

**CONTRACT FOR CONSTRUCTION WORK
TURNKEY BUILD CONSTRUCTION OF FRONT RECEPTION DESK
IMPROVEMENTS AT THE ROMEOVILLE RECREATION CENTER
FOR THE VILLAGE OF ROMEOVILLE, ILLINOIS**

THIS AGREEMENT, made this _____ day of September, 2019, between the **VILLAGE OF ROMEOVILLE, 1050 W. ROMEO ROAD, ROMEOVILLE, ILLINOIS 60446**, an Illinois home rule municipal corporation (“Owner”), and F.H. Paschen (“Contractor”).

WITNESSETH, that the parties hereto, for the considerations hereinafter expressed, covenant and agree as follows:

Section 1. Owner’s Representative.

Wherever used in this Agreement, “Owner’s Representative” means the Village Manager or his duly authorized representative.

Section 2. Contract Documents.

(a) This Agreement together with the specifications, plans, drawings, schedules, and other papers, attached hereto as Exhibit B, form the Contract Documents and are hereby made a part hereof.

(b) In case of conflict or inconsistency between the provisions of this Agreement and the provisions of any of the other Contract Documents, the provisions of this Agreement shall control.

Section 3. Scope of Work.

(a) The Contractor shall furnish all development and design services, shall furnish all necessary materials, superintendence, labor, tools, equipment, means of construction and transportation, shall pay all licenses, inspection fees, taxes, royalties and patents, shall secure all permits, and shall expeditiously perform and complete the following described work which shall provide for a complete, functioning project and which shall be performed in a good and workmanlike manner and in accordance with standard customs and procedures in the industry.

Scope of Work:

Turnkey Design-Build Construction of Front Reception Desk Improvements at the Romeoville Recreation Center (the “Project” or “Work”).

For the Contractor’s performance of the Scope of Work, the Owner shall pay Contractor an amount not to exceed \$129,000, as set forth on the Proposal attached hereto as Exhibit A.

(b) Contractor shall have the exclusive right and duty to control the work of its employees. All persons employed by Contractor or any of its subcontractors in the performance of this Agreement shall be the sole employees of Contractor or its subcontractors.

(c) Owner shall, in the absence of Contractor's superintendent, have the right to stop the work if any person employed by Contractor or any of its subcontractors performs work in a manner not in compliance with the requirements specified in the Contract Documents described in Section 2 hereof, and/or performs work in a manner not in compliance with standard industry safety rules, not performed in a workmanlike manner, or not performed in accordance with standard customs and procedures in the industry.

(d) Intentionally left blank.

(e) Upon completion of the design, the Scope of Work shall be competitively bid out to subcontractors to establish the cost of work. Upon review and approval of the bids by the Owner, the Owner shall authorize the Contractor to proceed with construction. In the event the Scope of Work does not proceed to construction, the Contractor shall be compensated for all design and project management time incurred on an hourly basis plus Contractor's cost.

Section 4. Time for Performing Work.

The Work shall be commenced within 30 calendar days of the issuance of a notice-to-proceed by the Owner, and the Contractor shall provide for beneficial use of the Work by the Owner on or before November 1, 2019, unless time for completion is extended, as provided in Section 23 hereof. Time is of the essence in performing work under this Agreement.

Section 5. Failure to Complete the Work on Time.

Should the Contractor fail to complete the Work by the completion date stipulated in Section 4 or within such extended time as may have been allowed, the Contractor shall be liable to the Owner in the amount of \$150.00, not as a penalty but as liquidated damages, for each calendar day of overrun in the time stated in Section 4 or such extended time as may have been allowed.

Section 6. Performance Bond and Labor and Material Payment Bond.

Before commencing any work hereunder, the Contractor, at its own expense, shall furnish to the Owner, in a form acceptable to the Owner, a fully executed Performance Bond and a fully

executed Labor and Material Payment Bond, each issued by a surety or sureties approved by the Owner, and each in the amount of \$129,000 as security for the faithful performance of this Agreement and for the payment of all persons performing labor or furnishing materials or equipment in connection therewith.

Section 7. Assignment of Subcontracting.

