulations.
- .6 That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency Illinois Department of Human Rights for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.
- .7 That it will include verbatim or by reference the provisions of this clause in every subcontract so that such provisions will be binding upon every such subcontractor. In the same manner as with other provisions of this Contract,

the Construction Manager will be liable for compliance with applicable provisions of this clause by all its subcontractors; and further it will promptly notify the Owner and the Illinois Department of Human Rights in the event any subcontractor fails or refuses to comply therewith. In addition, the Construction Manager will not utilize any subcontractor declared by the Owner to have failed to comply with this Equal Employment Opportunity provision.

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

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

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

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

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

If requested, the Construction Manager and each subcontractor shall provide to the Owner, the certified payroll as required by the Prevailing Wage Act. The Construction Manager and each subcontractor shall preserve their weekly payroll records for a period of three years from the date of completion of this Contract.

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

3.21 Steel Procurement. The steel products, as defined in Section 3 of the Steel Products Procurement Act (30 ILCS 565/3) used or supplied in the performance of this Contract or any subcontract shall be manufactured or produced in the United States unless the Construction Manager certifies in writing that (a) the specified products are not manufactured or produced in the United States in sufficient quantities to meet the Owner's requirements or cannot be manufactured or produced

in the United States within the necessary time in sufficient quantities to meet the Owner's requirements; or (b) obtaining the specified products, manufactured or produced in the United States would increase the cost of the Contract by more than 10%, or the application of the Steel Products Procurement Act (30 ILCS 565/1 *et seq.*) is not in the public interest.

- 3.22 Certifications. The Construction Manager shall provide Owner with a signed Contractor's Certification, dated evenly herewith, certifying that the Construction Manager is complying with and shall comply with the specific statutes and laws required in connection with a public works contract entered into by an Illinois unit of local government.

ARTICLE 4 - SUBCONTRACTS

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

- 4.5 Foreign Corporation. Foreign (non-Illinois) corporations shall procure from the Illinois Secretary of State a certificate of authority to transact business in Illinois in accordance with 805 ILCS 5/13.

ARTICLE 5 - CONSTRUCTION MANAGER'S WARRANTIES

- 5.1 One-Year Warranty. The Construction Manager warrants that all work performed hereunder shall be of good workmanship and the materials and equipment furnished under this Contract will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials; and the Construction Manager agrees to correct all construction performed under this Contract which proves to be defective in workmanship or materials. These warranties shall commence on the date of Substantial Completion of the Work or of a designated portion thereof and shall continue for a period of one year therefrom or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents.
- 5.2 Materials Specified By Owner. The products, equipment, systems or materials incorporated in the Work at the direction or upon the specific request of the Owner shall be covered exclusively by the warranty of the manufacturer and are not otherwise warranted under this Contract.
- 5.3 Other Warranties. ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED.

ARTICLE 6 - OWNER'S RESPONSIBILITIES

- 6.1 Information and Services. The Owner shall provide:
- .1 All necessary information describing the physical characteristics of the site, including survey, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations;
 - .2 Inspection and testing services during construction as required by the law or as mutually agreed;
 - .3 Any necessary approvals, rezoning, easements and assessments, permits, fees and charges required for the construction, use, occupancy or renovation of permanent structures, including any legal and other required services; and
 - .4 any other information or services stated in the Contract Documents as being provided by the Owner.
- 6.2 Reliance. The Construction Manager shall be entitled to rely on the completeness and accuracy of the information and services required by paragraph 6.1 above, and

the Owner agrees to provide such information and services in a timely manner so as not to delay the Work.

- 6.3 Notice of Defect. If the Owner becomes aware of any error, omission or other inadequacy in the Contract Documents or of the Construction Manager's failure to meet any of the requirements of the Contract Documents, or of any other fault or defect in the Work, the Owner shall give prompt written notice to the Construction Manager; however, the Owner's failure to provide notice shall not relieve the Construction Manager of its obligations under this Contract.
- 6.4 Communications. The Owner shall communicate with the Subcontractors and Subsubcontractors only through the Construction Manager. The Owner shall have no contractual obligations to any Subcontractors or Subsubcontractors.
- 6.5 Owner's Representative. The Owner's Representative for this Project is Owner's Public Works Director who shall be fully acquainted with the Project; shall be the conduit by which the Owner furnishes the information and services required of the Owner; and shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization or written notice; provided, however, the Public Works Director shall not have authority to increase the Contract Price by \$10,000.00 or more or to extend the Contract Time. Authority to increase the Contract Price by \$10,000.00 or more or to extend the Contract Time may only be exercised by written Change Order signed by the Public Works Director and authorized by a due and proper vote of the Village Council. If the Owner changes its representative, the Owner shall notify the Construction Manager in advance in writing. Change orders must be approved in accordance with Section 33E-9 of the Illinois Criminal Code

ARTICLE 7 - CONTRACT TIME

- 7.1 Execution Date. The parties contemplate that this Contract will be fully executed on or before the October 16, 2020. A delay in the Owner's execution of this Contract which postpones the commencement of the Work.
- 7.2 Substantial Completion. The date of Substantial Completion of the Work shall be contingent upon receipt of the screens and equipment for the kiosks and as adjusted in accordance with the provisions of this Contract. Once received, the completion of the kiosks will be completed within 3 weeks, pending appropriate weather conditions.
- 7.3 Delays. If causes beyond the Construction Manager's control delay the progress of the Work, then the Contract Price and/or the date of Substantial Completion shall be modified by Change Order as appropriate. Such causes shall include but not be limited to: changes ordered in the Work, a delay in the Stage 3 Wet Utility work, acts or omissions of the Owner or separate contractors employed by the Owner, the Owner's preventing the Construction Manager from performing the Work pending dispute resolution, Hazardous Materials, differing site conditions, adverse weather conditions not reasonably anticipated, fire, unusual transportation delays, labor disputes, or unavoidable accidents or circumstances. In the event that delays to the

Project are encountered for any reason, the Owner and the Construction Manager both agree to undertake reasonable steps to mitigate the effect of such delays.

7.4 Inclement Weather. The Contract Time shall not be extended due to normal inclement weather. Unless the Construction Manager can substantiate to the satisfaction of the Owner that there was greater than normal inclement weather considering the full term of the Contract Time and using the most recent ten-year average of accumulated record mean values from climatological data compiled by the United States Department of Commerce National Oceanic and Atmospheric Administration for the locale of the project and that such alleged greater than normal inclement weather actually delayed the Work or portions thereof which had an adverse material effect on the Contract Time, the Construction Manager shall not be entitled to an extension of the Contract Time. If the total accumulated number of calendar days lost due to inclement weather from the start of work until substantial completion exceeds the total accumulated number to be expected for the same time period from the aforesaid data and the Owner grants the Construction Manager an extension of time, the Contract Time shall be extended by the appropriate number of calendar days.

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

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

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

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

ARTICLE 8 - PAYMENT

8.1 Guaranteed Maximum Price. The sum of the Cost of Work and the Construction Manager's Fee including professional services is guaranteed by the Construction Manager not to exceed the price listed on page 1, subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. The Construction Manager's Fee including professional fees, general conditions, insurance, overhead and profit is identified on **Exhibit A - Summary Schedule of Values**. The Construction Manager's Fee shall be increased proportionally with the Cost of Work for any Change Orders in accordance with this Contract. The Contractor's Fee will not be reduced as the result of a Change Order. In the event the Cost of Work plus the Construction Manager's Fee including professional services shall total less than the Guaranteed Maximum Price as adjusted by Change Orders, the resulting savings shall be shared equally between the Owner and the Construction Manager, and the Owner shall make payment of the Construction Manager's portion upon Final Completion of the Work. In the event that the Cost of Work plus the Construction Manager's Fee including professional services exceeds the Guaranteed Maximum Price as adjusted by Change Orders, then the Owner shall pay no more than the Guaranteed Maximum Price as adjusted by Change Orders. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

1. The Guaranteed Maximum Price is based on the following scope of work as depicted in the exhibit prepared by Christopher B. Burke Engineering, Ltd. and as negotiated between the Village and Meridian including any Addenda thereto. Any changes or upcharges from Meridian will result in a proportional increase to the GMP.
2. Unit prices used for the actual work will be determined by the bidding process identified in Article 4 of this Agreement.
3. Assumptions on which the Guaranteed Maximum Price are based, are as follows:
 - .1 The site is free of rock, debris or other bad soil conditions
 - .2 Hazardous materials are not present at the site.
 - .3 Durations to acquire permits are beyond the Contractor's control.
 - .4 No utility conflicts exist.
 - .5 To the extent that the Exhibits are anticipated to require further development by the Engineer, the Construction Manager has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. However, 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.

8.2 Compensation. The Guaranteed Maximum Price is the sum of the Cost of the Work plus the Construction Manager's Fee as identified in this Contract, subject to adjustment in accordance with the provisions of this Contract.

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

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

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

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

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

- .4 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
 - .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.
 - .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.
 - .3 Add the Construction Manager's Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in paragraph 8.2 or, if the Construction Manager's Fee is stated as a fixed sum in that paragraph, shall be an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion.
 - .4 Subtract the aggregate of previous payments made by the Owner.
 - .5 Except with the Owner's prior approval, payments to the Construction Manager and Subcontractors shall be subject to retention of not less than ten percent (10%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.
 - .6 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

8.4 Progress Payment Documentation and Withholding of Payments due to Subcontractor Notice Received. The Construction Manager shall supply and

each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner:

- (A) a duly executed and acknowledged sworn statement showing all Subcontractors with whom the Construction Manager has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor in the requested progress payment and the amount to be paid to the Construction Manager from such progress payment, together with similar sworn statements from all Subcontractors and, where appropriate, from sub-Subcontractors;
- (B) duly executed waivers of mechanics' and materialmen's liens of the money due or to become due herein, establishing payment to the Subcontractor or material supplier of all such obligations to cover the full amount of the Application for Payment from each and every Subcontractor and suppliers of material or labor to release the Owner of any claim to a mechanic's lien, which they or any of them may have under the mechanic's lien laws of Illinois. Any payments made by the Owner without requiring strict compliance to the terms of this paragraph shall not be construed as a waiver by the Owner of the right to insist upon strict compliance with the terms of this approach as a condition of later payments. The Construction Manager shall indemnify and save the Owner harmless from all claims of Subcontractors, laborers, workmen, mechanics, material men and furnishers of machinery and parts thereof, equipment, tools and all supplies incurred in the furtherance of the performance of the Work;
- (C) sworn statements or lien waivers supporting the Application for Payment submitted late by the Construction Manager to the Owner will result in the Application for Payment not being processed until the following month.
- (D) Owner may, after having served written notice to the Construction Manager either pay unpaid bills, of which Owner has written notice, direct, or withhold from Construction Manager's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to Construction Manager shall be resumed, in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon Owner to the Construction Manager. In paying any unpaid bills of Construction Manager, Owner shall be deemed the agent of Construction Manager and any payment so made by Owner, shall be considered as payment made under the Contract by OWNER to Construction Manager and OWNER shall not be liable to Construction Manager for any such payment made in good faith.

Construction Manager agrees that all payments made by the OWNER shall be applied to the payment or reimbursement of the costs with respect to which they were paid, and not to any pre-existing or unrelated debt between Construction Manager and OWNER or between the Construction Manager and any subcontractors or suppliers.

- 8.5 Late Payments. Payments shall be made in accordance with the Local Government Prompt Payment Act (50 ILCS 505/1 *et. seq.*)
- 8.6 Title. The Construction Manager warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the Owner free and clear of all liens, claims, security interests or encumbrances upon receipt of such payment by the Construction Manager.
- 8.7 Final Payment. Final Payment shall be due and payable when the Work is fully completed. Before issuance of any final payment, the Owner may request satisfactory evidence that all payrolls, materials bills and other indebtedness connected with the Work have been or will be paid or otherwise satisfied. In accepting final payment, the Construction Manager waives all claims except those previously made in writing and which remain unsettled. In making final payment, the Owner waives all claims except for outstanding liens, improper workmanship or defective materials appearing within one year after the date of Substantial Completion, and terms of any special warranties required by the Contract Documents.
- .1 The amount of the final payment shall be calculated as follows:
- .1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.
- .2 Subtract the aggregate of previous payments made by the Owner. If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.
- .2 The Owner's accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Owner by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, the Owner will, within seven (7) days after receipt of the written report of the Owner's accountants, either make final payment as requested to the Construction Manager, or notify the Construction Manager in writing of the Owner's reasons for withholding part or all of the requested final payment.
- .3 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Paragraph 8.7 and not excluded by Paragraph 8.8 (1) to correct nonconforming Work, or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated

and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

8.8 Cost of the Work. The term "Cost of the Work" shall mean all costs incurred by the Construction Manager and the cost of professional services in the proper performance of the Work. The Cost of the Work shall include the items set forth below.

.1 Labor costs.

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

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

.3 Costs of materials and equipment incorporated in the completed construction.

- .1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- .2 Costs of materials described above in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager, with the amounts realized, if any, from such sales credited to the Owner as a deduction from the Cost of the Work.

.4 Costs of other materials and equipment, temporary facilities and related items.

- .1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work, and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager.
 - .2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof.
 - .3 Costs of removal of debris from the site.
 - .4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.
 - .5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.
- .5 Miscellaneous costs.
- .1 That portion directly attributable to this Contract of premiums for insurance and bonds.
 - .2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.
 - .3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager has paid or is required by the Contract Documents to pay.
 - .4 Fees of testing laboratories for tests required by the Contract Documents or advisable in the Construction Manager's discretion.
 - .5 Expenses and time incurred investigating potential changes in the Work.
 - .6 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract

Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent.

- .7 Data processing costs related to the Work.
- .8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .9 Legal, and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work.
- .10 Expenses incurred in accordance with the Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.
- .6 Other costs. Other costs incurred in the performance of the Work.
- .7 Emergencies and repairs to damaged or nonconforming work.
 - .1 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.
 - .2 Costs incurred in repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers.
- 8.9 Non-Reimbursable Costs. The Cost of the Work shall not include any of the following.
 - .1 The Cost of the Work shall not include professional services or the following:
 - .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in paragraph 8.7.1, unless such personnel are directly engaged in the performance of the Work.
 - .2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Paragraph 8.7.
 - .3 Overhead and general expenses, except as may be expressly included in Paragraph 8.7.

- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
 - .5 The Construction Manager's Fee.
 - .6 The payment of Retailers' Occupation Tax, the Service Occupation Tax (both state and local), the Use Tax and the Service Use Tax in Illinois from which the Owner as a unit of local government is exempt.
 - .7 Costs which would cause the Guaranteed Maximum Price to be exceeded.
- .2 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured. Amounts which accrue to the Owner shall be credited to the Owner as a deduction from the Cost of the Work.

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

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

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

- .6 Failure to perform the Work in accordance with the Contract Documents.

ARTICLE 9 - CHANGES

- 9.1 Change Orders. Changes in the Work which are within the general scope of this Contract may be accomplished by Change Order without invalidating this Contract. A Change Order is a written instrument, issued after execution of this Contract signed by the Owner and Construction Manager stating their agreement upon a change and any adjustment in the Guaranteed Maximum Price and/or the date of Substantial Completion. The Construction Manager shall not be obligated to perform changed Work until the Change Order has been executed by the Owner and Construction Manager.
- 9.2 Costs. An increase or decrease in the Guaranteed Maximum Price resulting from a change in the Work shall be determined by one or more of the following methods:
- .1 Unit prices as set forth in this Contract or as subsequently agreed (but if the original quantities are altered to a degree that application of previously agreed unit prices would be inequitable to either the Owner or the Construction Manager, the Unit Prices shall be equitably adjusted);
 - .2 A mutually accepted, itemized lump sum;
 - .3 Time and materials.

Construction Manager's fee shall be proportionately increased in all Change Orders that increase the Guaranteed Maximum Price, but shall not be proportionately decreased by a Change Order that decreases the Guaranteed Maximum Price. If the parties cannot agree on the price term of a Change Order, then the Change Order will be calculated on the basis of actual time and materials costs incurred. If at the Owner's request the Construction Manager incurs substantial costs or time investigating a proposed change which is never ultimately made, the Guaranteed Maximum Cost and Contract Time shall be equitably adjusted.

