

**CONTRACT BETWEEN
THE BOARD OF TRUSTEES OF ORLAND FIRE PROTECTION DISTRICT
AND
VILLAGE OF ROMEOVILLE FIRE ACADEMY**

ARTICLE 1. INTRODUCTION

This Contract is made and entered into between The Board of Trustees of Orland Fire Protection District, on behalf of Orland Fire Protection District, hereinafter referred to as “District” and Village of Romeoville Fire Academy, with principal address at 18 Montrose Drive hereinafter referred to as “Contractor.”

ARTICLE 2. TERMS AND CONDITIONS

This Contract establishes terms and conditions which are negotiated to define the relationship and limitations between District and your company for the products/services defined.

A Contract is not a guarantee of work. A purchase order will serve as ‘notice to proceed’ and approval of any official orders, approved requisitions and shipments.

ARTICLE 3. SCOPE OF SERVICES

Contractor shall provide the labor, new equipment, materials and services which are described below:

3.01 Description of Goods and Services:

2024 Courses including:

Confined Space Rescue Awareness and Operations
Fire Department Incident Safety Officer
Hazardous Materials Operations
Hazardous Materials Technician
Rope Rescue Awareness and Operations
Vehicle and Machinery Awareness and Operations
Vehicle and Machinery Technician

(hereinafter sometimes referred to as the “work”).

3.02 Allowable approvers:

Notice to proceed, or verbal approval, in case of emergent need is limited to the District staff named in this section:

Lieutenant Michael Siefert
Battalion Chief John Purtill
Battalion Chief Erick Johnson
Deputy Chief Nicholas Cinquepalmi
Chief Michael Schofield

3.03 Changes in the Work:

- 1) District shall have the right to order changes to be made in the work, including changes in the specifications, drawings, designs and time and place of delivery. If these changes affect Contractor's costs, performance schedules, warranties and other provisions of the Contract, the prices and other affected provisions shall be equitably adjusted by agreement of Contractor and District. Any adjustments shall be preceded by Contractor's detailed proposal therefore, except that if it is impossible or impractical to prepare a proposal, District and Contractor shall proceed on the basis of a budget estimate or other reasonable basis, subject to final determination at a later date. Any claim by Contractor for adjustment shall be deemed waived unless made in writing within ten (10) days after receipt by Contractor of notice of such change.
- 2) Subject to District's prior written approval, Contractor may made changes in the work without any change in the prices or the times by which Contractor must perform its obligations under the Contract.
- 3) Where change orders or a series of change orders authorize or necessitate an increase or decrease in either the cost of the work totaling \$10,000 or more or the time of completion of the work by thirty (30) days or more, a written determination must be prepared and signed by the District, or its designee, stating that the circumstances necessitating the changes in performing were not reasonably foreseeable at the time the contract was signed; or the change is germane to the original contract as signed; or the change order is in the best interest of the District and authorized by law.

3.04 Standard of Service:

Contractor shall provide competent, suitably qualified personnel to perform the work as required by the Contract. Services shall be rendered to the highest professional standards to meet or exceed those standards met by others providing the same or similar services in the Chicagoland area. Sufficient personnel shall be provided who with supervision shall complete the services required within the time allowed for performance. Contractor shall at all times maintain good discipline and order at the work site. The Contractor's personnel shall, at all times present a neat appearance and shall be trained to handle all contact with District residents or District employees in a respectful manner. At the request of the District Contract Representative or a designee, the Contractor shall replace any incompetent, abusive or disorderly person in its employ.

Except in connection with the safety or protection of persons, or the work, or property at the work site or adjacent thereto, all work shall be performed during regular working hours, and Contractor will not permit overtime work or the performance of work on Saturday, Sunday or any legal holiday without District's consent given after prior written notice to the District Contract Representative. Regular working hours shall be between the hours of nine o'clock A.M. and five o'clock P.M., Monday through Friday.

Unless otherwise specified in Article 3 Scope of Services, Contractor shall furnish all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water and sanitary facilities, and all other facilities and incidentals necessary for the execution, testing, initial operation and completion of the work. All materials and equipment shall be of good quality and new, except as otherwise provided in Article 3 Scope of Services.