This Agreement shall not be assigned nor shall any portion of the work be subcontracted without the written consent of the Owner's Representative. Executed copies of any and all subcontracts shall be furnished the Owner's Representative at the time he consents to the same. No such contract shall release or relieve the Contractor from any obligation hereunder, but the Contractor shall be as fully responsible to the Owner for the acts and omissions of any and all subcontractors and of persons either directly or indirectly employed by them as if such acts and omissions were the acts and omissions of the Contractor or of persons directly employed by the Contractor.

Section 8. Investigation of Contract Documents and Site of Work by Contractor.

The Contractor has examined and fully understands the Contract Documents described in Section 2 hereof and has by careful examination ascertained the nature and location of the work, the character, quality, and quantity of materials, and of equipment and facilities, necessary in the prosecution of the work, the general and local conditions, and all other matters which can in any way affect the work under this Agreement.

Section 9. Contractor's Warranty.

Unless otherwise provided in the specifications, the Contractor warrants that all materials, supplies and equipment installed or incorporated in the work covered by this Agreement shall be of the best grade of their respective kinds for the purpose, and shall comply with all applicable federal, state and local governmental statutes, ordinances, orders and regulations. Without relieving the Contractor of his obligation to provide Owner with products and completed operations insurance coverage under Section 17 hereof, Contractor further warrants that such materials, supplies and equipment shall be and remain free from defects in material and workmanship for the period of one year from the date of final acceptance of the work by the Owner, and agrees to make any necessary repairs or corrections, or provide replacement parts, at Contractor's expense, promptly upon receipt of written notice thereof from Owner.

Section 10. Materials and Workmanship: Inspection.

The Contractor shall remove, without expense to the Owner, any work or materials found unacceptable by the Owner's Representative, and shall promptly rebuild or replace the same without extra charge. Any omission or failure on the part of the Owner's Representative to disapprove or reject any work or materials shall not be construed as an acceptance thereof, and the Owner's Representative is hereby authorized to require any defective work or material to be taken out and rebuilt or replaced at the expense of the Contractor at any time within one year

from the date of final acceptance of the work by Owner, however, this right shall not waive any other Owner rights at law or in equity with respect to any defective or substandard materials or workmanship. All work and material shall be at all times open to the inspection of, and acceptance or rejection by the Owner's Representative.

Section 11. Changes and Alterations.

(a) The Owner reserves the right to make, at any time during the progress of the work, such changes and alterations in the details of the work or in the quantities of the work as may be found necessary or desirable, and such changes shall not be considered as a waiver of any condition of this Agreement, nor shall they invalidate any of the provisions hereof. The Contractor shall perform the work as increased or decreased.

(b) When the change or alteration concerns an item or items the cost of which exceeds ten (10) percent of the total Cost of Work (based on the prices contained in the Contract Documents) and the quantity of the work to be done or the materials to be furnished pursuant to the change or alteration is more than 120 percent or less than 80 percent of the quantity provided for such item or items in the Contract Documents, then either party, upon the demand of the other, shall be entitled to an equitable adjustment in the applicable process, as agreed to by the parties in a supplemental agreement.

Section 12. Force Account Work.

In the event work is made necessary by changes and alteration of plans or other reasons, and no basis of payment has been provided for such work in this Agreement, or if this is a lump sum contract, such work shall be designated "Force Account Work". The Contractor shall perform such Force Account Work in accordance with the specifications and as directed by the Owner's Representative, and shall be paid for such Force Account Work as described in Section 35 or Section 36 hereof. No such Force Account Work shall be undertaken by the Contractor until a written order has been issued by the Owner's Representative to perform the work on a "Force Account" basis.

Section 13. Eliminated Items.

Should any items of work contained in the bid schedule be found unnecessary for the proper completion of the work, the Owner's Representative may, upon written order to the Contractor, eliminate such item from this Agreement and such action shall in no way invalidate this Agreement or affect the enforceability of any provisions of this Agreement. When the Contractor is notified of the elimination of items, he will be reimbursed for actual work done and all costs incurred in connection with such eliminated items, including mobilization of materials and equipment prior to said notification, and if this is a lump sum contract, the lump sum price for the remaining items shall be equitably adjusted as agreed to by the parties in a supplemental agreement.

Section 14. Compliance with Laws.

(a) In the performance of the work provided herein, the Contractor and all subcontractors shall comply with all applicable federal, state and local governmental statutes, ordinances, orders and regulations. No penalties, costs or additional expense resulting from failure to comply with any such requirement shall be payable by Owner.