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

shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in Guaranteed Maximum Price and/or Date of Substantial Completion resulting from such claim shall be effectuated by Change Order.

ARTICLE 10 - INSURANCE AND BONDING

10.1 The Contractor's Insurance. The Construction Manager and each of its Subcontractors shall provide insurance as outlined in the attached "Insurance Requirements" document provided by the Village of Algonquin. The Construction Manager shall obtain and maintain insurance coverage for the following claims which may arise out of the performance of this Contract, whether resulting from the Construction Manager's operations or by the operations of any Subcontractor, anyone in the employ of any of them, or by an individual or entity for whose acts they may be liable:

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

10.2 The Construction Manager's Commercial General and Automobile Liability Insurance shall be written for not less than the following limits of liability:

Commercial General Liability Insurance

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

Medical Expenses, each person	\$ 10,000
Comprehensive Automobile Liability Insurance	
Combined Single Limit, each accident	\$1,000,000
or	
Bodily Injury (per person)	\$1,000,000
Bodily Injury (per accident)	\$1,000,000
Property Damage (per accident)	\$1,000,000
Worker's Compensation & Employer's Liability	
Worker's Compensation	Statutory Limits
Employer's Liability	
Bodily Injury by Accident	\$ 500,000 each accident
Bodily Injury by Disease	\$ 500,000 policy limit
Bodily Injury by Disease	\$ 500,000 each employee
Commercial Umbrella/Excess Liability	
Each Occurrence	\$5,000,000
Aggregate	\$5,000,000
Professional Liability	
Each Occurrence	\$2,000,000
Aggregate	\$2,000,000

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

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

10.4 Primary Insurance. The Commercial General Liability and Automobile Liability Insurance policies required under this contract shall be endorsed to include, as additional insured, the OWNER, its elected and appointed officials, officers and employees, and owners of property where the Work is to be completed. Prior to the commencement of any Work, the Construction Manager shall provide the Owner with Certificates of Insurance for all insurance required pursuant to this Article. Any insurance or self-insurance maintained by the Owner and Engineer shall be excess of Construction Manager's insurance and shall not contribute with it. Any failure to

comply with reporting provisions of the policies shall not affect coverage provided to the Owner and Engineer. Construction Manager shall not allow any Subcontractor to commence or continue any part of the Work until and unless such Subcontractor provides and has in force insurance coverages equal to those required of Construction Manager by this Article, including, but not limited to, naming the OWNER as an additional insured for liability arising out of the subcontractor's work.

- 10.5 Acceptability of Insurers. The insurance carrier used by the Construction Manger shall have a minimum insurance rating of A:VII according to the AM Best Insurance Rating Schedule and shall meet the minimum requirements of the State of Illinois.
- 10.6 Reserved.
- 10.7 Property Insurance Loss Adjustment. Any insured loss shall be adjusted with the Owner and the Construction Manager and made payable to the Owner and Construction Manager as trustees for the insureds, as their interests may appear, subject to any applicable mortgagee clause. Upon the occurrence of an insured loss, monies received will be deposited in a separate account; and the trustees shall make distribution in accordance with the agreement of the parties in interest, or in the absence of such agreement, in accordance with the dispute resolution provisions of this Contract. If the trustees are unable to agree between themselves on the settlement of the loss, such dispute shall also be submitted for resolution pursuant to the dispute resolution provisions of this Contract.
- 10.8 Waiver of Subrogation. The Owner and Construction Manager waive all rights against each other, the Engineer, and any of their respective employees, agents, consultants, Subcontractors and Subsubcontractors, for damages caused by risks covered by insurance provided in Paragraph 10.2 to the extent they are covered by that insurance, except such rights as they may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all Subcontractors, and shall require each of them to include similar waivers in their subsubcontracts and consulting agreements. The Owner waives subrogation against the Construction Manager, Engineer, Subcontractors and Subsubcontractors on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion. If the policies of insurance referred to in this Paragraph require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.
- 10.9 Bonds. The Construction Manager shall furnish bonds covering faithful performance of the Contract, exclusive of the Construction Manager's Fee and all other professional services, and payment of the obligations arising thereunder. Bonds may be obtained through the subcontractor's usual source and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to 100% of the Guaranteed Maximum Price, less the Construction Manager's Fee and all other professional services. The Construction Manager shall deliver the required bonds to the Owner at least three days before commencement of any Work at the Project site.

10.10 Performance and Payment Guarantee. In lieu of the Village not requiring payment and performance bonds by the Construction Manager pursuant to 30 ILCS 550/1, et. seq, the undersigned members of Burke, LLC, individually guarantee that 1) all the undertakings, covenants, terms, conditions, and promises made herein by Burke, LLC will be performed and fulfilled and 2) Burke, LLC shall pay all persons, firms and corporations having contracts with Burke, LLC, or with subcontractors and all just claims due them under the provisions of such contracts for labor performed or materials furnished in the performance of the Work on the Project, when such claims are not satisfied out of the Cost of Work, after final settlement between the Village and Burke, LLC has been made.

ARTICLE 11 - TERMINATION

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

- .1 If the Work has been stopped for a thirty (30) day period;
 - a. under court order or order of other governmental authorities having jurisdiction;
 - b. as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Construction Manager, materials are not available; or
 - c. because of the Owner's failure to pay the Construction Manager in accordance with this Contract;
- .2 if the Work is suspended by the Owner for thirty (30) days;
- .3 if the Owner materially delays the Construction Manager in the performance of the Work without agreeing to an appropriate Change Order; or
- .4 if the Owner otherwise materially breaches this Contract.

Upon termination by the Construction Manager in accordance with this paragraph, the Construction Manager shall be entitled to recover from the Owner all damages allowed under Illinois law. In addition, the Construction Manager shall be paid an amount calculated as set forth in paragraph 11.3.

11.2 By the Owner for Cause. If the Construction Manager fails to perform any of its obligations under this Contract, the Owner may, after seven (7) days written notice, during which period the Construction Manager fails to perform or to begin to perform such obligation, undertake to perform such obligations itself. The Contract Price shall be reduced by the cost to the Owner of performing such obligations. Additionally, upon seven (7) days written notice to the Construction Manager and the Construction Manager's surety, if any, the Owner may terminate this Contract for any of the following reasons:

- .1 if the Construction Manager utilizes improper materials and/or inadequately skilled workers;
- .2 if the Construction Manager does not make proper payment to laborers, material suppliers or subcontractors and refuses or fails to rectify same;
- .3 if the Construction Manager fails to abide by the orders, regulations, rules, ordinances or laws of governmental authorities having jurisdiction; or
- .4 if the Construction Manager otherwise materially breaches this Contract.

If the Construction Manager fails to cure within the seven (7) days, the Owner, without prejudice to any other right or remedy, may take possession of the site and complete the Work utilizing any reasonable means. In this event, the Construction Manager shall not have a right to further payment until the Work is completed. If the Construction Manager files a petition under the Bankruptcy Code, this Contract shall terminate if the Construction Manager or the Construction Manager's trustee rejects the Agreement or, if there has been a default, the Construction Manager is unable to give adequate assurance that the Construction Manager will perform as required by this Contract or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code. In the event the Owner exercises its rights under this paragraph, upon the request of the Construction Manager, the Owner shall provide a detailed accounting of the costs incurred by the Owner.

- 11.3 Termination by the Owner Without Cause. If the Owner terminates this Contract other than as set forth in Paragraph 11.2, the Owner shall pay the Construction Manager for the Cost of all Work executed and for any proven loss, cost or expense in connection with the Work, plus all demobilization costs. The Owner shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. The Owner shall assume and become liable for obligations, commitments and unsettled claims that the Construction Manager has previously undertaken or incurred in good faith in connection with the Work or as a result of the termination of this Contract. As a condition of receiving the payments provided under this Article 11, the Construction Manager shall cooperate with the Owner by taking all steps necessary to accomplish the legal assignment of the Construction Manager's rights and benefits to the Owner, including the execution and delivery of required papers.
- 11.4 Suspension By The Owner For Convenience. The Owner for its convenience may order the Construction Manager in writing to suspend, delay or interrupt all or any part of the Work without cause for such period of time as the Owner may determine to be appropriate. Adjustments shall be made for increases in the Guaranteed Maximum Price and/or the date of Substantial Completion caused by suspension, delay or interruption. No adjustment shall be made if the Construction Manager is or otherwise would have been responsible for the suspension, delay or interruption of the Work, or if another provision of this Contract is applied to render an equipment adjustment.

ARTICLE 12 - DISPUTE RESOLUTION

12.1 Step Negotiations. The parties shall attempt in good faith to resolve all disputes promptly by negotiation, as follows. Either party may give the other party written notice of any dispute not resolved in the normal course of business. Management representatives of both parties one level above the Project personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days from the referral of the dispute to such management representatives, or if no meeting has taken place within fifteen (15) days after such referral, the dispute shall be referred to senior managers under the aforesaid procedure. If the matter has not been resolved by such senior managers, both parties must agree to initiate binding arbitration as provided hereinafter. If a negotiator intends to be accompanied at a meeting by an attorney, the other negotiator shall be given at least three (3) working days' notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and applicable state Rules of Evidence.

12.2 Arbitration. Except as provided in this paragraph, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration, one arbitrator, administered by the American Arbitration Association under its Construction Industry Arbitration Rules or JAMS Dispute Resolution, at the Village Hall 2200 Harnish Dr. Algonquin, Illinois, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Owner may elect, at its exclusive option, to file a lawsuit by rather than arbitration with regard to amounts due Owner of \$10,000 or less and \$200,000 or more and to enforce equitable remedies such as injunctive relief and mechanic lien rights. In the event of such election, each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any litigation directly or indirectly arising out of under or in connection with this Contract.

In the event of arbitration or litigation of this Contract between Owner and Construction Manager, the non-prevailing party shall pay all attorneys' fees and expenses incurred by prevailing party, as determined by the Arbiter or judge in connection with the respective arbitration or litigation.

Until final resolution of any dispute hereunder, Construction Manager shall diligently proceed with the performance of this Contract as directed by Owner.

12.3 Continued Performance of the Work. In the event of any dispute, the Construction Manager shall continue to perform the Work and maintain its progress pending final determination of the dispute, provided the Owner places a sum equal to 150% of the amount in dispute in an escrow account, reasonably satisfactory to both parties, which specifies that the escrow agent shall distribute the escrow sum between the

parties in accordance with any agreement or court judgment entered resolving the dispute.

- 12.4 Required in Subcontracts. The Construction Manager shall include the provisions of this Article 12 in all Subcontracts into which it enters.

ARTICLE 13 – LIQUIDATED DAMAGES

- 13.1 Late Completion. In the event that the Work is not Substantially Complete by the date set forth in this Contract, then promptly after receiving Final Payment, the Construction Manager shall pay to the Owner as liquidated damages a sum equal Two Hundred Dollars (\$200) for each day that the Work is late in reaching Substantial Completion.

ARTICLE 14 - MISCELLANEOUS

- 14.1 Project Sign. The Owner agrees that the Construction Manager and Engineer will be properly identified and will be given appropriate credit on all signs, press releases and other forms of publicity for the Project. Owner will permit the Construction Manager and Engineer to photograph and make other reasonable use of the Project for promotional purposes.
- 14.2 Notices. Notices to the parties shall be given at the addresses shown on the cover page of this Contract by mail, fax or any other reasonable means.
- 14.3 Integration. This Contract is solely for the benefit of the parties, and no one is intended to be a third party beneficiary hereto. This Contract represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral.
- 14.4 Governing Law. This Contract shall be governed by the laws of the State of Illinois.
- 14.5 Severability. The partial or complete invalidity of any one or more provisions of this Contract shall not affect the validity or continuing force and effect of any other provision.
- 14.6 Assignment. Neither party to this Contract shall assign the Contract as a whole without written consent of the other, except that the Owner may collaterally assign this Contract to a lender if required to secure financing for this Project.
- 14.7 Existing Contract Documents. A list of the Plans, Specifications and Addenda in existence at the time of execution of this Contract is attached as an exhibit to this Contract.
- 14.8 Illinois Freedom of Information Act. The Construction Manager acknowledges that, pursuant to the provisions of the Illinois Freedom of Information Act, (5 ILCS 140/1 *et seq.*), documents or records prepared or used in relation to Work performed under this Agreement are considered a public record of the Owner; and therefore, the Construction Manager shall review its records and promptly produce to the Owner

any records in the Construction Manager's possession which the Owner requires in order to properly respond to a request made pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*), and the Construction Manger shall produce to the Owner such records within three (3) business days of a request for such records from the owner at no additional cost to the Owner.

Owner:

Village of Algonquin
2200 Harnish Dr
Algonquin, IL 60102

Contractor:

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

By: _____ Date: _____

By:  _____ Date: 9/25/2020
Principal

Attest: _____ Date: _____



By:  _____ Date: 9/25/2020
Principal

Guarantee

Pursuant to paragraph 10.10 of this Agreement, the undersigned members of Burke, LLC, individually guarantee that 1) all the undertakings, covenants, terms, conditions, and promises made herein by Burke, LLC will be performed and fulfilled and 2) Burke, LLC shall pay all persons, firms and corporations having contracts with Burke, LLC, or with subcontractors and all just claims due them under the provisions of such contracts for labor performed or materials furnished in the performance of the Work on the Project, when such claims are not satisfied out of the Cost of Work, after final settlement between the Village and Burke, LLC has been made.

By:  Date: 12/6/17 By:  Date: 12/6/17
Principal Principal

By:  Date: 12/6/2017 By:  Date: 12/06/2017
Principal Principal

By:  Date: 12/6/17 By:  Date: 12/06/17
Principal Principal

By:  Date: 12-10/17 By:  Date: 12/6/2017
Principal Principal



MCCD Prairie Path and Town Park Kiosks
Algonquin, Illinois

Exhibit A - Summary Schedule of Values



Item

Contract Value

	\$	65,382
MCCD Trail Kiosk		<hr/>
Foundation, Concrete Core, and Installation	\$	7,000
Kiosk Frame and Roof	\$	10,500
Masonry	\$	3,250
Electrical Work	\$	1,900
Screen and Equipment (2 EA)	\$	28,482
Restoration	\$	1,250
Design Services	\$	4,500
Construction Management	\$	5,000
General Conditions (Insurance OH and Profit)	\$	3,500
Town Park Kiosk	\$	71,082
		<hr/>
Foundation, Concrete Core, and Installation	\$	7,000
Kiosk Frame and Roof	\$	10,500
Masonry	\$	3,750
Electrical Work	\$	4,500
Screen and Equipment (2 EA)	\$	28,482
Restoration	\$	3,850
Design Services	\$	4,500
Construction Management	\$	5,000
General Conditions (Insurance OH and Profit)	\$	3,500
Contract Price		\$ 136,464



MCCD TRAIL HEAD KIOSK



TOWNE PARK KIOSK

NO.	DATE	NATURE OF REVISION	CHKD.	MODEL:
FILE NAME	N:\ALGONQUIN\070273\070273.000955\Landscaping\MCCD Trailhead			

TITLE:

MCCD and
Towne Park Kiosks



MERIDIAN ORDER FORM

concept to completion.

MERIDIAN
312 S. Pine St.
Aberdeen, NC 28315

910.944.1751
866.4.KIOSKS (866.454.6757)
sales@mzero.com
www.meridiankiosks.com

Kevin Crook
Village of Algonquin

kevincrook@algonquin.org

Quote Date: 9/14/2020
Quote ID: 38425
Project ID: 43498
Rep: Bill Lindquist
Email:
bill.lindquist@mzero.com
Phone:
Fax: 910.401.1942

QUOTE IS VALID FOR 30 DAYS.

Our Message:

9/14/2020

Please find your quote. If you have any questions, please contact me at 910-944-4635. Shipping is not included in the quote.