ARTICLE 4. DURATION OF CONTRACT

The term of this Contract shall be from the date of execution of this Contract, through project completion unless terminated as provided herein, or extended by amendment or renewal options to this Contract. The work shall commence upon notice to proceed and continue expeditiously from that date until final. Failure to meet the Contract time shall be considered an occasion of default under the Contract. The Contract time shall not be increased without the express written consent of the District.

ARTICLE 5. RENEWAL OPTION

This Contract is not renewable.

ARTICLE 6. TERMINATION FOR CONVENIENCE

The District may terminate this contract for convenience upon thirty (30) days prior written notice to the contractor. In the event of termination for convenience, the Contractor shall be paid for services satisfactorily performed under this contract up to the effective date of termination.

ARTICLE 7. TERMINATION FOR CAUSE

The District may cancel the Contract for breach, as determined by the District, for items such as, but not limited to: failure to meet insurance requirements, failure to meet required performance or progress standards as described herein, or if the quality or level of service is unsatisfactory to the District. This cause for breach may include any cessation or diminution of service which, in the opinion of the District, is not in its best interest or any failure to comply with the terms of the Contract.

The District shall notify the Contractor in writing of any Contract breach. The Contractor shall remedy the breach within ten (10) calendar days. If the breach is not remedied in ten (10) calendar days, the District may cancel the Contract by giving thirty (30) days' notice in writing of its intention to cancel this Contract.

Should the District breach any terms or provisions of the Contract, the Contractor shall serve written notice on the District setting forth the alleged breach and demanding compliance with the Contract. Unless within ten (10) calendar days after receiving such notice, the allegation shall be contested or such breach shall cease and arrangements be made for corrections, the Contractor may cancel the Contract by giving thirty (30) days' notice, in writing of its intention to cancel this Contract.

In the event of cancellation for breach, the Contractor shall be paid only for work satisfactorily performed up to the date of cancellation.

In the event of early termination or cancellation for any cause, no payment for services performed will be made until and unless any necessary reports and/or deliverables have been provided.

ARTICLE 8. ADMINISTRATION OF CONTRACT

The District Contract Representative named below shall be the District's authorized representative in all matters pertaining to procedures or the administration of the terms and conditions of this Contract. All matters of interpretation and/or approval shall be directed to the District Contract Representative who will be the primary point of contact and coordinate any necessary response.

For information purposes, a District Technical Representative may be indicated below. If listed, the District Technical Representative may be contacted directly by the Contractor to discuss technical issues or schedules related to performance of duties and responsibilities in the Contract.

Any substantive changes to any term or condition or work to be performed under the Contract must be made in the form of an amendment to this Contract.

District Contact Representative:

Kerry C. Sullivan
Finance Director
Orland Fire Protection District
9790 W. 151st Street
Orland Park, IL 60462
Phone: 708-873-2711
Fax: 708-349-0354
k.sullivan@orlandfire.org

District Technical Representative:

Michael Siefert
Lieutenant
Orland Fire Protection District
9790 W. 151st Street
Orland Park, IL 60462
Phone: 708-873-2705
Fax: 708-349-0354
m.siefert@orlandfire.org

ARTICLE 9. NOTIFICATION

Where notice is required by the Contract documents, it shall be considered received if it is 1) delivered in person, 2) sent by registered United States mail, return receipt requested, 3) delivered by messenger or mail service with a signed receipt, 4) sent by facsimile with an acknowledgment of receipt, or 5) by e-mail with an acknowledgement of receipt only if the parties agree separately to use e-mail for providing notice. Notice shall be sent to the following:

Notices to the District shall be sent to:

Kerry C. Sullivan
Finance Director
Orland Fire Protection District
9790 W. 151st Street
Orland Park, IL 60462
Phone: 708-873-2711
Fax: 708-349-0354
k.sullivan@orlandfire.org

Notices to the Contractor shall be sent to:

Mike Pemble
Academy Director
Romeoville Fire Academy
18 Montrose Drive
Romeoville, IL 60446
Phone: 815-641-8812
mpemble@romeoville.org