(b) The Contractor shall comply with all federal, state and local environmental laws and regulations in any operations, activities or services provided for under this Agreement. The Contractor shall not treat, store or dispose of hazardous waste nor release any hazardous substances as the same are defined in applicable federal, state, or local laws and regulations on or adjacent to Owner's property.

(c) The Contractor shall indemnify, save harmless and assume the cost of defense of the Owner and Owner's duly authorized representative from and against all claims, actions or legal proceedings arising from the violation or alleged violation of any laws, ordinances, orders or regulations by the Contractor or any of his subcontractors.

Section 15. Patents.

Contractor shall indemnify defend and save harmless the Owner and Owner's duly authorized representative from liability of any kind, including costs and expenses, for or on account of the manufacture or use of any patented or unpatented invention, article, or appliance in the performance of this Agreement, except articles specified by the Owner, the use of which the Contractor does not control.

Section 16. Indemnity against Liability for Loss and Damage.

(a) Contractor shall indemnify and hold harmless Owner and Owner's duly authorized representative for all judgments, awards, claims, demands, and expenses (including attorney's fees), for injury or death to all persons, including Owner's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or failure to perform any obligation hereunder, regardless of Owner's negligence, except to the extent that such claims, demands, or judgments are proximately caused by the intentional misconduct or gross negligence of Owner.

(b) The Contractor assumes all responsibility for loss of or damage to materials of the Owner after delivery to and acceptance by the Contractor and to materials and property of the Contractor used in the performance of the work until the work is accepted by the Owner's Representative, and shall indemnify, hold harmless and defend the Owner and Owner's duly authorized representative from and against any liability for loss of or damage to the materials and property of any subcontractor used in the performance of the work, including tools, machinery, equipment, appliances, supplies, scaffolding and forms.

(c) In the event any claim shall be made or suit brought against the Owner for damages on account of any personal injury or death or for loss of or damage to property, or if the Owner shall sustain any loss of or damage to its property, for which the Contractor is responsible

under the terms of this Agreement, then if the Owner is not protected by a performance and payment bond or insurance furnished by the Contractor, Owner may deduct from any amounts which then or thereafter would otherwise be due the Contractor hereunder, such amount as in the opinion of the Owner's Representative will be sufficient to protect it fully from any loss, damage or expense; and if the amount then due or to become due the Contractor is not sufficient for that purpose, then the Contractor shall promptly pay to the Owner such amount as in the opinion of the Owner's Representative is needed to fully reimburse or protect the Owner.

(d) It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement shall survive any termination of this Agreement.

Section 17. Insurance.

(a) Before commencing any work, Contractor must provide and maintain in effect insurance, at Contractor's expense, covering all of the work and services to be performed hereunder by the Contractor and each of its subcontractors, as described below. In all cases, the certificate for each policy must specifically state that **"THE VILLAGE OF ROMEOVILLE IS A NAMED INSURED PARTY."**

(b) Coverage shall be provided with the following minimum limits of coverage:

- (1) Workmen's Compensation coverage, as is required by State law. The Contractor shall provide such coverage whether or not such insurance is optional under State law. **THE CERTIFICATE MUST CONTAIN A SPECIFIC WAIVER OF THE INSURANCE COMPANY'S SUBROGATION RIGHTS AGAINST THE VILLAGE OF ROMEOVILLE;**
- (2) Employer's Liability insurance, with coverage of at least \$1,000,000 per occurrence;
- (3) Comprehensive General Liability insurance covering liability, including but not limited to Public Liability, Personal Injury, Property Damage, Environmental Damage, Contractual Liability and Products/Completed Operations, with coverage or at least \$2,000,000 for property damages; \$2,000,000 for bodily injury or death of any one person, and; \$5,000,000 per occurrence;
- (4) Automobile Bodily Injury Liability insurance, including hired automobiles and non-ownership liability, with coverage of at least \$1,000,000 per occurrence;

- (5) Automobile Property Damage Liability insurance, including hired automobiles and non-ownership liability, with coverage of at least \$1,000,000 per occurrence.

(c) If so requested by Owner, Contractor shall alter the above-described kinds of insurance or increase the limits thereof, and any such change shall be at the expense of Owner, but only to the extent that such expense is applicable to this Agreement. In the event Contractor so desires, Contractor may carry or take out additional kinds of insurance of increased limits over those set forth in Subparagraph (b) hereof at Contractor's own expense.