Best regards,
Bill Lindquist
Sales Executive
910-944-4635

CATEGORY	ITEM	DESCRIPTION	WARRANTY
Outdoor Screens	Screen Orientation <i>P</i>	Portrait	N/A
Computer	Meridian Computer - i5 Processor <i>CPU-04101</i>	Intel Core i56400 2.70GHz 6MB, UV500 120GB 2.5in SATA SSD , 2 x 4GB DDR4 2666MHz Non ECC SODIMM Module, Antenna Dual- Band 2.4 / 5GHz 2dBi Omnidirectional	3 year return to depot
Powder Coat Colors	Powder Coat: TBD	Powder Coat: COLOR TBD; Powdura® Polyester TGIC Powder Coating offers excellent film appearance as well as outstanding mechanical and outdoor exposure qualities.	

Packaging	Pallet and Box Packaging - Standard	Standard pallet and cardboard shipping container w/ wrench - STANDARD	No warranty
Mzero Software	MzeroInterAct - Digital Signage Software <i>SFT-09636</i>	Mzero InterAct Interactive Digital Signage Software. Includes InterAct cloud based content management access and one-hour software training. 20% annual maintenance.	Warranty: Refer to the End User License Agreement ("EULA")
Mzero Software	MzeroManage Web Portal <i>SFT-09022</i>	One year subscription. Includes access to Mzero Manage cloud portal for one endpoint (computer). Allows users to remotely monitor kiosk state of health, manage peripherals, update content, subscribe to email alerts, access reports and analytics, and deploy system. Renewable annually.	Refer to the End User License Agreement ("EULA")
Mzero Software	MzeroPlatform Setup <i>SFT-09654</i>	Sold with each Mzero License for setup and load of the software.	
Mzero Software	MzeroPlatform Software <i>SFT-09007</i>	Mzero Platform kiosk software for Self Service Terminals. Provides security for public space deployment, integration of hardware peripherals, Mzero Secure Web Browser. (Remote terminal monitoring with optional MZeroNet portal).	Refer to the End User License Agreement ("EULA")
Custom Services (one time fees)	Engineering Design Services <i>ENG-00100</i>	Consultative kiosk enclosure design. Non-recurring expense (NRE) based on use cases and customer requirements. Charge listed in one time fee section of quote.	N/A
Kiosks Outdoor	Outdoor Presenza - 27"- Single Sided <i>PRO27</i>	Single-sided digital signage outdoor monolith design for 27" high brightness display. Aluminum construction with side-hinged full front access. Built to IP54 specification. Includes closed-cell neoprene gaskets, compression locks, UL certified surge-protected power outlets and administrative keyboard with integrated trackball.	1 year return to depot
Outdoor Peripherals	Meridian 600W AC unit with 500W Heater <i>EPD-03093</i>	Meridian 600W AC unit with built-in 500W heater	1 year return to depot

Custom	Custom Outdoor monitor	27" Outdoor PCAP touch screen	1 year, return-to-depot
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Sub Total	\$14,241.00
Quantity	4
Subtotal	\$56,964.00
Shipping fee	\$0.00
One time fee	\$2,800.00
Discount	\$4,000.00
GRAND TOTAL	\$55,764.00

Note: Production will not begin until payment is received or credit application has been approved. Purchase Agreement must be completed to begin the order process. Final Payment must be received before units ship unless terms have been established

Terms & Conditions:

DELIVERY

Any delays in receipt of Customer consigned equipment will cause equal or greater delays in Meridian delivery; All Customer consigned equipment must be received at Meridian factory no later than two (2) weeks prior to delivery date; Any delay in receipt of necessary information from Customers or changes in ordering by Customers, will result in delay of delivery. Meridian is not responsible for this delay and additional time will be added for delivery.

SHIPPING

Quote does not include freight charges unless specified. Freight quotes are estimated for budgeting purposes only; Meridian is not responsible for fluctuations in price for shipping; Meridian is not responsible for damage during shipping or delays in shipping out of the direct control of Meridian; Quotes are valid for thirty (30) days.

Shipping address will be verified after order is processed. Address changes must be in writing at least 7 days prior to shipment. Charges incurred for re-routing shipments will be invoiced to the customer and due upon receipt.

CUSTOMER SUPPLIED COMPONENTS

If an RMA (returned merchandise authorization) on a CSC is required, the customer has two options:

- Pay a \$65 tech fee plus the shipping costs
- Customer handles the RMA

CHANGE ORDER FEE/MERIDIAN SHOP RATE

Meridian will add a \$50 change order fee invoiced for any change(s) made after a Purchase Order has been issued. The Meridian shop rate is \$85 per hour and CAD fees are \$150 per hour. This will be applied if additional design is required after the Purchase Order has been received.

ORDER INSTRUCTIONS

To purchase, please sign below and fax this Order Form to _____ or send a pdf file of this Order Form by e-mail to _____ with a purchase order or credit card information.

PAYMENT

You agree to pay Meridian the fees stated on this Order Form under the terms of the Agreement. Meridian will invoice you for these fees upon the execution of this Order Form or as otherwise agreed to in this Order Form or the Agreement. Payments made by credit card will incur a 4% fee for domestic orders and 6% fee for international shipments (including Canada). Payments made by credit card for orders under \$50 will incur a 7% fee.

ORDERING ADDITIONAL HARDWARE, SOFTWARE OR SERVICES

You may order additional quantities of the Hardware, Software or Services as described in the Purchase Summary by issuing purchase order(s) to Meridian specifying the ordered items and referencing this

Order Form by date. By doing so, you agree that each additional order is governed exclusively by the terms of this Order Form and the Agreement.

SOFTWARE RENEWALS

A 20% software maintenance fee will be billed to the Customer annually, starting at the end of Year 1. Excluded products include: MzeroPlatform (secure browser), which is a one-time fee, MzeroCreate (software development kit), which is a one time fee, and MzeroManage (remote management), which is a set annual fee.

Each party has executed this Order Form by its duly authorized representative.

TERMS & CONDITIONS

This Order Form incorporates the Meridian Basic Ordering agreement, view BOA by clicking [here](#) and the End User License Agreement ("EULA") view EULA by clicking [here](#)

By signing below, you acknowledge that you have read, understand, and agree to the terms of Meridian's Basic Order and End User License Agreement.

Printed Name: _____

Title: _____

Company: _____

Signature: _____

Date: _____



T 910.944.1751 T 866.4.KIOSKS (866.454.6757) F 910.401.1942

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VILLAGE OF ALGONQUIN
PUBLIC WORKS DEPARTMENT

– M E M O R A N D U M –

DATE: October 1, 2020

TO: Tim Schloneger, Village Manager
Committee of the Whole

FROM: Robert G. Mitchard, Public Works Director

SUBJECT: Ratt Creek Reach 5 Utilities Relocation Engineering Plans

Tim, attached you will find the Master Agreement Work Order Form for Consulting Engineering Services from Christopher B. Burke LLC for the provision of field work and engineering plans and specifications for the relocation of Utilities that run under the High Hill Dam and Stormwater Detention/Natural Area south of Harnish Drive. The cost for this geotechnical analysis, topographic survey, land acquisition, permitting, and engineering work totals \$149,140.00.

The overall construction project involves the relocation and rehabilitation of approximately 3,000 linear feet of 15-inch sanitary sewer mainlines on the north side of the creek, abandoning and plugging the sanitary mainline sewer within Ratt Creek, with the proposed 15-inch sanitary sewer being installed via trenchless methods. The 15-inch mainline will be constructed outside of the floodplain and all existing laterals that cross the creek will be lined in place from the downstream manhole to the upstream manhole.

The proposed lining contract, both up-pipe and down-pipe of this work will be pursued separately by the Village; no tasks or fees have been included for this work in this proposal, which consists of lining the existing 15-inch mainline sanitary sewer and all 8-inch laterals that cross the creek from the downstream manhole to the upstream manhole. This work also includes lining and adjusting the rim elevations of the existing mainline manholes located within in the floodplain.

Currently, in the Capital Improvement Budgets within the Water and Sewer Improvement Fund, we have \$500,000.00 budgeted for water and sewer improvements in the Terrace Hill Subdivision Road Rehab project, of which we have only used approximately \$130,000.00 this fiscal year, as much of the work was completed and paid out in the prior fiscal year. We plan to use a portion of that money for this project, and then fund the actual construction in the next fiscal year.

We recommend that the Committee of the Whole take the necessary action on the contract with Christopher B. Burke, LLC in the amount of \$149,140.00 and move that motion on to the Village Board of Trustees for approval.

Work will begin as soon as the agreement is approved. The work is anticipated to be completed by the end of the fiscal year, if not sooner. Easement acquisitions may take a significant amount of effort and time, however, prior to construction.

Consulting Engineering
Master Agreement Work Order Form

I. Incorporation of Master Agreement

All terms and conditions contained within the Village Engineer Master Agreement executed between the parties shall be applicable to the work to be performed under this Work Order and shall be deemed to be fully incorporated as if fully set forth herein.

II. Project Understanding

A. General Understanding/Assumptions

CBBEL understands that the Village would like to improve the existing sanitary sewer system located along Ratt Creek between Hanson Road to the outfall to the east between Edgewood Drive and Beach Drive. This includes the project being completed in two phases per our Technical Memorandum dated June 18, 2020, with the assumptions stated below.

- The construction of approximately 3,000 linear feet of 15-inch sanitary sewer mainlines on the north side of the creek, abandoning and plugging the sanitary mainline sewer within Ratt Creek, with the proposed 15-inch sanitary sewer being installed via trenchless methods. The 15-inch mainline will be constructed outside of the floodplain and all existing laterals that cross the creek will be lined in place from the downstream manhole to the upstream manhole.
- It is our understanding that the proposed lining contract will be pursued separately by the Village; no tasks or fees have been included for this work in this proposal, which consists of lining the existing 15-inch mainline sanitary sewer and all 8-inch laterals that cross the creek from the downstream manhole to the upstream manhole. This work also includes lining and adjusting the rim elevations of the existing mainline manholes located within in the floodplain.

B. Design Criteria
Village/IDOT

III. Scope of Services

A. Survey and Geotechnical Services

Task A.1 – Geotechnical Investigation

CBBEL will retain Rubino Engineering, Inc. (Rubino) to perform three (3) soil borings to a depth of 25 feet within the sanitary sewer relocation limits to determine the existing soil characteristics and analyze the sideslopes of the proposed trenches. The soil borings and environmental testing will be compiled into a geotechnical report which will provide recommendations for subgrade preparation and cut/fill recommendations, utility installation and backfill recommendations, trench box lateral earth pressures, dewatering, and handling of soil to be disposed of off-site. Rubino will also complete an LPC-663 for material testing to check for compliance with the Clean Construction Demolition Debris (CCDD).

Task A.2 – Evaluation of Geotechnical Report

CBBEL and Village Staff will evaluate the geotechnical report to verify the proposed scope of work (trenchless installation) and review the soil analytics based on the Village's budget.

Task A.3 – Additional Survey

CBBEL will perform full topographic survey along the proposed alignment of the sanitary sewer relocation as shown in the Ratt Creek Reach 5 – Utilities Concept Study Technical Memorandum dated June 18, 2020. Topographic survey will extend 25 feet on each side of the sewer alignment for approximately 3,000 linear feet.

1. Horizontal Control: Utilizing state plane coordinates, CBBEL will tie into NGS Monumentation control utilizing state of the art GPS equipment. Horizontal Datum will correlate with established/existing NGS control monuments (NAD '83, Illinois East Zone 1201).
2. Vertical Control: Establish site benchmarks for construction purposes, tied to the NGS control monuments NAVD '88 Vertical Datum. State-of-the-art G.P.S. equipment will be used to establish benchmarks and assign a vertical datum on the horizontal control points. This will be based on GPS observed NAVD '88 Vertical Datum.
3. CBBEL will field locate all pavements, driveways, bike path, curb and gutters, pavement markings, signs, manholes, utility vaults, drainage structures, utilities, driveway culverts, crossroad culverts, etc. within the project limits. Field location of all above ground utilities including, but not limited to water, sanitary sewer, storm sewer, telephone, electric, cable and gas, etc. Identify size, type, rim, and invert elevations.
4. Location of all isolated trees of 6-inch caliper or greater to be surveyed within Project Area, & Tree Line only of forested areas. Provide tree size, location, and elevation on survey.
5. Office calculations and plotting of field and record data.
6. Cross Sections: CBBEL will survey cross sections along the project limits at 50' intervals, at driveways, and at all other grade controlling features.
7. Utility Survey and Coordination: All existing storm and sanitary sewers will be surveyed to determine rim elevations. Above ground facilities of any additional underground utilities including water main, gas, electric, cable, etc. will also be located. No JULIE Utility Survey Coordination is included in this task.
8. Office contouring of field data and one-foot contour intervals.
9. Drafting of an Existing Conditions Plan at a scale of 1"=20'.

Base Mapping: CBBEL will compile all of the above information onto one base map at 1"=20' scale that is representative of existing conditions for use as the base sheet for the

construction of any public or private infrastructure subsequent to the findings of engineering/drainage.

Task A.4 – Refinement of 15-Inch Sanitary Sewer Alignment

CBBEL will refine the alignment of the proposed sanitary sewer mainline to finalize the alignment and try to reduce the number of Permanent Easements. For the purpose of the proposal, we believe 12 Permanent Easements will be required for this project.

Task A.5 – Meeting with Village to Finalize Sanitary Sewer Alignment

Upon refinement of the proposed sanitary sewer mainline alignment, CBBEL will meet with the Village to finalize the alignment based on Village input. CBBEL will prepare full size color exhibits showing the proposed alignment with a revised cost estimate to be presented to the Village.

Task A.6 – Preparation of (up to) 10 Temporary Easements and (up to) 12 Permanent Easements

CBBEL will complete the Easement Exhibits and Legal Descriptions assuming 11 Residential and 1 School site properties:

1. Initial coordination with Client.
2. Research with the McHenry County Recorder's Office.
3. Field survey to establish the existing boundaries of the subject parcels.
4. Office calculations and plotting of field and record data.
5. CAD drafting of the easement exhibits for the proposed easement areas.
6. Write legal descriptions for the proposed easement areas.
7. Final review and submittal by an Illinois Professional Land Surveyor.

This task also includes the preparation of Temporary Construction Easements for access to the construction site. CBBEL assumes a maximum of 10 Temporary Construction Easements will be required, which will be determined during Task A.4.

B. Engineering Services

Task B.1 – Plans, Specifications and Estimates

CBBEL will prepare engineering plans, specifications and estimates utilizing local funds for the following sheets:

- Cover Sheet
- General Notes Sheets
- Summary of Quantities
- Alignment Ties and Benchmarks
- Tree Schedule
- Existing and Removal Sheets
- Sanitary Sewer Plan and Profile Sheets
- Landscape and Restoration Sheets
- Soil Erosion and Sediment Control Sheets

Task B.2 – Permits

The proposed maintenance to the sanitary sewer will include work within the Zone A floodplain associated with Ratt Creek and within limits of an identified wetland. It is anticipated that the maintenance for 3,000 linear feet of sewer will disturb a maximum of

60,000 square feet of area (assuming 20-foot-wide excavation, if necessary, for the entire length). Therefore, the following agencies and permitting conditions apply to this project:

- Illinois Department of Natural Resources – Office of Water Resources (IDNR-OWR): This work is authorized under self-issuing Statewide Permit No. 8 provided the special conditions are met. The applicable special conditions of this permit shall be followed and include a minimum of three feet of cover for crossings directly under the streambed **not** encased in concrete, disturbance of streamside vegetation shall be kept to a minimum during construction and all disturbed areas shall be restored to existing conditions with no change to existing contours. CBBEL will follow these special conditions such the requirement of the self-issuing permit is fulfilled, and no formal permit submittal is required to IDNR-OWR.
- Illinois Environmental Protection Agency (IEPA) – NPDES Permit for Construction Activities: It is anticipated that the disturbed area will be over 1 acre given that the sanitary sewer is installed using trenchless methods (due to the numerous large pits required) through the entire 3,000 linear feet.
- Village of Algonquin – (Kane County tabular Submittal): Not required as the proposed improvements are considered maintenance of an existing sanitary sewer, there is no new impervious area, there is no known flooding or drainage issues in the area and the hydrologically disturbed area is less than 3 acres.
- Illinois Environmental Protection Agency (IEPA) – Sanitary Sewer Construction Permit for constructing a sanitary sewer on a different alignment than the existing pipe.