ARTICLE 10. INDEPENDENT CONTRACTOR

The Contractor will independently perform all services specified in this Contract, except as provided herein. The Contractor shall have sole control over the manner and means of providing the work and services performed under this Contract including the selection and use of any Subcontractors, used in the performance of the required services. The District's relationship to the Contractor under this Contract shall be that of Independent Contractor. The Contractor will not be considered an agent or employee of the District for any purpose. Contractor will not hire District employees to perform any portion of the work or services provided for herein, including clerical, secretarial, and similar incidental services, except with the prior written approval of the District. The District shall have no responsibility to any Subcontractor employed by a Contractor for performance of work on the Project, and all Subcontractors and material suppliers shall look exclusively to the Contractor for any payments due. The District will not be responsible for reporting or paying employment taxes or other similar levies that may be required by the United States

Internal Revenue Service or other State or Federal agencies. Every Subcontractor shall be bound by the terms and provisions of this Contract as far as applicable to their work. The Contractor shall be fully responsible to the District for the acts and omissions of its Subcontractors, and shall ensure that any Subcontractors perform in accordance with the requirements of this Contract. Nothing contained herein shall create any contractual or employment relations between any Subcontractor and the District. The Contractor is solely responsible for the safety procedures, programs and methods of its employees and agents and shall hold the District harmless for any and all damages resulting from violations thereof. The Contractor shall comply with all applicable federal, state and local safety laws and regulations.

ARTICLE 11. CONFLICT OF INTEREST

The contractor affirms that, to the best of its knowledge, there exists no actual or potential conflict between the Contractor's family, business, or financial interests and its services under this Contract; and, in the event of change in either its private interests or services under this Contract, the Contractor will raise with the District any questions regarding possible conflict of interest which may arise as a result of such change.

ARTICLE 12. ASSIGNMENT

Contractor shall not assign the duties and obligations involved in the performance of the work which is the subject matter of this Contract without the written consent of the District, except that the Contractor may assign work to any pre-approved Subcontractor.

ARTICLE 13. SUBCONTRACTORS

If any Subcontractor is to be used in the performance of the services required under this Contract, the Contractor has provided the name(s), address(es) and amount(s) expected to be paid to Subcontractor(s) and a description of which portion(s) of the work will be subcontracted out is listed below or in a separate Exhibit to this Contract. The District shall have the right to approve of all Subcontractors.

Contractor may not use the services of other Contractors or Subcontractors not named herein without prior written permission of the District. If at any time during the term of the Contract, a Contractor adds or changes any Subcontractor, the Contractor shall promptly notify, in writing, the District Contract Representative of the names and addresses and the expected payment each new or replaced Subcontractor will receive under the Contract.

ARTICLE 14. DISCREPANCIES AND OMISSIONS

Should anything which is necessary for a clear understanding of the work be omitted from the Contract documents, or should it appear that various instructions are in conflict, the Contractor shall secure written instructions from the District Contract Representative before proceeding with the work affected by such omissions or discrepancies.

ARTICLE 15. COMPENSATION

15.01 Rate of Compensation

The District agrees to pay the Contractor pursuant to the provisions of the Local Government Prompt Payment Act (50 ILCS 505/1 *et seq.*) the following amount for performance and final completion of the above-described services:

Per Student:

Confined Space Rescue Awareness and Operations	\$ 800
Fire Department Incident Safety Officer	\$ 400
Hazardous Materials Operations	\$ 600
Hazardous Materials Technician	\$1,400
Rope Rescue Awareness and Operations	\$ 800
Vehicle and Machinery Awareness and Operations	\$ 900
Vehicle and Machinery Technician	\$1,000

(the" Contract Sum"). The Contract Sum shall not be increased without the express written consent of the District. No payment shall be made by the District until the Contractor has submitted to the District (i) a Contractor's Affidavit listing all Subcontractors and material suppliers utilized on the project and (ii) waivers of lien from the Contractor, all Subcontractors and all material suppliers.