(d) All insurance shall be placed with insurance companies licensed to do business in the State in which the work is to be performed, and with a current Best's Insurance Guide Rating of A and Class X, or better.

(e) Any coverage afforded the Village of Romeoville as an additional named insured under Contractor's policies of insurance as herein specified, shall apply as primary and not excess to any insurance issued in the name of the Village of Romeoville.

(f) Before commencing any Work hereunder, the Contractor shall furnish to the Village of Romeoville Certificates of Insurance on the form prescribed by the Village of Romeoville, evidencing the issuance of the Contractor of the policies of insurance providing the types of insurance and limits of liability prescribed above, and certifying that the Village of Romeoville shall be given not less than 30 days written notice prior to any material change, substitution or cancellation prior to normal expiration dates. Cancellation or expiration of any of said policies of insurance shall not preclude the Village of Romeoville from recovery thereunder for any liability arising under this Agreement. If the Village of Romeoville certificate is not furnished, the Contractor shall furnish signed policy endorsements from the insurance companies involved, providing the coverage outlined above.

(g) It is mutually understood and agreed that the purchase of insurance as herein provided shall not in any way limit the liability of the Contractor to the Village of Romeoville and the Village of Romeoville's duly authorized representative, as herein set forth.

(h) Losses or expenses not compensated by the foregoing insurance, which are caused in whole or in part by the negligence or fault of the Contractor, or its subcontractors, their agents or employees, shall not be deemed to be part of the Work, and shall be payable solely by Contractor.

(i) Contractor will permit no subcontractor to enter upon or continue the performance of the Work unless such subcontractor is and remains insured in accordance with the above requirements. Contractor shall indemnify Owner for any loss suffered by Owner for the failure of any such subcontractor to be so insured.

(j) Contractor shall comply and shall ensure that all of its subcontractors:

- (1) Comply with all Worker's Compensation laws.

- (2) From time to time, at the request of Owner, furnish evidence to Owner that all payments required by such laws have been and are being made.

Section 18. Liens and Claims from Labor and Materials Furnished.

(a) The Contractor shall promptly pay or cause to be paid all subcontractors and persons furnishing labor, services, articles or materials for the work, whether pursuant to an agreement with the Contractor or any subcontractor, and shall deliver the work free from any claims or liens; and in the event of failure of the Contractor to do so, the Owner may pay and discharge any such lien or claim and deduct the amount so paid from any moneys which may be or become due and payable to the Contractor even if there is a dispute between Contractor and the person asserting the claim or lien. Before payment of the final estimate the Contractor shall furnish the Owner's Representative a notarized waiver of lien as evidence that the work is free and clear from all liens for labor and materials, and that no claim then exists for which any lien could be filed or enforced.

(b) The Contractor hereby agrees to indemnify, defend and save harmless the Owner against all loss, damage, or expense which the Owner may sustain, incur, or become liable for on account of any such claim or lien, regardless of whether any such claim or lien is presented or filed before or after the final estimate is paid, and that payment of the final estimate shall not constitute a release from or waiver of this obligation of the Contractor.

Section 19. Superintendence; Employees.

The Contractor shall constantly keep on the work site or have in direct charge of the work during its progress, a competent superintendent, and any information given to such superintendent or any notices served upon him shall have the same force and effect as if given to or served upon the Contractor; provided, that if the Contractor is an individual and properly qualified, he may himself superintend the work. The Contractor shall employ on the work only persons who are qualified and competent to perform the work entrusted to them.

Section 20. Protection against Property Damage and Personal Injuries.

(a) In all cases especially wherever the work provided for by this Agreement is upon or near any structure or building of the Owner or of others, the Contractor shall use care and vigilance to avoid injury to persons or property, and whenever local conditions, laws or ordinances require, the Contractor shall furnish and maintain, without expense to the Owner, such passageways, guard-fences, lights, and other facilities and means for protective as may be necessary. To the extent possible, the work shall be so conducted as not to interfere with the operations of the Owner; and if in any case such interference is necessary the Contractor shall not proceed until he has first obtained specific authority and directions from the Owner's Representative or from such officer of the Owner as shall be designated by the Owner's Representative.