Task B.2.A: Corps Permit Application (AES)

- AES understands that sanitary sewer work within Ratt Creek Reach 5 in Algonquin, Illinois must first occur before the proposed Ratt Creek Reach 5 Stream Restoration Project can begin. AES also understands based on email correspondence with the Corps on June 24, 2019 that Corps Permit #LRC 2019-584 that was obtain by AES for the Ratt Creek Reach 5 Restoration Project does not cover the proposed sanitary sewer work and that a Corps Permit Application must be submitted under either RP 8 and/or RP 9.
- AES will prepare a Corps/IEPA Joint Application for the proposed Ratt Creek Reach 5 Sanitary Sewer Project under RP 8 and/or RP 9. AES understands that CBBEL will prepare all required design plans, calculate relevant wetland impacts, etc. and submit to AES for use in the Corps Permit Application. AES may also request that engineering related sections of the Corps Permit Application be completed by CBBEL. AES also anticipates meeting the Corps project manager on site for a pre-application meeting to discuss project details and respond to Corps' requests for additional information. Note that a Wetland Delineation Report dated April 2019 was completed by AES and will be used in the Corps Permit Application.

This task also includes development of monthly progress reports which will be submitted to the Village each month in conjunction with submittal of project invoices.

C. Meetings/Coordination

CBBEL will coordinate the project with the Village and residents throughout the design. It is anticipated that four (4) coordination meetings will be required.

D. Deliverables

PDF of the final plans, specifications, and cost estimates, as well as the easement documents.

IV. Man-Hour & Fee Summary

A. Engineering Services

Task A.1 – Geotechnical Investigation

Rubino Engineering, Inc. = **\$8,100**

Task A.2 – Evaluation of Geotechnical Report

Engineer VI 2 hrs x \$190/hr = \$ 380

Engineer III 8 hrs x \$125/hr = \$1,000

\$1,380

Task A.3 – Additional Survey

Survey V 4 hrs x \$165/hr = \$ 660

Survey IV 8 hrs x \$160/hr = \$1,280

Survey III 8 hrs x \$155/hr = \$1,240

Survey II 32 hrs x \$115/hr = \$3,680

Survey I 32 hrs x \$90/hr = \$2,880

CAD Manager 20 hrs x \$160/hr = \$3,200

\$12,940

Task A.4 – Refinement of the 15-Inch Sanitary Sewer Alignment

Engineer VI 4 hrs x \$190/hr = \$ 760

Engineer V 16 hrs x \$175/hr = \$ 2,800

Engineer III 48 hrs x \$125/hr = \$ 6,000

CAD Manager 24 hrs x \$160/hr = \$ 3,840

\$ 13,400

Task A.5 – Meeting with Village to Finalize Sanitary Sewer Alignment

Engineer VI 5 hrs x \$190/hr = \$ 950

Engineer V 10 hrs x \$175/hr = \$ 1,750

Engineer III 15 hrs x \$125/hr = \$ 1,875

CAD Manager 5 hrs x \$160/hr = \$ 800

\$ 5,375

Task A.6 – Preparation of 10 Temporary Easements and 12 Permanent Easements

Survey V 12 hrs x \$165/hr = \$ 1,980

Survey IV 54 hrs x \$160/hr = \$ 8,640

Survey III 8 hrs x \$155/hr = \$ 1,240

Survey II 48 hrs x \$115/hr = \$ 5,520

Survey I 48 hrs x \$90/hr = \$ 4,320

CAD Manager 72 hrs x \$160/hr = \$11,520

\$33,220

Subtotal Task A **\$74,415**

Task B.1 – Plans, Specifications & Estimates

Engineer VI	5 hrs x \$190/hr	=	\$ 950
Engineer V	25 hrs x \$175/hr	=	\$ 4,375
Engineer III	200 hrs x \$125/hr	=	\$25,000
CAD Manager	50 hrs x \$160/hr	=	<u>\$ 8,000</u>
			\$38,325

Task B.2 – Permits

Engineer IV	30 hrs x \$145/hr	=	\$4,350
Engineer III	30 hrs x \$125/hr	=	<u>\$3,750</u>
			\$8,100

Task B.2.A – Permits

Applied Ecological Services (AES) = **\$3,500**

Subtotal Task B **\$49,925**

C. Meetings/Coordination

Engineer VI	20 hrs x \$190/hr	=	\$3,800
Engineer V	40 hrs x \$175/hr	=	\$7,000
Engineer III	40 hrs x \$125/hr	=	<u>\$5,000</u>

Subtotal Task C **\$15,800**

D. Deliverables/Direct Costs

Surveying Expenses			\$ 500
Engineering Expenses			\$1,000
Permitting Expenses			<u>\$7,500</u>

Subtotal Task D **\$9,000**

PROJECT TOTAL **\$149,140**

VILLAGE OF ALGONQUIN

Accepted by: _____

Title: _____

Date: _____

CHRISTOPHER B. BURKE ENGINEERING, LTD.

Accepted by:  _____

Title: President

Date: 9/10/2020

CHRISTOPHER B. BURKE ENGINEERING, LTD.

STANDARD CHARGES FOR PROFESSIONAL SERVICES
VILLAGE OF ALGONQUIN

<u>Personnel</u>	<u>Charges</u> <u>(\$/Hr)</u>
Principal	210
Engineer VI.....	190
Engineer V	175
Engineer IV	145
Engineer III	125
Engineer I/II.....	100
Survey V	165
Survey IV	160
Survey III	155
Survey II.....	115
Survey I.....	90
Engineering Technician V	160
Engineering Technician IV	130
Engineering Technician III	140
Engineering Technician I/II	87
CAD Manager	160
Assistant CAD Manager	135
CAD II	125
GIS Specialist III.....	130
GIS Specialist I/II	85
Landscape Architect.....	150
Environmental Resource Specialist V.....	160
Environmental Resource Specialist IV	140
Environmental Resource Specialist III	110
Environmental Resource Specialist II.....	85
Environmental Resource Technician	100
Administrative.....	95
Engineering Intern	46

Updated January 8, 2020



VILLAGE OF ALGONQUIN
PUBLIC WORKS DEPARTMENT

– M E M O R A N D U M –

DATE: October 3, 2020

TO: Tim Schloneger, Village Manager
Committee of the Whole

FROM: Robert G. Mitchard, Public Works Director

SUBJECT: Resolution for Federal Participation in the Main Street Roundabout and
Harrison Street Bike Lane Plan

Tim, attached you will find a draft resolution committing local funding participation in the Main Street Roundabout and Harrison Street Bike Lane Plan. I have also included the site map, the BLR (Bureau of Local Roads) form IDOT approval, and the GATA reporting addenda from the McHenry County Council of Mayors.

Please place this resolution on the next COTW agenda for consideration by the elected officials. This is just a housekeeping item to move this project forward to the State letting early in 2021. Thank you for supporting this important improvement to the downtown area.

DRAFT RESOLUTION _-_-

A RESOLUTION AUTHORIZING EXECUTION OF A PUBLIC AGENCY AGREEMENT WITH THE ILLINOIS DEPARTMENT OF TRANSPORTATION FOR FEDERAL PARTICIPATION IN THE MAIN STREET ROUNDABOUT AND HARRISON STREET BIKE LANES PLAN

WHEREAS, the Village of Algonquin, McHenry County, Illinois and the State of Illinois Department of Transportation plan to implement the Main Street Roundabout and Harrison Street bike lanes construction plan in Algonquin, Illinois; and

WHEREAS, it is necessary for the Village and State to enter into an agreement to receive Federal participation in the funding for the subject project.

NOW, THEREFORE, BE IT RESOLVED by the Village President and Village Board of the Village of Algonquin, Illinois, that the Village President is authorized to execute a Local Public Agency Agreement with the Illinois Department of Transportation for Federal participation in construction of the Main Street Roundabout and Harrison Street bike lanes construction plan, Project No. I3LE(630), Section 16-00090-02-PV; and

BE IT FURTHER RESOLVED that the Village has appropriated FOUR MILLION THREE THOUSAND TWO HUNDRED DOLLARS, (\$4,003,200.00) or as much may be needed to match federal funds in the completion of the project; and

BE IT FURTHER RESOLVED that the Village Clerk is hereby directed to transmit five certified copies of this resolution to the Illinois Department of Transportation.

ADOPTED the ___ day of October, 2020.

Village President

ATTEST:

Village Clerk



LOCAL PUBLIC AGENCY

Local Public Agency: Village of Algonquin; County: McHenry; Section Number: 16-00090-02-PV; Fund Type: STP and TAP; ITEP, SRTS, HSIP Number(s): 142029; MPO Name: CMAP; MPO TIP Number: 11-18-0016

This Agreement is made and entered into between the above local public agency, hereinafter referred to as the "LPA" and the State of Illinois, acting by and through its Department of Transportation, hereinafter referred to as "STATE".

LOCATION

Local Street/Road Name: (see below in Project Description); Key Route: (see below); Length: 1.35 mi.; Stationing: From (see below) To (see below); Location Termini: Harrison Street at the Prairie Trail to Main Street at IL 31

PROJECT DESCRIPTION

The bike path will connect an existing multi-use path at IL 31 to the Prairie Trail. The bike lane will convert to sharrows along Park St. to Riverview Dr. The intersection of Cary/Main will be converted to a roundabout.

LOCAL PUBLIC AGENCY APPROPRIATION - REQUIRED FOR STATE LET CONTRACTS

By execution of this Agreement the LPA attests that sufficient moneys have been appropriated or reserved by resolution or ordinance to fund the LPA share of project costs.

METHOD OF FINANCING - (State-Let Contract Work Only)

Check One: [] METHOD A - Lump Sum (80% of LPA Obligation); [] METHOD B - Monthly Payments; [x] METHOD C - LPA's Share \$4,003,200.00 divided by estimated total cost multiplied by actual progress payment.

Progress Payments - Upon receipt of the contractor's first and subsequent progressive bills for this improvement, the **LPA** will pay to the **STATE** within thirty (30) calendar days of receipt, an amount equal to the **LPA's** share of the construction cost divided by the estimated total cost multiplied by the actual payment (appropriately adjust for nonparticipating costs) made to the contractor until the entire obligation incurred under this agreement has been paid.

Failure to remit the payment(s) in a timely manner as required under Methods A, B, or C shall allow the **STATE** to internally offset, reduce, or deduct the arrearage from any payment or reimbursement due or about to become due and payable from the **STATE** to the **LPA** on this or any other contract. The **STATE** at its sole option, upon notice to the **LPA**, may place the debit into the Illinois Comptroller's Offset System (15 ILCS 405/10.05) or take such other and further action as may be required to recover the debt.

THE LPA AGREES:

1. To acquire in its name, or in the name of the **STATE** if on the **STATE** highway system, all right-of-way necessary for this project in accordance with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and established State policies and procedures. Prior to advertising for bids, the **LPA** shall certify to the **STATE** that all requirements of Titles II and III of said Uniform Act have been satisfied. The disposition of encroachments, if any, will be cooperatively determined by representatives of the **LPA**, the **STATE**, and the **FHWA** if required.
2. To provide for all utility adjustments and to regulate the use of the right-of-way of this improvement by utilities, public and private, in accordance with the current Utility Accommodation Policy for Local Public Agency Highway and Street Systems.
3. To provide for surveys and the preparation of plans for the proposed improvement and engineering supervision during construction of the proposed improvement.
4. To retain jurisdiction of the completed improvement unless specified otherwise by addendum (addendum should be accompanied by a location map). If the improvement location is currently under road district jurisdiction, a jurisdictional addendum is required.
5. To maintain or cause to be maintained the completed improvement (or that portion within its jurisdiction as established by addendum referred to in item 4 above) in a manner satisfactory to the **STATE** and the **FHWA**.
6. To comply with all applicable Executive Orders and Federal Highway Acts pursuant to the Equal Employment Opportunity and Nondiscrimination Regulations required by the U.S. Department of Transportation.
7. To maintain for a minimum of 3 years after final project close out by the **STATE**, adequate books, records and supporting documents to verify the amounts, recipients and uses of all disbursements of funds passing in conjunction with the contract. The contract and all books, records, and supporting documents related to the contract shall be available for review and audit by the Auditor General and the **STATE**. The **LPA** agrees to cooperate fully with any audit conducted by the Auditor General, the **STATE**, and to provide full access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this section shall establish presumption in favor of the **STATE** for recovery of any funds paid by the **STATE** under the contract for which adequate books, records and supporting documentation are not available to support their purported disbursement.
8. To provide if required, for the improvement of any railroad-highway grade crossing and rail crossing protection within the limits of the proposed improvement.
9. To comply with Federal requirements or possibly lose (partial or total) Federal participation as determined by the **FHWA**.
10. (Local Contracts or Day Labor) To provide or cause to be provided all of the initial funding, equipment, labor, material and services necessary to complete the project.
11. (Preliminary Engineering) In the event that right-of-way acquisition for, or construction of, the project for which this preliminary engineering is undertaken with Federal participation is not started by the close of the tenth fiscal year following **FHWA** authorization, the **LPA** will repay the **STATE** any Federal funds received under the terms of this agreement.
12. (Right-of-Way Acquisition) In the event construction has not commenced by the close of the twentieth fiscal year following **FHWA** authorization using right-of-way acquired this agreement, the **LPA** will repay the **STATE** any Federal Funds received under the terms of this agreement.
13. (Railroad Related Work) The **LPA** is responsible for the payment of the railroad related expenses in accordance with the **LPA/** railroad agreement prior to requesting reimbursement from the **STATE**. Requests for reimbursement should be sent to the appropriate IDOT District Bureau of Local Roads and Streets Office. Engineer's Payment Estimates shall be in accordance with the Division of Cost.
14. Certifies to the best of its knowledge and belief that its officials:
 - a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
 - b. have not within a three-year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements receiving stolen property;
 - c. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, Local) with commission of any of the offenses enumerated in item (b) of this certification; and
 - d. have not within a three-year period preceding the agreement had one or more public transactions (Federal, State, Local) terminated for cause or default.
15. To include the certifications, listed in item 14 above, and all other certifications required by State statutes, in every contract, including procurement of materials and leases of equipment.
16. (**STATE** Contracts). That execution of this agreement constitutes the **LPA's** concurrence in the award of the construction contract to the responsible low bidder as determined by the **STATE**.
17. That for agreements exceeding \$100,000 in federal funds, execution of this agreement constitutes the **LPA's** certification that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or any employee of a member of congress in connection with the awarding of any federal contract, the making of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress or an employee of a member of congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard form - LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
 - c. The LPA shall require that the language of this certification be included in the award documents for all subawards (including subcontracts, subgrants and contracts under grants, loans and cooperative agreements), and that all subrecipients shall certify and disclose accordingly.
18. To regulate parking and traffic in accordance with the approved project report.
 19. To regulate encroachments on public rights-of-way in accordance with current Illinois Compiled Statutes.
 20. To regulate the discharge of sanitary sewage into any storm water drainage system constructed with this improvement in accordance with the current Illinois Compiled Statutes.
 21. To comply with the federal Financial Integrity Review and Evaluation (FIRE) program, which requires States and subrecipients to justify continued federal funding on inactive projects. 23 CFR 630.106(a)(5) defines an inactive project as a project in which no expenditures have been charged against federal funds for the past twelve (12) months.
 22. (Reimbursement Requests) For reimbursement requests the LPA will submit supporting documentation with each invoice. Supporting documentation is defined as verification of payment, certified time sheets or summaries, vendor invoices, vendor receipts, cost plus fix fee invoice, progress report, personnel and direct cost summaries, and other documentation supporting the requested reimbursement amount (Form BLR 05621 should be used for consultant invoicing purposes). LPA invoice requests to the STATE will be submitted with sequential invoice numbers by project.
 23. (Final Invoice) The LPA will submit to the STATE a complete and detailed final invoice with applicable supporting documentation of all incurred costs, less previous payments, no later than twelve (12) months from the date of completion of work or from the date of the previous invoice, which ever occurs first. If a final invoice is not received within this time frame, the most recent invoice may be considered the final invoice and the obligation of the funds closed. Form BLR 05613 (Engineering Payment Record) is required to be submitted with the final invoice on the engineering projects.
 24. (Project Closeout) The LPA shall provide the final report to the appropriate STATE district office within twelve (12) months of the physical completion date of the project so that the report may be audited and approved for payment. If the deadline cannot be met, a written explanation must be provided to the district prior to the end of the twelve (12) months documenting the reason and the new anticipated date of completion. If the extended deadline is not met, this process must be repeated until the project is closed. Failure to follow this process may result in the immediate close-out of the project and loss of further funding.
 25. (Project End Date) For Preliminary Engineering projects the end date is ten (10) years from the execution date of the agreement. For Right-of-Way projects the end date is fifteen (15) years from the execution date of the agreement. For Construction projects the end date is five (5) years for projects under \$1,000,000 or seven (7) years for projects over \$1,000,000 from the execution date of the agreement. Requests for time extensions and joint agreement amendments must be received and approved prior to expiration of the project end date. Failure to extend the end date may result in the immediate close-out of the project and loss of further funding.
 26. (Single Audit Requirements) That if the LPA expends \$750,000 or more a year in federal financial assistance they shall have an audit made in accordance with 2 CFR 200. LPA's expending less than \$750,000 a year shall be exempt from compliance. A copy of the audit report must be submitted to the STATE (Office of Internal Audit, Room 201, 2300 South Dirksen Parkway, Springfield, Illinois, 62764) within 30 days after the completion of the audit, but no later than one year after the end of the LPA's fiscal year. The CFDA number for all highway planning and construction activities is 20.205.
 27. That the LPA is required to register with the System for Award Management or SAM, which is a web-enabled government-wide application that collects, validates, stores, and disseminates business information about the federal government's trading partners in support of the contract award and the electronic payment processes. To register or renew, please use the following website: <https://www.sam.gov/SAM/>
 28. (Required Uniform Reporting) To comply with the Grant Accountability and Transparency Act (30 ILCS 708) that requires a uniform reporting of expenditures. Uniform reports of expenditures shall be reported no less than quarterly using IDOT's BoBS 2832 form available on IDOT's web page under the "Resources" tab. Additional reporting frequency may be required based upon specific conditions, as listed in the accepted Notice of State Award (NOSA). Specific conditions are based upon the award recipient/grantee's responses to the Fiscal and Administrative Risk Assessment (ICQ) and the Programmatic Risk Assessment (PRA).