15.02 Withhold Payment

District may decline to pay an invoice, in whole or in part, to the extent District decides it is necessary to protect it from loss due to any of the following:

- (i) Breach by Contractor of any of its obligations under the Contract (including the costs to District of remedying the breach (whether by replacing or repairing the work or otherwise) and all other costs directly attributable to other services that are required to be performed in connection with remedying such breach);
- (ii) Third party claims filed or reasonable evidence indicating probable filing of such claims;
- (iii) Contractor's failure to properly pay Subcontractors or to properly pay for equipment, materials or labor;
- (iv) Damage to District's or another's project where such damage arises out of the actual or alleged willful misconduct or negligent acts or omissions of Contractor and Subcontractors or their agents, employees or any other person to whom, directly or indirectly, Contractor or any Subcontractor may be liable;
- (v) Reasonable evidence that the work will not be completed within the time requirements specified in the contract or for the balance of the contract price then unpaid;
- (vi) Unsatisfactory work performed; or
- (vii) Incomplete, inaccurate, or unauthorized billing.

15.03 Method of Payment

The District agrees to pay the Contractor no more frequently than monthly for services rendered for the contract period in accordance with the amounts specified in this Contract. The Contractor is responsible for completing the scope of work specified in this Contract. The District may withhold final payment until all services, reports and/or other deliverables specified herein have been completed in a form satisfactory to the District. Final payment will be made by the District

only upon inspection of the work, completion of any punch list items and after receipt of final release and waiver of liens from all Subcontractors and material suppliers for the work.

15.04 Method of Billing

To receive payment, the Contractor must submit an appropriately itemized invoice to the District for services performed and allowable expenses incurred. Invoices are to be sent in duplicate to the District Accounts Payable Department. The Contract Number (or Purchase Order Number, if applicable) must be included on the invoice.

15.05 Payments to Other Parties

The Contractor shall not obligate the District to make payments to third parties or make promises or representations to third parties on behalf of the District without prior written approval of the District Contract Representative or a designee.

ARTICLE 16. INCREASE IN WAGE RATES OR IN MATERIALS OR EQUIPMENT COSTS

For the Contract period, it is understood and agreed that should there be any increase in wage rates or in the Costs of materials or equipment, or in any other of the Contractor's costs, or should the Contractor be compelled to pay premium wages for overtime work during the term of this Contract or prior to completion of the Contractor's work thereunder, the Contractor shall absorb all such increased costs within and without addition to the contract sum.

ARTICLE 17. PRICE ESCALATION

If the District decides to exercise any right to renew the Contract, a revised price schedule will be included with the renewal. Cost increases or decreases shall be allowed only at the time of Contract renewal and approved by the District.

ARTICLE 18. PREVAILING WAGE

This contract calls for the construction of a "public work," within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/01 *et seq.* ("the Act"). The Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the current "prevailing rate of wages" (hourly cash wages plus amount for fringe benefits) in the county where the work is performed. The Department publishes the prevailing wage rates on its website at <http://labor.illinois.gov/>. The Department revises the prevailing wage rates and the contractor/subcontractor has an obligation to check the Department's website for revisions to prevailing wage rates. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor's website. All contractors and subcontractors rendering services under this contract must comply with all requirements of the Act, *including but not limited to*, all wage requirements and notice and record keeping duties.

ARTICLE 19. DISTRICT'S RIGHT OF INSPECTION

The District reserves the right to inspect and investigate thoroughly the establishment, facilities, equipment, business reputation, and other qualifications of the Contractor and any of its Subcontractors throughout the life of the Contract.

ARTICLE 20. DISTRICT'S RIGHT TO HAVE WORK EXECUTED

If the Contractor should neglect to execute the work or any part or parts thereof diligently and properly or fail to perform any provision of the Contract, the District, after ten (10) days' written notice to the Contractor, may without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.