(b) Contractor will be authorized to enter Owner's property during regular business hours to perform services to be rendered under this Agreement. In the event of emergencies or any other requirement for Contractor's services other than during regular business hours, arrangements to enter Owner's property must be made through the Owner. Contractor shall comply with all federal, state and local safety rules and regulations and with Owner safety rules and regulations while on Owner's property and while performing services under this Agreement. Contractor will be provided a copy of the Owner's Rules and Regulations.

Section 21. Concurrent Work; Order of Work; Possession before Completion.

Wherever work being done by the Owner or by other contractors is contiguous to work concurrently carried on hereunder by the Contractor, the Owner's Representative shall establish the rights of the various interests involved to the end that all such work may be coordinated and completed in general harmony. The Contractor shall complete the various portions of the Contract work in such order of time at the Owner's Representative may require. The Owner shall have the right to take possession of and use any completed or partially completed portions of such work, but such possession and use shall not be deemed an acceptance thereof.

Section 22. Storage Facilities, Vacation Thereof and Cleaning Up.

The Owner will, so far as it conveniently can do so, permit the Contractor to use so much of its property as is required for the storage of materials and for temporary construction facilities, but if any additional facilities or land is required, the Contractor shall provide the same without expense to the Owner. The Contractor shall, as directed by the Owner's Representative, remove from the Owner's property and from any public property, without expense to the Owner, all temporary structures, rubbish and waste materials resulting from the Contract operations and shall remove from Owner's property all equipment, tools, materials and supplies not needed whenever directed by the Owner's Representative, but not later than 10 days after the work is completed and accepted by the Owner's Representative, unless such 10-day period shall be extended in writing by the Owner's Representative.

Section 23. Delay.

If the Contractor shall be delayed in the execution of the work from any cause for which the Owner is responsible, or from any cause which is beyond the control of the Contractor, the Contractor shall, upon written application to the Owner's Representative at the time of such delay, be granted such reasonable extension of time as the Owner's Representative shall deem equitable and just.

Section 24. Suspension or Termination without Fault of Contractor.

(a) The Owner's Representative may at any time or times suspend the work or any part thereof by giving the Contractor notice in writing, and the Contractor shall resume operations promptly after receipt of written notice from the Owner's Representative so to do. The Owner shall not be liable for any loss of anticipated profits on account of the suspension, but it will pay the Contractor such amount as in the opinion of the Owner's Representative will cover

the actual expense incurred or paid, for any men necessarily retained or equipment kept idle during the period of such suspension.

(b) If not notified to resume operations within thirty (30) days from the effective date of any suspension notice, the Contractor may, unless it is then otherwise agreed in writing, abandon the work or part thereof specified in the suspension notice, and shall thereupon be entitled to receive a final estimate and payment for such portion of the abandoned work as has been performed, together with an amount which in the opinion of the Owner's Representative will cover any additional expense actually and necessarily incurred on account of such abandonment, but no allowance shall be made for anticipated profits on work not performed.

(c) The Owner's Representative may also at any time terminate this Agreement upon giving notice in writing to the Contractor, in which event the Contractor shall be paid for all work done under this Agreement up to the time of such annulment, including any retained percentage rates or prices herein specified or on a prorata basis if this is a lump sum contract. The Contractor shall also be reimbursed by the Owner for any such expenditures as in the judgment of the Owner's Representative are not compensated for by such payments, the intent being that an equitable settlement shall be made with the Contractor, but without any allowances for anticipated profits with respect to work not performed.

Section 25. Remedies of Owner upon Failure of Performance by Contractor.

(a) If the Owner's Representative shall at any time be of the opinion that the Contractor is neglecting to remedy any imperfections in the work, or is not progressing with the work as fast as necessary to insure its completion within the time and as required by this Agreement, or is otherwise violating any of the provisions of this Agreement, the Owner's Representative, on behalf of the Owner, shall have the power to notify the Contractor in writing to remedy such imperfections, proceed more rapidly with the work, or otherwise comply with the provisions of this Agreement.

(b) If on the expiration of three (3) days after the serving of such written notice upon the Contractor, or within such additional time as shall be specified in such notice, the Contractor shall continue to neglect the work or fail to remedy any specified deficiencies, the Owner's Representative may terminate this Agreement by written notice to the Contractor and may take possession of the work and of all materials, tools and appliances thereon, and employ such means as, in the Owner's Representative's judgment, may be necessary to finish the work. In such case the Contractor shall receive no further payment until the work shall be finished, when if the unpaid balance that would be due under this Agreement exceeds the cost to the Owner of finishing the work, such excess shall be paid to the Contractor; but if such cost exceeds such unpaid balance, the Contractor shall pay the difference to the Owner and the Owner shall retain the unpaid balance.