NOTE: Under the terms of the Grant Funds Recovery Act (30 ILCS 705/4.1), "Grantor agencies may withhold or suspend the distribution of grant funds for failure to file requirement reports" if the report is more than 30 calendar days delinquent, without any approved written explanation by the grantee, the entity will be placed on the Illinois Stop Payment List. (Refer to the Grantee Compliance Enforcement System for detail about the Illinois Stop Payment List: <https://www.illinois.gov/sites/GATA/Pages/ResourceLibrary.aspx>)

THE STATE AGREES:

1. To provide such guidance, assistance, and supervision to monitor and perform audits to the extent necessary to assure validity of the LPA's certification of compliance with Title II and III Requirements.
2. (State Contracts) To receive bids for construction of the proposed improvement when the plans have been approved by the

STATE (and **FHWA**, if required) and to award a contract for construction of the proposed improvement after receipt of a satisfactory bid.

3. (Day Labor) To authorize the **LPA** to proceed with the construction of the improvement when agreed unit prices are approved, and to reimburse the **LPA** for that portion of the cost payable from Federal and/or State funds based on the agreed unit prices and engineer's pay estimates in accordance with the division of cost page.
4. (Local Contracts) For agreements with federal and/or state funds in engineering, right-of-way, utility work and/or construction work:
 - a. To reimburse the **LPA** for federal and/or state share on the basis of periodic billings, provided said billings contain sufficient cost information and show evidence of payments by the **LPA**;
 - b. To provide independent assurance sampling and furnish off-site material inspection and testing at sources normally visited by **STATE** inspectors for steel, cement, aggregate, structural steel, and other materials customarily tested by the **STATE**.

IT IS MUTUALLY AGREED:

1. Construction of the project will utilize domestic steel as required by Section 106.01 of the current edition of the Standard Specifications for Road and Bridge Construction and federal Buy America provisions.
2. That this Agreement and the covenants contained herein shall become null and void in the event that the **FHWA** does not approve the proposed improvement for Federal-aid participation within one (1) year of the date of execution of this agreement.
3. This agreement shall be binding upon the parties, their successors and assigns.
4. For contracts awarded by the **LPA**, the **LPA** shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any USDOT - assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The **LPA** shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of USDOT - assisted contracts. The **LPA's** DBE program, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this agreement. Upon notification to the recipient of its failure to carry out its approved program, the **STATE** may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S. C 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C 3801 et seq.). In the absence of a USDOT - approved **LPA** DBE Program or on state awarded contracts, this agreement shall be administered under the provisions of the **STATE'S** USDOT approved Disadvantaged Business Enterprise Program.
5. In cases where the **STATE** is reimbursing the **LPA**, obligation of the **STATE** shall cease immediately without penalty or further payment being required if, in any fiscal year, the Illinois General Assembly or applicable federal funding source fails to appropriate or otherwise make available funds for the work contemplated herein.
6. All projects for the construction of fixed works which are financed in whole or in part with funds provided by this agreement and/or amendment shall be subject to the Prevailing Wage Act (820 ILCS 130/0.01 et seq.) unless the provisions of the act exempt its application.

ADDENDA

Additional information and/or stipulations are hereby attached and identified below as being a part of this agreement.

	1.	Location Map
	2.	Division of Cost
-	3.	LPA Funding Authorization Resolution
-	4.	GATA Reporting
-		

Add Row

The LPA further agrees as a condition of payment, that it accepts and will comply with the applicable provisions set forth in this agreement and all Addenda indicated above.

APPROVED

Local Public Agency

Name of Official (Print or Type Name)

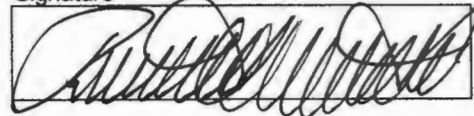
ROBERT G MITCHELL II

Title of Official

PUBLIC WORKS DIRECTOR

Signature

Date

 10/2/2020

The above signature certifies the agency's Tin number is

366005766 conducting business as a Governmental Entity.

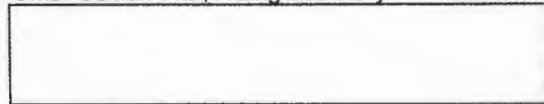
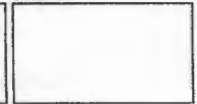
Duns Number 070161971

APPROVED

State of Illinois
Department of Transportation

Omer Osman P.E., Acting Secretary

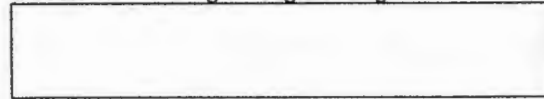

Date

By:

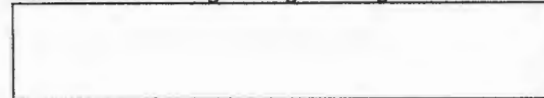
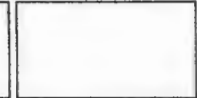
Director of Planning & Programming

Date

Director of Planning & Programming

Date

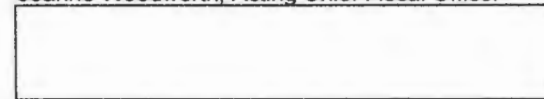

Philip C. Kaufmann, Chief Counsel

Date

Joanne Woodworth, Acting Chief Fiscal Officer

Date

NOTE: if the LPA signature is by an APPOINTED official, a resolution authorizing said appointed official to execute this agreement is required.

ADDENDA NUMBER 2

Local Public Agency Village of Algonquin	County McHenry	Section Number 16-00090-02-PV
--	--------------------------	---

Construction Job Number C-91-163-20	Project Number I3LE(630)	Engineering Job Number 	Project Number 	Right of Way Job Number 	Project Number
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DIVISION OF COST

Type of Work	Federal Funds			State Funds			Local Public Agency			Totals
	Fund Type	Amount	%	Fund Type	Amount	%	Fund Type	Amount	%	
- Participating Construction	STU	\$1,500,000.00	40.3%				Local Funds	\$2,226,600.00	59.7%	\$3,726,600.00
- Participating Construction	ITEP	\$1,196,800.00	40.3%				Local Funds	\$1,776,600.00	59.7%	\$2,973,400.00
-										
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-										
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-										
Total		\$2,696,800.00		Total			Total	\$4,003,200.00		\$6,700,000.00

Add

If funding is not a percentage of the total place an asterisk (*) in the space provided for the percentage and explain below:

NOTE: The costs shown in the Division of Cost table are approximate and subject to change. The final LPA share is dependent on the final Federal and State participation. The actual costs will be used in the final division of cost for billing and reimbursement.

Instructions for BLR 05310 - Page 1 of 3

NOTE: Form instructions should not be included when the form is submitted.

This form shall be used when a local public agency (LPA) project involves Federal-Aid, with or without state funds and this standard form is sufficient to describe all details of the agreement. For more information refer to the Bureau of Local Roads and Streets Manual (BLRS) Chapter 5. For signature requirements refer to Chapter 2, Section 3.05(b) of the BLRS manual. When filling out this form electronically, once a field is initially completed, fields requiring the same information will be auto-populated.

Local Public Agency

Name of LPA	Insert the name of the LPA																																
County	Insert the name of the county in which the LPA is located.																																
Section Number	Insert the section number applied to this project.																																
Fund Type	Insert the funding type(s) being used for this project (e.g. STU, STR, ITEP, etc.)																																
ITEP, SRTS, HSIP Number	Insert the ITEP, SRTS, HSIP number assigned to this project.																																
MPO Name	From the drop down choose the MPO in which the project is located. If the project is not located within an MPO, select N/A. Types to choose from are:																																
	<table border="0"> <tr><td>Bi-State</td><td>Bi-State Regional Commission</td></tr> <tr><td>CMAP</td><td>Chicago Metropolitan Planning Organization</td></tr> <tr><td>CUUATS</td><td>Champaign/Urbana Urban Area Transportation Study</td></tr> <tr><td>DATS</td><td>Danville Area Transportation Study</td></tr> <tr><td>DMATS</td><td>Dubuque Metropolitan Area Transportation Study</td></tr> <tr><td>DSATS</td><td>DeKalb/Sycamore Area Transportation Study</td></tr> <tr><td>DUATS</td><td>Decatur Urbanized Area Transportation Study</td></tr> <tr><td>EWGCG</td><td>East-West Gateway Council of Governments</td></tr> <tr><td>KATS</td><td>Kankakee Area Transportation Study</td></tr> <tr><td>MCRPC</td><td>McLean County Regional Planning Commission</td></tr> <tr><td>PPUATS</td><td>Peoria/Pekin Urban Area Transportation Study</td></tr> <tr><td>RPC</td><td>Region 1 Planning Council</td></tr> <tr><td>SATS</td><td>Springfield Area Transportation Study</td></tr> <tr><td>SEMPO</td><td>South East Metropolitan Planning Organization</td></tr> <tr><td>SIMPO</td><td>Southern Illinois Metropolitan Planning Organization</td></tr> <tr><td>SLATS</td><td>State Line Area Transportation Study</td></tr> </table>	Bi-State	Bi-State Regional Commission	CMAP	Chicago Metropolitan Planning Organization	CUUATS	Champaign/Urbana Urban Area Transportation Study	DATS	Danville Area Transportation Study	DMATS	Dubuque Metropolitan Area Transportation Study	DSATS	DeKalb/Sycamore Area Transportation Study	DUATS	Decatur Urbanized Area Transportation Study	EWGCG	East-West Gateway Council of Governments	KATS	Kankakee Area Transportation Study	MCRPC	McLean County Regional Planning Commission	PPUATS	Peoria/Pekin Urban Area Transportation Study	RPC	Region 1 Planning Council	SATS	Springfield Area Transportation Study	SEMPO	South East Metropolitan Planning Organization	SIMPO	Southern Illinois Metropolitan Planning Organization	SLATS	State Line Area Transportation Study
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SIMPO	Southern Illinois Metropolitan Planning Organization																																
SLATS	State Line Area Transportation Study																																
MPO Tip Number	Insert the MPO Tip Number assigned to this project, this is required for all projects located within the MPO planning boundaries if applicable. If not, insert "N/A".																																
Construction on State Letting	Check this box if the construction portion of this project will be on a state held letting.																																
Day Labor	Check this box if the project will be constructed using day labor.																																
Local Administered Engineering	Check this box if the LPA is administering the engineering locally.																																
Right-of-Way	Check this box if Right-Of-Way is part of the project.																																
Construction																																	
Job Number	Insert the job number assigned for the construction portion, the number will begin with a "C"																																
Project Number	Insert the project number assigned to the construction portion of this project.																																
Engineering																																	
Job Number	Insert the job number assigned for the engineering portion of this project.																																
Project Number	Insert the project number assigned to the engineering portion of this project.																																

Instructions for BLR 05310 - Page 2 of 3

Right-of-Way

Job Number Insert the job number assigned for Right-of-Way for the project, if applicable. The number will begin with a "R".

Project Number Insert the project number assigned to the Right-of-Way for the project, if applicable.

Location

Use the add location button to add additional locations if needed for up to a total of five location. If there are more than five locations, use various.

Local Street/Road Name

Insert the local street/ road name.

Key Route

Insert the key route of the street/road listed above.

Length

Insert the length in miles as it pertains to the location listed above. For a structure insert 0.01.

Station

From

Insert the beginning station of the project as it pertains to the key route for this location for this project.

To

Insert the ending station of the project as it pertains to the key route for this location for this project.

Location Termini

Insert the beginning and ending termini as it pertains to this location for this project.

Existing Structure Number(s)

Insert the existing structure number(s) for this project.

Add Location

Use this button to add additional locations. A total of four additional locations can be added. If there are more than 5 locations, do not add each location. Instead, insert "Various" in the first location field.

Project Description

Insert a description of the work to be accomplished by this project.

Method of Financing

This area is for state-let-contracts only. Check one.

Method A

If this box is checked insert the dollar amount equal to 80% of the LPA's total obligation.

Method B

If this box is checked insert the number of monthly payments needed to repay 80% of the LPA's estimated obligation.

Method C

If this box is checked insert the dollar amount of the LPA's share of the construction costs for this project.

For State Let Construction Projects:

Addenda

Within the Addenda table, check the box as applicable. Insert the item number of the addenda and a description of the item.

- 1. Location Map** Attach a location map to this agreement showing all locations being improved by this project.
- 2. Division of Cost** Insert the division of cost page (see separate instructions for completing this document).
- 3. LPA Appropriation Resolution** For State-Let construction projects, the LPA must pass an appropriation resolution covering the local share of the project. Attach the resolution for this appropriation.
- 4. IDOT Fiscal Approval Signature Page**

Approved

Local Public Agency

The appropriate LPA official shall insert their name, sign and date. Insert the LPA's TIN number and DUNS Number.

Illinois Dept of Transportation

The appropriate IDOT official shall sign and date here.

For Local Let Projects:

- 1. Location Map** Attach a location map to this agreement showing all locations being improved by this project.
- 2. Division of Cost** Insert the division of cost page (see separate instructions for completing this document)

For additional addenda, check this box and insert a description of the item and attach it to the agreement.

Instructions for BLR 05310 - Page 3 of 3

Approved

Local Public Agency The appropriate LPA official shall insert their name, sign, and date. Insert the LPA's TIN number and DUNS Number.

Illinois Dept of Transportation The appropriate IDOT officials shall sign and date here.

Division of Cost Table:

When the LPA desires to use one or more lump-sum amounts before the federal percentage is calculated, specify the order in which it should be used and the "not to exceed" amount. The following provides an example of the wording that may be used:

- Lump-sum \$60,000 TARP funds not to exceed 50% of final cost of project credited to the project to be utilized first.
- Lump-sum to be utilized second not to exceed \$20,000 EDP funds.
- Lump-sum to be utilized third not to exceed \$40,000 SMA funds.

These specified amounts will be used in sequence, with the federal and local percentages calculated after they are deducted.