ARTICLE 21. INDEMNIFICATION

The Contractor covenants and agrees at its own expense to defend, indemnify and hold harmless the District, its trustees, officers, directors, agents, employees and representatives and assigns, from and against all lawsuits, actions, costs (including attorneys' fees), claims or liability of any character, incurred due to the alleged negligence or wrongful act of the Contractor or Subcontractor, brought because of any injuries or damages received or sustained by any person, persons or property on account of any act of omission, neglect or misconduct of said Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, their officers, agents and/or employees arising out of, or in performance of any of the provisions of the Contract Documents and/or work, including any claims or amounts recovered for any infringements of patent, trademark or copyright; or from any claims or amounts arising or recovered under the "Worker's Compensation Act" or any other law, ordinance, order or decree. In connection with any such claims, lawsuits, actions or liabilities, the District, its trustees, officers, directors, agents, employees, representatives and their assigns shall have the right to defense counsel of their choice. The Contractor shall be solely liable for all costs of such defense and for all expenses, fees, judgments, settlements and all other costs arising out of such claims, lawsuits, actions or liabilities. Contractor shall protect, indemnify, and hold and save harmless the District from and against any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Contractor's breach of any obligations under or Contractor's default of any provision of the Contract Documents.

The Contractor shall not make any settlement or compromise of a lawsuit or claim, or fail to pursue any available avenue of appeal of any adverse judgment, without the approval of the District and any other indemnified party. The District or any other indemnified party, in its or their sole discretion, shall have the option of being represented by its or their own counsel. If this option is exercised, then the Contractor shall promptly reimburse the District or other indemnified party, upon written demand, for any expenses, including but not limited to court costs, reasonable attorneys' and witnesses' fees and other expenses of litigation incurred by the District or other indemnified party in connection therewith.

Contractor shall purchase and maintain such insurance as will protect it from claims which may arise out of or result from Contractor's work under the Contract Documents, whether such operations be by itself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

All insurance required by the Contract Documents shall be provided under enforceable and valid policies issued by insurance companies licensed to do business in the State of Illinois and approved by the District. Before commencing any work under the Contract Documents, Contractor shall deliver to District evidence of all insurance required under the Contract Documents, which evidence shall be in form and substance satisfactory to the District.

It shall be the sole and exclusive responsibility of Contractor and its Subcontractors and material suppliers to separately insure each of their own property such as tools, equipment, and scaffolding whether owned, borrowed or rented, and all materials which do not become part of the construction or included in the Contract Sum. Should Contractor cause damage to the work or the property of the District, Contractor shall promptly remedy such damage.

ARTICLE 22. INSURANCE

The Contractor shall cause a Certificate of Insurance to be issued showing the following required coverage in no less than the minimum coverage limits listed below. The insurance companies providing coverage must have a B+:VI or better rating in the current edition of Best's Key Rating Guide. The Contractor must agree to maintain such insurance for the duration of the project or the term for which services will be rendered.

A. Worker's Compensation and Occupational Diseases	Illinois Statutory Limits
Employer's Liability (Part B)	\$500,000 per occurrence
B. Commercial General Liability	
Combined Single Limit	\$1,000,000 per occurrence
OR	
Bodily Injury	\$1,000,000 per occurrence
Property Damage	\$1,000,000 per occurrence
C. Commercial Auto Liability	
Combined Single Limit	\$1,000,000 per occurrence
OR	
Bodily Injury	\$1,000,000 per occurrence
Property Damage	\$1,000,000 per occurrence

Umbrella liability insurance may be used to meet the general liability coverage limit requirements.

Subcontractors must comply with the same insurance coverage requirements as the Contractor. Subcontractors shall submit the required Certificate of Insurance through the primary Contractor.

With respect to the required Commercial General Liability insurance, the Board of Trustees of Orland Fire Protection District shall be named as an additional insured on a primary and noncontributory basis. In order to meet this requirement, the following wording should appear on any Certificate of Insurance provided: "The Board of Trustees of Orland Fire Protection District is an additional insured for any liability incurred by the District arising from the activities of the Contractor and/or Subcontractor performing work on behalf of the Contractor on a primary and noncontributory basis."

The Contractor shall furnish any original Certificate(s) of Insurance evidencing the required coverage to be in force on the date of this Contract, and any renewal Certificate(s) of Insurance if coverage has an expiration or renewal date occurring during the term of this Contract to Orland Fire Protection District, Finance Director. All contracts of insurance shall provide for thirty (30) days advance notice to the District of cancellation thereof. The receipt of any certificate does not constitute Contract by the District that insurance requirements have been met. Failure of the District to obtain certificates or other insurance evidence from the vendor/contractor shall not be deemed a waiver by the District. Failure to comply with insurance requirements may be regarded as a breach of contract terms.