(c) Upon failure to the Contractor to comply with any notice given in accordance with the provisions of paragraph (a) of this Section hereof, the Owner shall have the alternative right, instead of assuming charge of the entire work, to place additional forces, tools, equipment, and materials on parts of the work, and the costs incurred by the Owner in carrying on such parts

of the work shall be payable by the Contractor who shall be allowed therefore the Contract price, but the Owner may retain the amount of the cost of such work, with ten percent added, from any sum or sums due or to become due the Contractor under this Agreement.

Section 26. Records.

The Contractor shall keep full and detailed records only as may be needed for proper financial management of this Agreement. Owner shall be afforded access at any reasonable time to all the Contractor's records relating to billing and quality of work to be performed, correspondence, instructions, drawings, receipts, vouchers and memoranda relating to this Agreement, and the Contractor shall preserve all such records and afford access to the Owner for a period of three years after final payment.

Section 27. Choice of Forum.

All questions arising under this Agreement shall be decided according to the laws of the State of Illinois, where the work is to be performed, excluding the conflicts of laws principles thereof.

Section 28. Service of Notices.

All notices herein provided for, if given by the Contractor, may be served by delivering a copy thereof to the Owner's Representative, and if given by the Owner, may be served by delivering a copy thereof to the Contractor or his representative at the site of the work or by depositing the same in the U.S. Postal Service, or its successor, certified mail with postage prepaid, addressed to the Contractor at the address shown on the signature page hereof, or at such other address as the Contractor may hereafter designate in writing delivered to the Owner's Representative.

Section 29. Joint and Several Liability.

In the event that the Contractor consists of two or more parties all of the covenants and agreements of the Contractor herein contained shall be the joint and several covenants and agreements of such parties.

Section 30. Severability.

To the maximum extent possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this Agreement.

Section 31. Successors and Assigns Clause.

All the covenants and agreements of the Contractor herein contained shall be binding upon the heirs, legal representatives, successors and assigns of the Contractor, and shall inure to the benefit of the successors and assigns of the Owner.

Section 32. Scope of Payment.

The Contractor shall receive and accept compensation provided for in this Agreement as fully payment for furnishing all materials and for performing all work under this Agreement in a complete and acceptable manner and for all risk, loss damage, or expense of whatever character arising out of the nature of the work or the prosecution thereof.

Section 33. Contract Prices.

The Owner shall pay, as and when the same shall become due and payable as provided in this Agreement, and subject to any adjustment as provided for in Section 11 hereof, the following:

Scope of Work: Turnkey Design-Build Construction of Front Reception Desk Improvements at the Romeoville Recreation Center

For the Contractor's performance of the Scope of Work, the Owner shall pay Contractor an amount not to exceed \$ 129,000.

Section 34. Partial and Final Payments.

(a) Prior to the tenth of each month, Contractor shall submit an invoice, in duplicate, for progress payment, based on cost analysis prepared by the Contractor for the material and equipment delivered and Work performed through the last day of the preceding calendar month. These progress payments shall be based upon a Schedule of Values prepared by the Contractor and agreed to by the Owner's Representative. Within thirty (30) days of receipt of such invoice, Owner shall pay to Contractor ninety percent (90%) of that portion of the amount specified in Contractor's invoices as shall correspond to the portion of the work designated in the cost analyses which shall have been completed to the satisfaction of the Owner.

(b) With each invoice other than the final invoice, Contractor shall submit partial lien waivers and affidavits together with bills from subcontractors, supplies and vendors showing that payment has been made for all labor, materials, and subcontractor's work covered by the last previous invoice for which payment has been made by Owner.

(c) In the event Owner disagrees with any such invoice, Owner shall notify Contractor in writing within fifteen (15) days from receipt thereof. When Owner and Contractor have agreed on the amount of such invoice, payment will be made within thirty (30) days from receipt of such invoice or within twenty (20) days of such agreement, whichever is later.