When the LPA desires to use a percent "not to exceed" commitment, the federal and state funds will be used concurrently at the specified percentages up to the "not to exceed" amount

Example:

- Maximum STR participation 80% not to exceed \$100,000
- Lump-sum SMA not to exceed \$20,000 to be used as a match to the federal funds

Be advised that the "not to exceed" amount specified under a percentage commitment will be tied up and unavailable for programming until the project is closed out and a documentation review has been completed by IDOT or FHWA, if required.

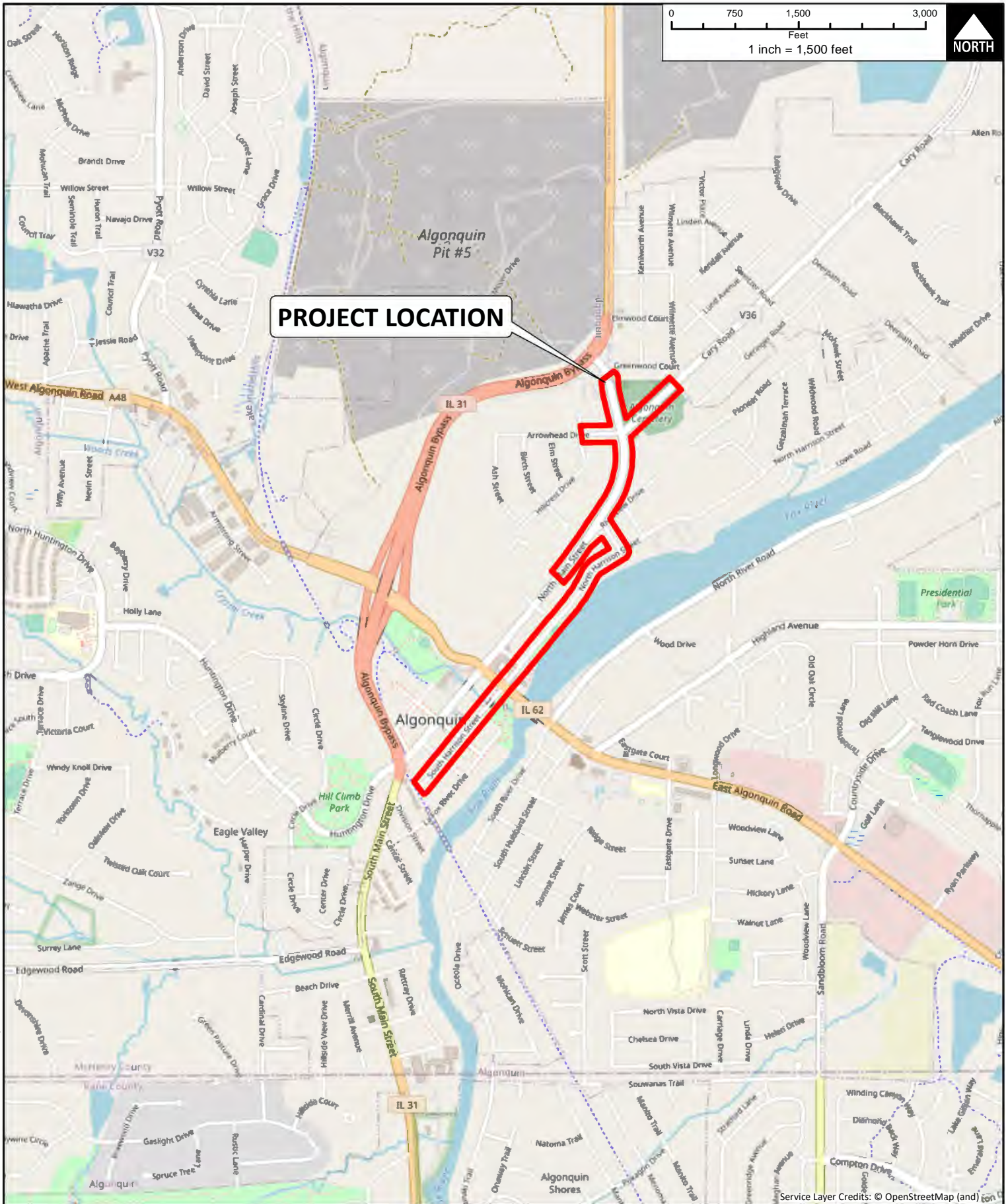
Division of Cost Table:

Use a separate line for each type of work as it relates to the fund type for federal, state and/or LPA funds.

Type of Work	Choose the type of work from the drop down list. Types to choose from are: Participating Construction, Non-Participating Construction, Preliminary Engineering, Construction Engineering, Right-of-Way, Railroads, Utilities, and Materials.
Federal Funds	If federal funds are being used on this project complete the following for federal funds.
Fund Type	Choose the type of federal fund type form the drop down.
Amount	Insert the amount of federal funds for the type listed under fund type.
%	Insert the percentage of federal funds for this type.
State Funds	If state funds are being used on this project complete the following for state funds.
Fund Type	Choose the type of State Funds from the drop down.
Amount	Insert the amount of state funds for the type listed under fund type.
%	Insert the percentage of state funds for this type.
Local Public Agency Funds	
Fund Type	Insert the type of LPA funds being used on this project.
Amount	Insert the amount of LPA funds for the type listed under fund type.
%	Insert the percentage of local funds for this type.
Explanation	Insert any necessary additional information as to how the funding is being applied for this project.

A minimum of three (3) originals executed by the LPA must be submitted to the District through its Regional Engineer's Office. Distribution will be as follows:

- District file
- Bureau of Local Roads Central Office (2)



Path: N:\ALGONQUIN\070273\070273.00095B\GIS\Exhibits\Location Map.mxd

CLIENT:
VILLAGE OF ALGONQUIN

TITLE:
**ADDENDA 1
PROJECT LOCATION MAP**

PROJ. NO. 070273.00095B
DATE: 12/01/2017
SHEET 1 OF 1
DRAWING NO.

CB CHRISTOPHER B. BURKE ENGINEERING, LTD.
9575 W. Higgins Road, Suite 600 · Rosemont, Illinois 60018 · (847) 823-0500

DSGN.		SCALE:	1:18,000
DWN.	DRW	AUTHOR:	DWALTERS
CHKD.		PLOT DATE:	10/1/2020
FILE:	Location Map		

EXH

Addendum 4

Grant Accountability and Transparency Act (GATA)

Required Uniform Reporting

The Grant Accountability and Transparency Act (30 ILCS 708), requires a uniform reporting of expenditures. Uniform reports of expenditures shall be reported no less than quarterly using IDOT's [BoBS 2832](#) form available on IDOT's web page under the "Resources" tab.

Additional reporting frequency may be required based upon specific conditions, as listed in the accepted Notice of State Award (NOSA). Specific conditions are based upon the award recipient/grantee's responses to the Fiscal and Administrative Risk Assessment (ICQ) and the Programmatic Risk Assessment (PRA).

PLEASE NOTE: Under the terms of the Grant Funds Recovery Act (30 ILCS 705/4.1), "*Grantor agencies may withhold or suspend the distribution of grant funds for failure to file requirement reports*" if the report is more than 30 calendar days delinquent, without any approved written explanation by the grantee, the entity will be placed on the Illinois Stop Payment List. (Refer to the Grantee Compliance Enforcement System for detail about the Illinois Stop Payment List: <https://www.illinois.gov/sites/GATA/Pages/ResourceLibrary.aspx>)



VILLAGE OF ALGONQUIN
PUBLIC WORKS DEPARTMENT

– M E M O R A N D U M –

DATE: October 8, 2020

TO: Bob Mitchard, Public Works Director

FROM: Steve Ludwig, General Services Superintendent

SUBJECT: Manchester Lakes Brick Pavement Replacement Recommendation

Attached you will find the design-build guaranteed maximum price proposal for the Manchester Lakes brick pavement replacement project for this year. This will cover the brick pavement replacement at Bunker Hill Dr. at Square Barn Rd, including installing a concrete subbase, replacement curbing, and associated asphalt patching. This is the west leg of the intersection, which serves as the entrance to the Manchester Lakes subdivision. The brick roadway here is substantially failed.

The design-build process allows us to engineer and construct on time, and with high quality results. Burke, LLC will handle all design, bidding, contract selection (with our approval), construction management, and communications and marketing at a guaranteed price of \$34: .97202. As part of the motivations to perform well, Burke, LLC and the Village of Algonquin share equally in any cost saving accomplished by effective contractor pricing management and construction efficiencies. We are also including an owner's allowance of \$10,000 for unforeseen costs such as failed sub-grade, extra curbing, landscaping, and the like.

There is currently \$200,000 budgeted in the Street Improvement budget for brick paver maintenance. We recommend the Committee of the Whole approve this proposal for the total amount of \$34: .97202. Work will begin as soon as able for this much-needed project.



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

OWNER: Village of Algonquin, Illinois
2200 Harnish Dr
Algonquin, IL 60102

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

PROJECT: Bunker Hill Drive Brick Paver Replacement

The project shall include the removal and replacement of the concrete retaining edge, brick pavers, and all necessary subgrade along Bunker Hill Drive between Square Barn Road and Georgetown Court. The brick pavers shall be set on an asphalt leveling pad over a 5-inch thick concrete base course. Furnishing, installing, and maintaining all traffic control devices required to close one entrance/exit at a time and redirect traffic to the opposite entrance/exit is also included in the GMP. Two-way traffic in and out of the subdivision will be maintained throughout construction. All required asphalt restoration shall be completed by Public Works.

CONTRACT DATE: October 13, 2020

GUARANTEED MAXIMUM
PRICE: \$128,750.00

SUBSTANTIAL COMPLETION DATE: November 13, 2020

ARTICLE 1 - RELATIONSHIP OF THE PARTIES

1.1 Relationship. The Relationship between the Owner and the Construction Manager with regard to the Project shall be one of good faith and fair dealing. The Construction Manager agrees to provide the design, construction, management and administration services as set forth in greater detail below.

1.2 Engineer. The Engineer for the Project is Christopher B. Burke Engineering, Ltd., a separate company and legal entity closely affiliated with the Construction Manager. The Owner, Engineer and Construction Manager had previously jointly entered into a Price and Schedule Guarantee for the Project. When fully executed, this Contract shall supersede the Owner's and Construction Manager's obligations in the Price and Schedule Guarantee, which merges into this Contract and is no longer separately enforceable.

ARTICLE 2 - DEFINITIONS

2.1 Contract Documents. The Contract Documents consist of:

.1 Change Orders and written amendments to this Contract signed by both the Owner and Construction Manager;

.2 This Contract;

.3 Village of Algonquin Standard Certifications
a. Business Organization
b. Certification of Eligibility
c. Equal Employment Opportunity
d. Illinois Prevailing Wage Act
e. Contractor's Certification
f. Apprenticeship and Training Program Certification

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

2.2 Day. A "Day" shall mean one calendar day.

2.3 Hazardous Material. A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or cleanup.

2.4 Owner. The Owner for the purposes of this Contract is the Village of Algonquin, Illinois, an Illinois municipal corporation.

2.5 Not Used.

2.6 Subcontractor. A Subcontractor is a person or entity who has an agreement with the Construction Manager to perform any portion of the Work, and includes vendors or material

suppliers but does not include the Engineer, any separate contractor employed by the Owner or any separate contractor's subcontractor.

2.7 Substantial Completion. The Owner shall determine substantial completion of the Work, or of a designated portion of the Work, occurs on the date when construction is sufficiently complete in accordance with the Contract Documents so that the Owner can begin to occupy or utilize the Project, or the designated portion, for the use for which it is intended.

2.8 Subsubcontractor. A Subsubcontractor is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's work.

2.9 The Work. The Work consists of all the construction, procurement and administration services to be performed by the Construction Manager and the Subcontractors under this Contract, as well as any other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

ARTICLE 3 - CONSTRUCTION MANAGER'S RESPONSIBILITIES

3.1 Commencement. The Construction Manager may commence the Work upon execution of this Contract. The parties contemplate that by mutual agreement, the Construction Manager may commence certain portions of the Work, such as procurement of long lead-time items, design and site preparation, prior to execution of this Contract in reliance on the Price/Schedule Guarantee.

3.2 General Requirements. The Construction Manager shall perform those portions of the Work that the Construction Manager customarily performs with its own personnel. All other portions of the Work shall be performed by Subcontractors or under other appropriate agreements with the Construction Manager. The Subcontractor selection process shall be as set forth in Article 4. The Construction Manager shall exercise reasonable skill and judgment in the performance of the Work. The Construction Manager shall give all notices and comply with all laws and ordinances legally enacted at the date of execution of this Contract which govern performance of the Work. Construction Manager is responsible for the performance of all design, design management, construction and construction management services, and providing all facilities, supplies, material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the plans and specifications.

3.3 Schedule. The Construction Manager shall maintain in written form a schedule of the Work. The schedule shall indicate the dates for the start and completion of various stages of the construction and shall be revised as required by the conditions of the Work. The schedule may contain dates when information, decisions and approvals are required from the Owner; and both the Owner and the Construction Manager agree to use their best efforts to comply with the time requirements of the schedule.

3.4 Reports. The Construction Manager shall provide monthly written reports to the Owner on the progress of the Work which shall include the current status of the Work in relation to the construction schedule as well as adjustments to the construction schedule necessary to meet the Substantial Completion date. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site,

number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner upon reasonable advance notice.

3.5 Cost Control. The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities and progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner in the monthly written reports.

3.6 Permits. The Construction Manager shall assist the Owner in securing the permits necessary for construction of the Project.

3.7 Safety. The Construction Manager shall take necessary precautions for the safety of its employees on the Project and shall comply with all applicable provisions of federal, state and local safety laws and regulations to prevent accidents or injuries to persons on or adjacent to the Project site. The Construction Manager, directly or through its Subcontractors, shall erect and properly maintain necessary safeguards for the protection of workers and the public. However, the Construction Manager shall not be responsible for the elimination or abatement of safety hazards created or otherwise resulting from any work at the Project site being performed by someone other than the Construction Manager, a Subcontractor or Subsubcontractor. The Engineer shall have no responsibility for safety programs or precautions in connection with the Work and shall not be in charge of or have any control over any construction means, methods, techniques, sequences or procedures.

Construction Manager shall take reasonable precautions for safety and shall provide reasonable protection to prevent damage, injury or loss to other property at the site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, foundations and foundation tiebacks and utilities not designated for removal, relocation or replacement in the course of construction, as well as the Work and materials and equipment on site to be incorporated into the Work.

Construction Manager assumes direct liability for all damages to private property arising from the execution of the Work by the Construction Manager or any of its Subcontractors, and agrees to promptly resolve all claims directly with the property owners.

Construction Manager agrees that Owner has the right at any time or times to withhold from any payment that may be or become due Construction Manager such amount as may reasonably appear necessary to compensate the Owner for any claims by adjacent land owner for property damage arising from the execution of the Work, and to defend and hold Owner harmless from such claims.

Construction Manager shall not be liable for existing infrastructure deficiencies on private property. It is understood by the Owner that unforeseen upgrades to existing infrastructure will be required to construct the improvements and that the Construction Manager will be paid for these upgrades either at the unit prices in the contract or on a time and materials basis. The Owner and Construction Manager will work jointly to identify, coordinate and obtain permission for all work on private property. The Owner, with input from the

construction Manager, will have the final say on what is an existing condition and what occurs as a result of the Construction Manager's actions.

3.8 Cleanup. The Construction Manager shall keep the site of the Work free from debris and waste materials resulting from the Work. At the completion of the Work, the Construction Manager or its Subcontractors shall remove from the site of the Work all construction equipment, tools, surplus materials, waste materials and debris.

3.9 Hazardous Materials. If the Construction Manager 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 encountered on the site of the Work by the Construction Manager, the Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing. Upon receipt of the Construction Manager's written notice, the Owner shall investigate and proceed pursuant to the law and applicable regulations. Upon providing a copy of the Construction Manager's written notice, the Construction Manager will be permitted to continue to suspend performance of the Construction Manager's services in the affected area provided, however, that Construction Manager shall return to work at Owner's discretion and declaration either that the material encountered does not require remediation or that it has been addressed in accordance with the law. If the Construction Manager suspends services to longer than 21 days, the Owner may terminate this Agreement, and the Construction Manager shall be compensated for services performed prior to the suspension of Construction Manager's services. Under no circumstances, unless required by law, shall the Construction Manager report the existence of any hazardous materials or substances to any other governmental entity or agency without the Owner's prior written consent. Unless otherwise provided in the Contract Documents to be part of the Work, Construction Manager is not responsible for any unforeseen hazardous materials or substances encountered at the site, provided, however, Owner is not responsible for any hazardous material or substance releases or spills introduced to the site by Construction Manager, subcontractor or anyone for whose acts they may be liable.