ARTICLE 23. BONDING

Performance and Payment Bond is not required.

ARTICLE 24. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon a contract or understanding for a commission, percentage brokerage, or contingency fee, excepting bona-fide employees or bona-fide established commercial or selling agencies maintained by

Contractor for purposes of securing business. For breach or violation of this warranty, the District shall have the right to annul this Contract without liability, or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

ARTICLE 25. TIME

Time is of the essence of this Contract. Contractor shall schedule its work and that of its Subcontractors to meet the requirement of the District. Contractor shall perform the work expeditiously in cooperation with the District's agents, employees, contractors and subcontractors. Contractors shall make no claim against District and no claim shall be allowed for any damages which may arise out of any delay caused by District, its agents, employees, contractor or subcontractors. Contractor's sole remedy for delay shall be an extension in the Contract time.

ARTICLE 26. COMPLIANCE WITH LAWS

Contractor agrees to comply with all applicable federal, state and local laws, ordinances, statutes, codes and rules and regulations including but not limited to Title 7 of the Civil Rights Act of 1964, the Immigration Reform and Control Act, the Illinois Prevailing Wage Act (820 ILCS 130/0, *et seq.*), the Illinois Drug-Free Workplace Act, Article 33E of the Illinois Criminal Code of 1961 and the Illinois Human Rights Act (775 ILCS 5/1-101, *et seq.*).

With regard to the Illinois Human Rights Act, Contractor hereby agrees that this Contract shall be performed in compliance with all requirements of the Illinois Human Rights Act, 775ILCS 5/1-101 *et seq.*, and that the Contractor and its Subcontractors shall not engage in any prohibited form of discrimination in employment as defined in that Act and shall maintain a sexual harassment policy as the Act requires.

The Contractor shall maintain, and require that its Subcontractors maintain, policies of equal employment opportunity which shall prohibit discrimination against any employee or applicant for employment on the basis of race, religion, color, sex, national origin, ancestry, citizenship status, age, marital status, physical or mental disability unrelated to the individual's ability to perform the essential function of the job, association with a person with a disability, or unfavorable discharge from military service. Contractor and all Subcontractors shall comply with all requirements of the Act and of the Rules of the Illinois Department of Human Rights with regard to posting information on employees' rights under the Act. Contractor and all Subcontractors shall place appropriate statements identifying their companies as equal opportunity employers in all advertisements for workers to be employed in work to be performed under this Contract. Contractor hereby certifies that it is in compliance with and is an "equal opportunity employer" as defined by the provisions of Section 2000(c) of Chapter 21, Title 42 of the United States Code and Federal Executive Order No. 11246 as amended by Executive Order No. 11375 which are incorporated herein by reference.

With regard to the Immigration Reform and Control Act, Contractor may not knowingly obtain the labor or services of an unauthorized alien. The Contractor, not the District, must verify eligibility for employment as required by the Immigration Reform and Control Act.

With regard to the Illinois Drug-Free Workplace Act, Contractor, having 25 or more employees, certifies that it shall provide a drug-free workplace for all employees engaged in the performance of the work under the Contract by complying with the requirements of the Illinois Drug-Free Workplace Act and, further certifies, that it is not ineligible for award of this Contract by reasons of debarment for a violation of the Illinois Drug-Free Workplace Act.

With regard to Article 33E of the Criminal Code of 1961, Contractor certifies that it is not barred for bidding or entering into this Contract as a violation of either the bid rigging or bid rotating prior thereto. Contractor also certifies that it is not delinquent in any taxes to the Illinois Department of Revenue.

The Contractor shall obtain all necessary local and state licenses and/or permits that may be required for performance of the work and provide those licenses to the District prior to commencement of the work.

ARTICLE 27. TAXES

The District is a tax exempt entity. Contractor agrees to purchase and cause its Subcontractor(s) to purchase all material used in connection with this Contract at prices that take full advantage of the District's tax exempt status. Contractor shall not use, nor shall it allow any of its Subcontractors or material suppliers to use, District's tax exempt status to reduce costs on any work other than the work set forth in this Contract.