(d) As soon as practical after completion of the Work as determined by Owner and its acceptance by Owner, Contractor shall submit a final invoice, in duplicate, for final payment. The final invoice shall include a final unconditional waiver of lien and a contractor's affidavit and receipted bills from subcontractors, suppliers and vendors showing that payment has been made for all labor, materials, and subcontractors' work performed under the Work. Within thirty (30) days from receipt of such invoice, final lien waiver, affidavit and receipted bills, Owner shall review such invoice and shall pay to the Contractor the difference between the Contractor Sum and the aggregate of all payments theretofore made, provided Owner is in agreement with Contractor's invoice.

(e) Final payment shall not constitute a waiver by Owner of any rights or claims arising out of Contractor's failure to adhere to the Contract Documents or from Work which is defective within the meaning of the Contract Documents.

(f) Before any partial or final payment can be made, included that for force account or extra or changed work, the Contractor and all Subcontractors who perform work shall furnish certified payroll reports and Equal Employment Opportunity reports covering the period of time covered in the pay request, as prescribed by the regulations of the Illinois Department of Labor.

Section 35. Payment for Force Account (Time and Material) Work.

(a) Work which is ordered in writing by the Owner's Representative to be performed by the Contractor on a "Force Account" basis in accordance with Section 12 hereof shall be paid for in the following manner:

- (1) Labor. For all labor and foremen in direct charge of the specific operations, the Contractor shall receive the rate of wage (or scale) agreed upon in writing before beginning work, for each and every hour that said labor and foremen are actually engaged in such work.

The Contractor shall receive the actual costs paid to, or in behalf of, workmen by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits, when such amounts are required by collective bargaining agreements or other employment contract generally applicable to the classes of labor employed on the work.

An amount equal to **Ten (10) percent** of the sum of the above item will also be paid to the Contractor.

- (2) Insurance, Performance and Payment Bonds, and Taxes. For property damage, liability, and workmen's compensation insurance premiums, unemployment insurance contributions and social security taxes on the

Force Account Work, the Contractor shall receive the actual cost, excluding any and all retroactive penalty adjustments. The Contractor shall furnish satisfactory evidence of the rate or rates paid for such bond, insurance, and taxes.

- (3) Materials. For materials accepted by the Owner's Representative and used, the Contractor shall receive the actual cost of such materials delivered on the work, including transportation charges paid by him (exclusive of machinery rentals as hereinafter set forth), to which **Ten (10) percent** will be added.
- (4) Equipment. For any machinery or special equipment (other than small tools) including fuel and lubricants, plus transportation costs, the use of which has been authorized by the Owner's Representative, the Contractor shall receive the rental rates agreed upon in writing before such work is begun, for the actual time that such equipment is in operation on the work, to which rental sum, **Ten (10) percent** will be added.
- (5) Miscellaneous. No additional allowance will be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.
- (6) Mark-up of Subcontractor work. The Contractor shall be allowed an administrative equal to **Ten (10) percent** of the net cost of any subcontractor's work.

(b) Records. The Contractor's representative and the Owner's Representative shall compare records of the cost of work done as ordered on a Force Account basis.

(c) Statements. No payment will be made for work performed on a Force Account basis until the Contractor has furnished the Owner's Representative with triplicate itemized statements of the cost of such Force Account Work detailed as follows:

- (1) Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman;
- (2) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment;
- (3) Quantities of materials, prices, and extensions;
- (4) Transportation of materials;

- (5) Cost of property damage, liability and workmen's compensation insurance premiums (excluding any and all retroactive penalty adjustments), unemployment insurance contributions, and social security taxes.

(d) Statements shall be accompanied and supported by receipted invoices for all materials used and transportation charges. However, if materials used on the Force Account Work are not specifically purchased for such work, but are taken from the Contractor's stock, then in lieu of the invoices the Contractor shall furnish an affidavit certifying that such materials were taken from his stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor.

Section 36. Payment for Stipulation Price Change.

At the Owner's agreement, extra or changed work ordered in accordance with Section 12 hereof may be paid to the Contractor at a stipulated price that has been submitted to the Owner's Representative for review and approved prior to the performing of the work.

Section 37. Credit for Deleted Work.

On Work deleted from this Agreement, the credit to the Owner shall be the Owner's Representative approved net cost plus **Ten (10) percent** of the overhead and profit percentage noted in Section 35.

Section 38. Prevailing Wage Act and Labor Rates.