3.10 Intellectual Property. The Construction Manager shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Construction Manager and incorporated in the Work. The Construction Manager shall defend, indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to defend, indemnify and hold the Construction Manager harmless from any suits or claims of infringement of any patent rights arising out of any patented materials, methods or systems required or specified by the Owner.

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

3.12 Indemnification. To the fullest extent permitted by law, the Construction Manager shall defend, indemnify and hold the Owner from all claims for bodily injury and property damage (other than to the Work itself and other property insured under the Owner's builder's risk or other property insurance) and all other claims, damages, losses, costs and expenses, whether direct, indirect or consequential, including but not limited to the negligent or willful acts or omissions by the Construction Manager, Subcontractors, Subsubcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Notwithstanding any of the foregoing, nothing contained in this paragraph shall require the Contractor to indemnify the Owner, their officials, agents and employees for their own negligent acts or omissions. The terms of this indemnification shall survive completion or termination of this Contract. Construction Manager shall indemnify and save Owner harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this Contract.

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

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

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

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

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

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

- .1 That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental handicap or unfavorable discharge from military service, and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- .2 That, if it hires additional employees in order to perform this Contract or any portion hereof, it will determine the availability of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- .3 That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, national origin, ancestry, age, martial status, physical or mental handicap or unfavorable discharge from military service.
- .4 That it will send to each labor organization or representative of workers with which it has or is bound by collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Construction Manager's obligations under the Illinois Human Rights Act and the Owner's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Construction Manager in its efforts to comply with such Act and Rules and Regulations, the Construction Manager will promptly notify the Illinois Department of Human Rights and the Owner and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
- .5 That it will submit reports as required by the Owner of Human Rights Rules and Regulations, furnish all relevant information as may from time to time be requested by the Owner or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Owner's Rules and Regulations.
- .6 That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency Illinois Department of Human Rights for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.
- .7 That it will include verbatim or by reference the provisions of this clause in every subcontract so that such provisions will be binding upon every such subcontractor. In the same manner as with other provisions of this Contract, the Construction Manager will be liable for compliance with applicable provisions of this clause by all its subcontractors; and further it will promptly notify the Owner and the Illinois Department of Human Rights in the event any

subcontractor fails or refuses to comply therewith. In addition, the Construction Manager will not utilize any subcontractor declared by the Owner to have failed to comply with this Equal Employment Opportunity provision.

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

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

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

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

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

If requested, the Construction Manager and each subcontractor shall provide to the Owner, the certified payroll as required by the Prevailing Wage Act. The Construction Manager and each subcontractor shall preserve their weekly payroll records for a period of three years from the date of completion of this Contract.

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

3.21 Steel Procurement. The steel products, as defined in Section 3 of the Steel Products Procurement Act (30 ILCS 565/3) used or supplied in the performance of this Contract or any subcontract shall be manufactured or produced in the United States unless the Construction Manager certifies in writing that (a) the specified products are not manufactured or produced in the United States in sufficient quantities to meet the Owner's requirements or cannot be manufactured or produced in the United States within the necessary time in sufficient quantities to meet the Owner's requirements; or (b) obtaining the specified products, manufactured or produced in the United States would increase the cost of the Contract by more than

10%, or the application of the Steel Products Procurement Act (30 ILCS 565/1 *et seq.*) is not in the public interest.

- 3.22 Certifications. The Construction Manager shall provide Owner with a signed Contractor's Certification, dated evenly herewith, certifying that the Construction Manager is complying with and shall comply with the specific statutes and laws required in connection with a public works contract entered into by an Illinois unit of local government.

ARTICLE 4 - SUBCONTRACTS

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

- 4.5 Foreign Corporation. Foreign (non-Illinois) corporations shall procure from the Illinois Secretary of State a certificate of authority to transact business in Illinois in accordance with 805 ILCS 5/13.

ARTICLE 5 - CONSTRUCTION MANAGER'S WARRANTIES

- 5.1 One-Year Warranty. The Construction Manager warrants that all work performed hereunder shall be of good workmanship and the materials and equipment furnished under this Contract will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials; and the Construction Manager agrees to correct all construction performed under this Contract which proves to be defective in workmanship or materials. These warranties shall commence on the date of Substantial Completion of the Work or of a designated portion thereof and shall continue for a period of one year therefrom or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents.
- 5.2 Materials Specified By Owner. The products, equipment, systems or materials incorporated in the Work at the direction or upon the specific request of the Owner shall be covered exclusively by the warranty of the manufacturer and are not otherwise warranted under this Contract.
- 5.3 Other Warranties. ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED.

ARTICLE 6 - OWNER'S RESPONSIBILITIES

- 6.1 Information and Services. The Owner shall provide:
- .1 All necessary information describing the physical characteristics of the site, including survey, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations;
 - .2 Inspection and testing services during construction as required by the law or as mutually agreed;
 - .3 Any necessary approvals, rezoning, easements and assessments, permits, fees and charges required for the construction, use, occupancy or renovation of permanent structures, including any legal and other required services; and
 - .4 any other information or services stated in the Contract Documents as being provided by the Owner.
- 6.2 Reliance. The Construction Manager shall be entitled to rely on the completeness and accuracy of the information and services required by paragraph 6.1 above, and the Owner agrees to provide such information and services in a timely manner so as not to delay the Work.

- 6.3 Notice of Defect. If the Owner becomes aware of any error, omission or other inadequacy in the Contract Documents or of the Construction Manager's failure to meet any of the requirements of the Contract Documents, or of any other fault or defect in the Work, the Owner shall give prompt written notice to the Construction Manager; however, the Owner's failure to provide notice shall not relieve the Construction Manager of its obligations under this Contract.
- 6.4 Communications. The Owner shall communicate with the Subcontractors and Subsubcontractors only through the Construction Manager. The Owner shall have no contractual obligations to any Subcontractors or Subsubcontractors.
- 6.5 Owner's Representative. The Owner's Representative for this Project is Owner's Public Works Director who shall be fully acquainted with the Project; shall be the conduit by which the Owner furnishes the information and services required of the Owner; and shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization or written notice; provided, however, the Public Works Director shall not have authority to increase the Contract Price by \$10,000.00 or more or to extend the Contract Time. Authority to increase the Contract Price by \$10,000.00 or more or to extend the Contract Time may only be exercised by written Change Order signed by the Public Works Director and authorized by a due and proper vote of the Village Council. If the Owner changes its representative, the Owner shall notify the Construction Manager in advance in writing. Change orders must be approved in accordance with Section 33E-9 of the Illinois Criminal Code

ARTICLE 7 - CONTRACT TIME

- 7.1 Execution Date. The parties contemplate that this Contract will be fully executed on or before the October 13, 2020. A delay in the Owner's execution of this Contract which postpones the commencement of the Work.
- 7.2 Substantial Completion. The date of Substantial Completion of the Work shall be contingent upon authorization to proceed. Once received, the work will be completed within 3 weeks, pending appropriate weather conditions.
- 7.3 Delays. If causes beyond the Construction Manager's control delay the progress of the Work, then the Contract Price and/or the date of Substantial Completion shall be modified by Change Order as appropriate. Such causes shall include but not be limited to: changes ordered in the Work, acts or omissions of the Owner or separate contractors employed by the Owner, the Owner's preventing the Construction Manager from performing the Work pending dispute resolution, Hazardous Materials, differing site conditions, adverse weather conditions not reasonably anticipated, fire, unusual transportation delays, labor disputes, or unavoidable accidents or circumstances. In the event that delays to the Project are encountered for any reason, the Owner and the Construction Manager both agree to undertake reasonable steps to mitigate the effect of such delays.

7.4 Inclement Weather. The Contract Time shall not be extended due to normal inclement weather. Unless the Construction Manager can substantiate to the satisfaction of the Owner that there was greater than normal inclement weather considering the full term of the Contract Time and using the most recent ten-year average of accumulated record mean values from climatological data compiled by the United States Department of Commerce National Oceanic and Atmospheric Administration for the locale of the project and that such alleged greater than normal inclement weather actually delayed the Work or portions thereof which had an adverse material effect on the Contract Time, the Construction Manager shall not be entitled to an extension of the Contract Time. If the total accumulated number of calendar days lost due to inclement weather from the start of work until substantial completion exceeds the total accumulated number to be expected for the same time period from the aforesaid data and the Owner grants the Construction Manager an extension of time, the Contract Time shall be extended by the appropriate number of calendar days.

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

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

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

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

ARTICLE 8 - PAYMENT

8.1 Guaranteed Maximum Price. The sum of the Cost of Work and the Construction Manager's Fee including professional services is guaranteed by the Construction Manager not to exceed the price listed on page 1, subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. The Construction Manager's Fee including professional fees, general conditions, insurance, overhead and profit is identified on Exhibit A - Summary Schedule of Values. The Construction Manager's Fee shall be increased proportionally with the Cost of Work for any Change Orders in accordance with this Contract. The Contractor's Fee will not be reduced as the result of a Change Order. In the event the Cost of Work plus the Construction Manager's Fee including professional services shall total less than the Guaranteed Maximum Price as adjusted by Change Orders, the resulting savings shall be shared equally between the Owner and the Construction Manager, and the Owner shall make payment of the Construction Manager's portion upon Final Completion of the Work. In the event that the Cost of Work plus the Construction Manager's Fee including professional services exceeds the Guaranteed Maximum Price as adjusted by Change Orders, then the Owner shall pay no more than the Guaranteed Maximum Price as adjusted by Change Orders. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

1. The Guaranteed Maximum Price is based the on the removal and replacement of the concrete retaining curb and all brick pavers located between Square Barn Road and Georgetown Court. The brick pavers shall be set on an asphalt leveling pad over a 5-inch thick concrete base course. Traffic control required to close one entrance/exit at a time and redirect traffic to the opposite entrance/exit is also included in the GMP. Two-way traffic in and out of the subdivision will be maintained at all times. All required asphalt restoration will be completed by Public Works.
2. Unit prices used for the actual work will be determined by the bidding process identified in Article 4 of this Agreement.
3. Assumptions on which the Guaranteed Maximum Price are based, are as follows:
 - .1 The site is free of rock, debris or other bad soil conditions
 - .2 Hazardous materials are not present at the site.
 - .3 Durations to acquire permits are beyond the Contractor's control.
 - .4 No utility conflicts exist.
 - .5 To the extent that the Exhibits are anticipated to require further development by the Engineer, the Construction Manager has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. However, 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.

8.2 Compensation. The Guaranteed Maximum Price is the sum of the Cost of the Work plus the Construction Manager's Fee as identified as Exhibit A in this Contract, subject to adjustment in accordance with the provisions of this Contract.

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

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

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

- .3 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.
- .4 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
 - .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.
 - .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.
 - .3 Add the Construction Manager's Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in paragraph 8.2 or, if the Construction Manager's Fee is stated as a fixed sum in that paragraph, shall be an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion.
 - .4 Subtract the aggregate of previous payments made by the Owner.
 - .5 Except with the Owner's prior approval, payments to the Construction Manager and Subcontractors shall be subject to retention of not less than ten percent (10%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.
 - .6 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

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

- (A) a duly executed and acknowledged sworn statement showing all Subcontractors with whom the Construction Manager has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor in the requested progress payment and the amount to be paid to the Construction Manager from such progress payment, together with similar sworn statements from all Subcontractors and, where appropriate, from sub-Subcontractors;
- (B) duly executed waivers of mechanics' and materialmen's liens of the money due or to become due herein, establishing payment to the Subcontractor or material supplier of all such obligations to cover the full amount of the Application for Payment from each and every Subcontractor and suppliers of material or labor to release the Owner of any claim to a mechanic's lien, which they or any of them may have under the mechanic's lien laws of Illinois. Any payments made by the Owner without requiring strict compliance to the terms of this paragraph shall not be construed as a waiver by the Owner of the right to insist upon strict compliance with the terms of this approach as a condition of later payments. The Construction Manager shall indemnify and save the Owner harmless from all claims of Subcontractors, laborers, workmen, mechanics, material men and furnishers of machinery and parts thereof, equipment, tools and all supplies incurred in the furtherance of the performance of the Work;
- (C) sworn statements or lien waivers supporting the Application for Payment submitted late by the Construction Manager to the Owner will result in the Application for Payment not being processed until the following month.
- (D) Owner may, after having served written notice to the Construction Manager either pay unpaid bills, of which Owner has written notice, direct, or withhold from Construction Manager's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to Construction Manager shall be resumed, in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon Owner to the Construction Manager. In paying any unpaid bills of Construction Manager, Owner shall be deemed the agent of Construction Manager and any payment so made by Owner, shall be considered as payment made under the Contract by OWNER to Construction Manager and OWNER shall not be liable to Construction Manager for any such payment made in good faith.

Construction Manager agrees that all payments made by the OWNER shall be applied to the payment or reimbursement of the costs with respect to which

they were paid, and not to any pre-existing or unrelated debt between Construction Manager and OWNER or between the Construction Manager and any subcontractors or suppliers.

- 8.5 Late Payments. Payments shall be made in accordance with the Local Government Prompt Payment Act (50 ILCS 505/1 *et. seq.*)
- 8.6 Title. The Construction Manager warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the Owner free and clear of all liens, claims, security interests or encumbrances upon receipt of such payment by the Construction Manager.
- 8.7 Final Payment. Final Payment shall be due and payable when the Work is fully completed. Before issuance of any final payment, the Owner may request satisfactory evidence that all payrolls, materials bills and other indebtedness connected with the Work have been or will be paid or otherwise satisfied. In accepting final payment, the Construction Manager waives all claims except those previously made in writing and which remain unsettled. In making final payment, the Owner waives all claims except for outstanding liens, improper workmanship or defective materials appearing within one year after the date of Substantial Completion, and terms of any special warranties required by the Contract Documents.
- .1 The amount of the final payment shall be calculated as follows:
- .1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.
- .2 Subtract the aggregate of previous payments made by the Owner. If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.
- .2 The Owner's accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Owner by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, the Owner will, within seven (7) days after receipt of the written report of the Owner's accountants, either make final payment as requested to the Construction Manager, or notify the Construction Manager in writing of the Owner's reasons for withholding part or all of the requested final payment.
- .3 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Paragraph 8.7 and not excluded by Paragraph 8.8 (1) to correct nonconforming Work, or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the

same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

8.8 Cost of the Work. The term “Cost of the Work” shall mean all costs incurred by the Construction Manager and the cost of professional services in the proper performance of the Work. The Cost of the Work shall include the items set forth below.

.1 Labor costs.

.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner’s agreement, at off-site locations.

.2 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when engaged in performance of the Work.

.3 Wages and salaries of the Construction Manager’s supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work.

.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work.

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

.3 Costs of materials and equipment incorporated in the completed construction.

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

.2 Costs of materials described above in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner’s option, shall be sold by the Construction Manager, with the amounts realized, if any, from such sales credited to the Owner as a deduction from the Cost of the Work.

- .4 Costs of other materials and equipment, temporary facilities and related items.
- .1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work, and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager.
 - .2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof.
 - .3 Costs of removal of debris from the site.
 - .4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.
 - .5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.
- .5 Miscellaneous costs.
- .1 That portion directly attributable to this Contract of premiums for insurance and bonds.
 - .2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.
 - .3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager has paid or is required by the Contract Documents to pay.
 - .4 Fees of testing laboratories for tests required by the Contract Documents or advisable in the Construction Manager's discretion.
 - .5 Expenses and time incurred investigating potential changes in the Work.
 - .6 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of

defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent.