ARTICLE 28. GOVERNING LAWS

Notwithstanding anything in the Contract or purchase order to the contrary, the parties hereto agree that for purposes of any lawsuit(s) between them concerning this Contract, its enforcement, or the subject matter thereof, venue shall be in Cook County, Illinois, and the laws of the State of Illinois, USA, shall govern the cause of action.

ARTICLE 29. WAIVER

The failure of either party hereto at any time or times to enforce any provision of this Contract shall in no way be construed to be a waiver of such provisions or to affect the validity of this Contract or any part hereof, or the right of either party thereafter to enforce each and every provision in accordance with the terms of this Contract.

ARTICLE 30. CONFIDENTIALITY

Any information furnished by the District shall be treated as confidential. The Contractor shall not disclose information unless specifically authorized and required to do so by law. The Contractor is hereby advised that any part of this contract or any materials provided by the contractor and marked as confidential, proprietary, or trade secret, can only be protected to the extent permitted by Illinois Statutes.

ARTICLE 31. RIGHTS IN DATA

31.01 Subject Data

"Subject Data" as used herein means any copyrightable works including all notes, designs, drawings, memoranda, reports, computer programs/input and output and other technical data (whether or not the copyright is registered) which are specified to be delivered under this Contract.

31.02 District's rights in Data First Produced Under this Contract

In consideration for the payment described herein, Contractor agrees to assign all right, title and interest in Subject Data first produced under this Contract, including copyright, to the District. Contractor understands the District shall have the exclusive right to use Subject Data for any purpose, including but not limited to use, reproduction, distribution, sale, licensing and sublicensing of the Subject Data and the development of derivative works based in whole or in part on the Subject Data, without further compensation to Contractor.

Other copyrightable works first produced under this Contract which are not specified as “Subject Data” shall be owned by the Contractor but licensed to the District on a royalty-free basis for use in its internally administered programs of teaching, research and public service.

31.03 Contractor’s Warranty of Originality

Contractor warrants that the Subject Data will be an original work by the Contractor and, to the best of Contractor’s knowledge, will not infringe upon the rights of third parties. For any data delivered to the District that is **not** first produced under this Contract, the Contractor certifies that he/she will acquire the necessary rights/licenses for the District to copy and use said data at its discretion without expense by the District.

31.04 Restriction on Contractor’s Use of Data

All original data and records of this work first produced by Contractor under this Contract shall be the property of the District. Permission to use such information for other purposes may be sought by the Contractor from the District, through the District Contract Representative.

31.05 Restrictive Markings

The Contractor shall not put any restrictive markings upon any Subject Data unless otherwise specified in this Contract.

31.06 Administrative Confidential Information

The Contractor shall not publish or otherwise disclose in any manner, except to the District and except matters of public record, any information or data obtained under this Contract from private individuals, organizations, or public agencies, in a publication whereby the information furnished by any particular person or establishment can be identified, except with the prior written consent of such person or establishment.

ARTICLE 32. NON-LIABILITY

In no event shall the District be liable for any claims or liabilities arising out of the use of any libelous or other unlawful matter contained in data furnished by Contractor under this Contract.

ARTICLE 33. ACKNOWLEDGMENT OF SPONSORSHIP

All inventions or discoveries first conceived or reduced to practice under this contract shall belong to the District. The Contractor agrees to disclose promptly and fully to the District each invention or discovery conceived or reduced to practice under this Contract. The District shall have the sole right to determine the disposition of District-owned inventions. The Contractor agrees to execute an assignment and related documents necessary to further the patenting and development of an invention and to cooperate with the District in such activities.

ARTICLE 34. RIGHTS TO INVENTIONS

All inventions or discoveries first conceived or reduced to practice under this Contract shall belong to the District. The Contractor agrees to disclose promptly and fully to the District each invention or discovery conceived or reduced to practice under this Contract. The District shall have the sole right to determine the disposition of District-owned inventions. The Contractor agrees to execute an assignment and related documents necessary to further the patenting and development of an invention and to cooperate with the District in such activities.