For all work performed under this Agreement by the Contractor and his subcontractors, including any authorized Force Account Work, the Contractor shall pay the prevailing rates of wages for Will County as established by the Illinois Department of Labor and as existing during the performance of this Agreement, in accordance with the Illinois Prevailing Wage Act (820 ILCS 130). The Contractor and his subcontractors shall make all payments, maintain and keep all records, furnish all certified payroll and all other reports to the Owner, shall be subject to all penalties, and otherwise meet all requirements prescribed in the Prevailing Wage Act.

Section 39. Equal Employment Opportunity and Nondiscrimination in Employment Practices.

(a) Equal Employment Opportunity Clause. In the event of the Contractors noncompliance with any provision of this Equal Employment Opportunity Clause, the Illinois Human Rights Act (775 ILCS 5) or other Illinois Human Rights Commission's Rules and Regulations for Public Contracts (53 Ill. Adm. Code 5200-5300), the Contractor may be declared non-responsive and therefore ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or Municipal corporations, and the Contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation.

(b) During the performance of this Agreement, the Contractor agrees as follows:

- (1) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or ancestry; 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 condition.
- (2) That, if it hires additional employees in order to perform this Agreement or any portion hereof, it will determine the availability (in accordance with the Commission's Rules and Regulations for Public Contracts) 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 or ancestry.
- (4) That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Contractor's obligations under the Illinois Human Rights and the Commission's Rule and Regulations for Public Contracts. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with this Act and Rules and Regulations, the Contractor will promptly so notify the Illinois Human Rights Commission and the Contracting Agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
- (5) That it will submit reports as required by the Illinois Human Rights Commission's Rules and Regulations for Public Contracts, furnish all relevant information as may from time to time be requested by the Commission or the Contracting Agency, and in all respects comply with the Illinois Human Rights Act and the Commission's Rules and Regulations for Public Contracts.

- (6) That it will permit access to all relevant books, records, accounts and work sites by personnel of the Contracting Agency and the Illinois Human Rights Commission for purposes of investigation to ascertain compliance with the Illinois Fair Employment Practices Act and the Commission's Rules and Regulations for Public Contracts.
- (7) That it will include verbatim or by reference the provisions of Paragraphs 1 through 7 of this clause in every performance subcontract as defined in Section 2.10(b) of the Commission's Rules and Regulations for Public Contracts so that such provisions will be binding upon every such subcontractor; and that it will also include the provisions of Paragraphs 1, 5, 6 and 7 in every supply subcontract as defined in Section 2.10(a) of the Commission's Rules and Regulations for Public Contracts so that such provisions will be binding upon every such subcontractor.

In the same manner as with other provisions of this Agreement, the Contractor will be liable for compliance with applicable provisions of this clause by all its subcontractors; and further it will promptly notify the Contracting Agency and the Illinois Human Rights Commission in the event any subcontractor fails or refuses to comply therewith. In addition, no Contractor will utilize any subcontractor declared by the Commission to be non-responsible and therefore ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or Municipal corporations.

- (8) The Contractor shall publish a statement to its employees that complies with the requirements of the Illinois Drug Free Workplace Act, establish a drug free workplace policy consistent with the requirements of the Act, and thereafter act in accordance with the policy and the Act with respect to any drug related issues occurring in the workplace during the performance of activities under this Agreement.
- (9) The Contractor certifies that neither it nor any of its officers, directors, shareholders or managers is barred from contracting with the Village of Romeoville because of any delinquency in the payment of any tax administered by the State of Illinois, Department of Revenue, unless the undersigned or the entity is contesting, in accordance with

the procedures established by the appropriate revenue act, liability of the tax or the amount of tax, and further represents to the Village that it understands that making a false statement regarding delinquency in taxes is a Class A Misdemeanor and in addition, voids this Agreement and allows the municipality to recover all amounts paid to the individual or entity under the contract in a civil action.

- (10) Contractor shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor's duties and responsibilities for the safety and protection of the work shall continue until such time as all the work is completed and accepted by the Village of Romeoville. A. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the work; all work, materials and equipment to be incorporated therein, whether in storage on or off site; and other property at the site or adjacent thereto in the course of construction.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

VILLAGE OF ROMEOVILLE

1050 W. Romeo Road
Romeoville, Illinois 60446

ATTEST

By: _____

Its Village Clerk

By: _____

Its Village President

CONTRACTOR

ATTEST

By: _____

Its _____

By: _____

Its _____

F.H. Paschen
5515 N. East River Road
Chicago, IL 60656

ATTEST

By: _____