- .7 Data processing costs related to the Work.
 - .8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.
 - .9 Legal, and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work.
 - .10 Expenses incurred in accordance with the Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.
- .6 Other costs. Other costs incurred in the performance of the Work.
- .7 Emergencies and repairs to damaged or nonconforming work.
- .1 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.
 - .2 Costs incurred in repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers.
- 8.9 Non-Reimbursable Costs. The Cost of the Work shall not include any of the following.
- .1 The Cost of the Work shall not include professional services or the following:
 - .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in paragraph 8.7.1, unless such personnel are directly engaged in the performance of the Work.
 - .2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Paragraph 8.7.

- .3 Overhead and general expenses, except as may be expressly included in Paragraph 8.7.
 - .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
 - .5 The Construction Manager's Fee.
 - .6 The payment of Retailers' Occupation Tax, the Service Occupation Tax (both state and local), the Use Tax and the Service Use Tax in Illinois from which the Owner as a unit of local government is exempt.
 - .7 Costs which would cause the Guaranteed Maximum Price to be exceeded.
- .2 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured. Amounts which accrue to the Owner shall be credited to the Owner as a deduction from the Cost of the Work.
- 8.10 Accounting Records. The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract. The accounting and control systems shall be reasonably satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.
- 8.11 Payment Approval. The Owner may disapprove a payment, in whole or in part, or because of subsequent observations, nullify any progress payment previously made, to such extent as may be necessary, in its opinion, to protect its interests due to:
- .1 Defective work not remedied;
 - .2 Third party claims or reasonable evidence indicating the probable filing of such claims;
 - .3 Failure to make payments to subcontractors for labor, materials or equipment;
 - .4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price;

- .5 Failure to prosecute the Work with sufficient workers, materials, and/or equipment;
- .6 Failure to perform the Work in accordance with the Contract Documents.

ARTICLE 9 - CHANGES

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

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

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

Construction Manager's fee shall be proportionately increased in all Change Orders that increase the Guaranteed Maximum Price, but shall not be proportionately decreased by a Change Order that decreases the Guaranteed Maximum Price. If the parties cannot agree on the price term of a Change Order, then the Change Order will be calculated on the basis of actual time and materials costs incurred. If at the Owner's request the Construction Manager incurs substantial costs or time investigating a proposed change which is never ultimately made, the Guaranteed Maximum Cost and Contract Time shall be equitably adjusted.

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

9.4 Claims. For any claim for an increase in the Guaranteed Maximum Price and/or an extension in the date of Substantial Completion, the Construction Manager shall give the Owner written notice of the claim within twenty-one (21) days after the

Construction Manager first recognizes the condition giving rise to the claim. Except in an emergency, notice shall be given before proceeding with the Work. In any emergency affecting the safety of persons and/or property, the Construction Manager shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in Guaranteed Maximum Price and/or Date of Substantial Completion resulting from such claim shall be effectuated by Change Order.

ARTICLE 10 - INSURANCE AND BONDING

10.1 The Contractor's Insurance. The Construction Manager and each of its Subcontractors shall provide insurance as outlined in the attached "Insurance Requirements" document provided by the Village of Algonquin. The Construction Manager shall obtain and maintain insurance coverage for the following claims which may arise out of the performance of this Contract, whether resulting from the Construction Manager's operations or by the operations of any Subcontractor, anyone in the employ of any of them, or by an individual or entity for whose acts they may be liable:

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

10.2 The Construction Manager's Commercial General and Automobile Liability Insurance shall be written for not less than the following limits of liability:

Commercial General Liability Insurance

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Operations Agg.	\$2,000,000

Personal & Advertising Injury Limit	\$1,000,000
Fire Damage (any one fire)	\$ 100,000
Medical Expenses, each person	\$ 10,000

Comprehensive Automobile Liability Insurance

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

Worker's Compensation & Employer's Liability

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

Commercial Umbrella/Excess Liability

Each Occurrence	\$5,000,000
Aggregate	\$5,000,000

Professional Liability

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

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

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

10.4 Primary Insurance. The Commercial General Liability and Automobile Liability Insurance policies required under this contract shall be endorsed to include, as additional insured, the OWNER, its elected and appointed officials, officers and employees, and owners of property where the Work is to be completed. Prior to the commencement of any Work, the Construction Manager shall provide the Owner with Certificates of Insurance for all insurance required pursuant to this Article. Any

insurance or self-insurance maintained by the Owner and Engineer shall be excess of Construction Manager's insurance and shall not contribute with it. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Owner and Engineer. Construction Manager shall not allow any Subcontractor to commence or continue any part of the Work until and unless such Subcontractor provides and has in force insurance coverages equal to those required of Construction Manager by this Article, including, but not limited to, naming the OWNER as an additional insured for liability arising out of the subcontractor's work.

- 10.5 Acceptability of Insurers. The insurance carrier used by the Construction Manger shall have a minimum insurance rating of A:VII according to the AM Best Insurance Rating Schedule and shall meet the minimum requirements of the State of Illinois.
- 10.6 Reserved.
- 10.7 Property Insurance Loss Adjustment. Any insured loss shall be adjusted with the Owner and the Construction Manager and made payable to the Owner and Construction Manager as trustees for the insureds, as their interests may appear, subject to any applicable mortgagee clause. Upon the occurrence of an insured loss, monies received will be deposited in a separate account; and the trustees shall make distribution in accordance with the agreement of the parties in interest, or in the absence of such agreement, in accordance with the dispute resolution provisions of this Contract. If the trustees are unable to agree between themselves on the settlement of the loss, such dispute shall also be submitted for resolution pursuant to the dispute resolution provisions of this Contract.
- 10.8 Waiver of Subrogation. The Owner and Construction Manager waive all rights against each other, the Engineer, and any of their respective employees, agents, consultants, Subcontractors and Subsubcontractors, for damages caused by risks covered by insurance provided in Paragraph 10.2 to the extent they are covered by that insurance, except such rights as they may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all Subcontractors, and shall require each of them to include similar waivers in their subsubcontracts and consulting agreements. The Owner waives subrogation against the Construction Manager, Engineer, Subcontractors and Subsubcontractors on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion. If the policies of insurance referred to in this Paragraph require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.
- 10.9 Bonds. The Construction Manager shall furnish bonds covering faithful performance of the Contract, exclusive of the Construction Manager's Fee and all other professional services, and payment of the obligations arising thereunder. Bonds may be obtained through the subcontractor's usual source and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to 100% of the Guaranteed Maximum Price, less the Construction Manager's Fee and all other professional services. The Construction Manager shall deliver the required bonds to the Owner at least three days before commencement of any Work at the Project site.

10.10 Performance and Payment Guarantee. In lieu of the Village not requiring payment and performance bonds by the Construction Manager pursuant to 30 ILCS 550/1, et. seq, the undersigned members of Burke, LLC, individually guarantee that 1) all the undertakings, covenants, terms, conditions, and promises made herein by Burke, LLC will be performed and fulfilled and 2) Burke, LLC shall pay all persons, firms and corporations having contracts with Burke, LLC, or with subcontractors and all just claims due them under the provisions of such contracts for labor performed or materials furnished in the performance of the Work on the Project, when such claims are not satisfied out of the Cost of Work, after final settlement between the Village and Burke, LLC has been made.

ARTICLE 11 - TERMINATION

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

- .1 If the Work has been stopped for a thirty (30) day period;
 - a. under court order or order of other governmental authorities having jurisdiction;
 - b. as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Construction Manager, materials are not available; or
 - c. because of the Owner's failure to pay the Construction Manager in accordance with this Contract;
- .2 if the Work is suspended by the Owner for thirty (30) days;
- .3 if the Owner materially delays the Construction Manager in the performance of the Work without agreeing to an appropriate Change Order; or
- .4 if the Owner otherwise materially breaches this Contract.

Upon termination by the Construction Manager in accordance with this paragraph, the Construction Manager shall be entitled to recover from the Owner all damages allowed under Illinois law. In addition, the Construction Manager shall be paid an amount calculated as set forth in paragraph 11.3.

11.2 By the Owner for Cause. If the Construction Manager fails to perform any of its obligations under this Contract, the Owner may, after seven (7) days written notice, during which period the Construction Manager fails to perform or to begin to perform such obligation, undertake to perform such obligations itself. The Contract Price shall be reduced by the cost to the Owner of performing such obligations. Additionally, upon seven (7) days written notice to the Construction Manager and the Construction Manager's surety, if any, the Owner may terminate this Contract for any of the following reasons:

- .1 if the Construction Manager utilizes improper materials and/or inadequately skilled workers;
- .2 if the Construction Manager does not make proper payment to laborers, material suppliers or subcontractors and refuses or fails to rectify same;
- .3 if the Construction Manager fails to abide by the orders, regulations, rules, ordinances or laws of governmental authorities having jurisdiction; or
- .4 if the Construction Manager otherwise materially breaches this Contract.

If the Construction Manager fails to cure within the seven (7) days, the Owner, without prejudice to any other right or remedy, may take possession of the site and complete the Work utilizing any reasonable means. In this event, the Construction Manager shall not have a right to further payment until the Work is completed. If the Construction Manager files a petition under the Bankruptcy Code, this Contract shall terminate if the Construction Manager or the Construction Manager's trustee rejects the Agreement or, if there has been a default, the Construction Manager is unable to give adequate assurance that the Construction Manager will perform as required by this Contract or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code. In the event the Owner exercises its rights under this paragraph, upon the request of the Construction Manager, the Owner shall provide a detailed accounting of the costs incurred by the Owner.

- 11.3 Termination by the Owner Without Cause. If the Owner terminates this Contract other than as set forth in Paragraph 11.2, the Owner shall pay the Construction Manager for the Cost of all Work executed and for any proven loss, cost or expense in connection with the Work, plus all demobilization costs. The Owner shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. The Owner shall assume and become liable for obligations, commitments and unsettled claims that the Construction Manager has previously undertaken or incurred in good faith in connection with the Work or as a result of the termination of this Contract. As a condition of receiving the payments provided under this Article 11, the Construction Manager shall cooperate with the Owner by taking all steps necessary to accomplish the legal assignment of the Construction Manager's rights and benefits to the Owner, including the execution and delivery of required papers.
- 11.4 Suspension By The Owner For Convenience. The Owner for its convenience may order the Construction Manager in writing to suspend, delay or interrupt all or any part of the Work without cause for such period of time as the Owner may determine to be appropriate. Adjustments shall be made for increases in the Guaranteed Maximum Price and/or the date of Substantial Completion caused by suspension, delay or interruption. No adjustment shall be made if the Construction Manager is or otherwise would have been responsible for the suspension, delay or interruption of the Work, or if another provision of this Contract is applied to render an equipment adjustment.

ARTICLE 12 - DISPUTE RESOLUTION

12.1 Step Negotiations. The parties shall attempt in good faith to resolve all disputes promptly by negotiation, as follows. Either party may give the other party written notice of any dispute not resolved in the normal course of business. Management representatives of both parties one level above the Project personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days from the referral of the dispute to such management representatives, or if no meeting has taken place within fifteen (15) days after such referral, the dispute shall be referred to senior managers under the aforesaid procedure. If the matter has not been resolved by such senior managers, both parties must agree to initiate binding arbitration as provided hereinafter. If a negotiator intends to be accompanied at a meeting by an attorney, the other negotiator shall be given at least three (3) working days' notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and applicable state Rules of Evidence.

12.2 Arbitration. Except as provided in this paragraph, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration, one arbitrator, administered by the American Arbitration Association under its Construction Industry Arbitration Rules or JAMS Dispute Resolution, at the Village Hall 2200 Harnish Dr. Algonquin, Illinois, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Owner may elect, at its exclusive option, to file a lawsuit by rather than arbitration with regard to amounts due Owner of \$10,000 or less and \$200,000 or more and to enforce equitable remedies such as injunctive relief and mechanic lien rights. In the event of such election, each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any litigation directly or indirectly arising out of under or in connection with this Contract.

In the event of arbitration or litigation of this Contract between Owner and Construction Manager, the non-prevailing party shall pay all attorneys' fees and expenses incurred by prevailing party, as determined by the Arbiter or judge in connection with the respective arbitration or litigation.

Until final resolution of any dispute hereunder, Construction Manager shall diligently proceed with the performance of this Contract as directed by Owner.

12.3 Continued Performance of the Work. In the event of any dispute, the Construction Manager shall continue to perform the Work and maintain its progress pending final determination of the dispute, provided the Owner places a sum equal to 150% of the amount in dispute in an escrow account, reasonably satisfactory to both parties, which specifies that the escrow agent shall distribute the escrow sum between the

parties in accordance with any agreement or court judgment entered resolving the dispute.

- 12.4 Required in Subcontracts. The Construction Manager shall include the provisions of this Article 12 in all Subcontracts into which it enters.

ARTICLE 13 – LIQUIDATED DAMAGES

- 13.1 Late Completion. In the event that the Work is not Substantially Complete by the date set forth in this Contract, then promptly after receiving Final Payment, the Construction Manager shall pay to the Owner as liquidated damages a sum equal Two Hundred Dollars (\$200) for each day that the Work is late in reaching Substantial Completion.

ARTICLE 14 - MISCELLANEOUS

- 14.1 Project Sign. The Owner agrees that the Construction Manager and Engineer will be properly identified and will be given appropriate credit on all signs, press releases and other forms of publicity for the Project. Owner will permit the Construction Manager and Engineer to photograph and make other reasonable use of the Project for promotional purposes.
- 14.2 Notices. Notices to the parties shall be given at the addresses shown on the cover page of this Contract by mail, fax or any other reasonable means.
- 14.3 Integration. This Contract is solely for the benefit of the parties, and no one is intended to be a third party beneficiary hereto. This Contract represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral.
- 14.4 Governing Law. This Contract shall be governed by the laws of the State of Illinois.
- 14.5 Severability. The partial or complete invalidity of any one or more provisions of this Contract shall not affect the validity or continuing force and effect of any other provision.
- 14.6 Assignment. Neither party to this Contract shall assign the Contract as a whole without written consent of the other, except that the Owner may collaterally assign this Contract to a lender if required to secure financing for this Project.
- 14.7 Existing Contract Documents. This Contract.
- 14.8 Illinois Freedom of Information Act. The Construction Manager acknowledges that, pursuant to the provisions of the Illinois Freedom of Information Act, (5 ILCS 140/1 *et seq.*), documents or records prepared or used in relation to Work performed under this Agreement are considered a public record of the Owner; and therefore, the Construction Manager shall review its records and promptly produce to the Owner

any records in the Construction Manager's possession which the Owner requires in order to properly respond to a request made pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*), and the Construction Manger shall produce to the Owner such records within three (3) business days of a request for such records from the owner at no additional cost to the Owner.


Owner:

Village of Algonquin
2200 Harnish Dr
Algonquin, IL 60102

Contractor:

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

By: _____ Date: _____

By:  _____ Date: 10/7/2020
Principal

Attest: _____ Date: _____



By:  _____ Date: 10/7/2020
Principal

Guarantee

Pursuant to paragraph 10.10 of this Agreement, the undersigned members of Burke, LLC, individually guarantee that 1) all the undertakings, covenants, terms, conditions, and promises made herein by Burke, LLC will be performed and fulfilled and 2) Burke, LLC shall pay all persons, firms and corporations having contracts with Burke, LLC, or with subcontractors and all just claims due them under the provisions of such contracts for labor performed or materials furnished in the performance of the Work on the Project, when such claims are not satisfied out of the Cost of Work, after final settlement between the Village and Burke, LLC has been made.

By:  Date: 12/6/17 By:  Date: 12/6/17
Principal Principal

By:  Date: 12/6/2017 By:  Date: 12/06/2017
Principal Principal

By:  Date: 12/6/17 By:  Date: 12/06/17
Principal Principal

By:  Date: 12-10/17 By:  Date: 12/6/2017
Principal Principal



Bunker Hill Drive Brick Paver Replacement Algonquin, Illinois

Exhibit A - Summary Schedule of Values



Pay Item Description	Contract Value	
Brick Paver Replacement	\$	60,219
Aggregate Base 8"	\$	5,100
Concrete Base 5"	\$	20,400
Pavement Removal	\$	6,804
Excavation	\$	3,969
Concrete Border	\$	8,208
Traffic Control	\$	12,000
Construction Management	\$	5,050
General Conditions (Insurance OH and Profit)	\$	7,000
Contract Price		\$ 128,750