ARTICLE 35. PATENT AND COPYRIGHT

The Contractor and its Surety shall pay for all royalties and/or license fees and assume all costs incident to the use in performance of the work or the incorporation in the work of any invention, design, process, product or device which is subject to patent or copyrights held by others, and, additionally, shall defend all suits or claims for infringements of any patent or invention right or copyrights involved in the items furnished hereunder.

The Contractor and its Surety shall hold and save the District and their officers, agents, servants and employees harmless from liability of any nature or kind, including cost and expenses, for, or on account of, any patented or unpatented invention, process, article or appliance furnished in the performance of the Contract including its use by the District, unless otherwise specifically stipulated and agreed to in this Contract.

ARTICLE 36. COMPLIANCE WITH FREEDOM OF INFORMATION ACT

The Illinois Freedom of Information Act (FOIA) has been amended and effective January 1, 2010, adds a new provision to Section 7 of the Act which applies to public records in the possession of a party with whom the District has contracted. The District will have only a very short time from receipt of a FOIA request to comply with the request, and there is a significant amount of work required to process a request including collating and reviewing the information.

The Contractor acknowledges the requirements of FOIA and agrees to comply with all requests made by the District for public records (as that term is defined by Section 2(c) of FOIA) in the Contractor or its Subcontractor's possession and to provide the requested public records to the District within two (2) business days of the request being made by the District. The undersigned agrees to indemnify and hold harmless the District from all claims, costs, penalty, losses and injuries (including but not limited to, attorney's fees, other professional fees, court costs and/or arbitration or other dispute resolution costs) arising out of or relating to its failure to provide the public records to the District under this Contract.

ARTICLE 37. WARRANTIES

The work product will conform to its specifications and District's requirements and that for 90 days following District's acceptance, Contractor shall correct and repair, at no cost to the District, any defect, malfunction or non-conformity that prevents such deliverables from conforming and performing as warranted.

ARTICLE 38. AMENDMENTS

This Contract shall not be amended, modified, altered or changed except by mutual agreement confirmed in writing by each party to this Contract. Contractor agrees to waive any and all claims for adjustment in regard to any services performed without prior receipt of an appropriate written amendment.

ARTICLE 39. ENTIRE CONTRACT

This Contract, attachments, and incorporated references shall constitute the entire Contract between the parties with respect to the subject matter herein and supersedes all prior communications and writings with respect to the content of said Contract. No modification, renewal, extension, or waiver of this Contract or of any of the provisions of this Contract, shall be binding upon either the Contractor or the District unless reduced to writing and duly executed as provided for in the Contract.

ARTICLE 40. SEVERABILITY

If any provisions of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it may become valid and enforceable, then said provision shall be deemed to be written, construed and enforced as so limited.

ARTICLE 41. ADVERTISEMENT

- 1) The Contractor and Subcontractor shall not display any signs, posters, or other advertising matter in or on the work or on or around the District's property without the specified approval in writing by the District.
- 2) In addition, no advertising copy mentioning the District or quoting the opinions of any of its employees may be released unless such copy is approved in writing by the District before release.

ARTICLE 42. TAX PAYER IDENTIFICATION

Under penalties of perjury, the Contractor certifies that its Federal Taxpayer's Identification Number or Social Security Number is _____ and has been accurately provided to the District and is doing business as a (check one):

- | | |
|--|--|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Real Estate Agent |
| <input type="checkbox"/> Sole Proprietorship | <input type="checkbox"/> Government Entity |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Medical & Health Care Services Provider Corporation |
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Tax Exempt Organization (ICR 501 {a} only) |
| <input type="checkbox"/> Not-for-Profit Corporation | <input type="checkbox"/> Trust or Estate |
| <input type="checkbox"/> Limited Liability Corporation | |

APPROVAL AND EFFECTIVE DATE

This Contract shall not be binding until signed by all parties. The persons signing this Contract represent and warrant that they have authority to bind their respective parties.

The Board of Trustees of DISTRICT

By: _____
Michael Schofield
Fire Chief
Orland Fire Protection District
for John Brudnak, President

Date: _____

Contractor

Signed

Type or print name

Title

Date