

CONTRACT BETWEEN
VILLAGE OF GRAYSLAKE
AND
MARK MEADE EXCAVATORS, INC.
FOR
EMERGENCY CONTRACTUAL ASSISTANCE

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CONTRACT BETWEEN
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AND
MARK MEADE EXCAVATORS, INC.
FOR
EMERGENCY CONTRACTUAL ASSISTANCE

In consideration of the mutual promises set forth below, the Village of Grayslake, 10 South Seymour Avenue, Grayslake, Illinois 60030, a municipal corporation ("Owner"), and **MARK MEADE EXCAVATORS, INC. 31446 N. ALLEGHANY ROAD, GRAYSLAKE, IL 60030**, an **ILLINOIS ORGANIZATION** ("Contractor"), make this Contract as of the 11th day of December, 2015, and hereby agree as follows:

ARTICLE I
THE WORK

1.1 Performance of the Work

Contractor shall, at its sole cost and expense, provide, perform, and complete all of the following, all of which is herein referred to as the "Work":

1. Labor, Equipment, Materials, and Supplies. Provide, perform, and complete, in the manner described and specified in this Contract, all necessary work, labor, services, transportation, equipment, materials, apparatus, machinery, tools, fuels, gas, electric, water, waste disposal, information, data, and other means and items necessary to accomplish the Project at the Work Site, both as defined in Attachment A, in accordance with the specifications attached hereto as Attachment B, the drawings identified in the list attached hereto as Attachment C, and the Special Project Requirements attached hereto as Attachment D.

2. Permits. Except as otherwise provided in Attachment A, procure and furnish all permits, licenses, and other governmental approvals and authorizations necessary in connection therewith.

3. Bonds and Insurance. Procure and furnish all Bonds and all certificates and policies of insurance specified in this Contract.

4. Taxes. Pay all applicable federal, state, and local taxes.

5. Miscellaneous. Do all other things required of Contractor by this Contract, including, without limitation, arranging for utility and other services needed for the Work

and for testing, including the installation of temporary utility lines, wiring, switches, fixtures, hoses, connections, and meters, and providing sufficient sanitary conveniences and shelters to accommodate all workers and all personnel of Owner engaged in the Work.

6. Quality. Provide, perform and complete all of the foregoing in a proper and workmanlike manner, consistent with the highest standards of professional and construction practices and in full compliance with, and as required by or pursuant to, this Contract, and with the greatest economy, efficiency, and expedition consistent therewith, with only new, undamaged and first quality equipment, materials, and supplies.

7. Engineer's Interpretation. Engineer shall determine which provision or provisions of this Contract Agreement and the Contract Documents best promotes or promote the overall objectives, and best fulfill the intents and purposes, of this Contract, and such provision or provisions shall govern. Such determination of Engineer shall be final.

1.2 Commencement and Completion Dates

Contractor shall commence the Work not later than the "Commencement Date" set forth on Attachment A and shall diligently and continuously prosecute the Work at such a rate as will allow the Work to be fully provided, performed, and completed in full compliance with this Contract not later than the "Completion Date" set forth in Attachment A. The time of commencement, rate of progress, and time of completion are referred to in this Contract as the "Contract Time."

1.3 Required Submittals

A. Submittals Required. Contractor shall submit to Owner all documents, data, and information specifically required to be submitted by Contractor under this Contract and shall, in addition, submit to Owner all such drawings, specifications, descriptive information, and engineering documents, data, and information as may be required, or as may be requested by Owner, to show the details of the Work, including a complete description of all equipment, materials, and supplies to be provided under this Contract ("Required Submittals"). Such details shall include, but shall not be limited to, design data, structural and operating features, principal dimensions, space required or provided, clearances required or provided, type and brand of finish, and all similar matters, for all components of the Work.

B. Number and Format. Contractor shall provide three complete sets for each Required Submittal. All Required Submittals, except drawings, shall be prepared on white 8-1/2 inch by 11 inch paper. Two blue-line prints and one sepia transparency of each drawing shall be provided. All prints of drawings shall be folded to 8-1/2 inches by 11 inches, or less. All drawings shall be clearly marked in the lower right-hand corner with the names of Owner and Contractor.

C. Time of Submission and Owner's Review. All Required Submittals shall be provided to Owner no later than the time, if any, specified in this Contract for their submission or, if no time for submission is specified, in sufficient time, in Owner's sole opinion, to permit Owner to review the same prior to the commencement of the part of the Work to which they relate and prior to the purchase of any equipment, materials, or supplies that they describe. Owner shall have the right to require such corrections as may be necessary to make such submittals conform to this Contract. All such submittals shall, after final processing and review with no exception noted by Owner, become a part of this Contract. No Work related to any submittal shall be performed by Contractor until Owner has completed review of such submittal with no exception noted. Owner's review and stamping of any Required Submittal shall be for the sole purpose of examining the general management, design, and details of the proposed Work, shall not relieve Contractor of the entire responsibility for the performance of the Work in full compliance with, and as required by or pursuant to this Contract, and shall not be regarded as any assumption of risk or liability by Owner.

D. Responsibility for Delay. Contractor shall be responsible for any delay in the Work due to delay in providing Required Submittals conforming to this Contract.

1.4 Review and Interpretation of Contract Provisions

Contractor represents and warrants that it has carefully reviewed this Contract, including all of its Attachments and the drawings identified in Attachment C, all of which are by this reference incorporated into and made a part of this Contract. Contractor shall, at no increase in the Contract Price, provide workmanship, equipment, materials, and supplies that fully conform to this Contract. Whenever any equipment, materials or supplies are specified or described in this Contract by using the name or other identifying feature of a proprietary product or the name or other identifying feature of a particular manufacturer or vendor, the specific item mentioned shall be understood as establishing the type, function and quality desired. Other manufacturers' or vendors' products may be accepted, provided that the products proposed are equivalent in substance and function to those named as determined by Owner in its sole and absolute discretion.

Contractor shall promptly notify Owner of any discrepancy, error, omission, ambiguity, or conflict among any of the provisions of this Contract before proceeding with any Work affected thereby. If Contractor fails to give such notice to Owner, then the subsequent decision of Owner as to which provision of this Contract shall govern shall be final, and any corrective work required shall not entitle Contractor to any damages, to any compensation in excess of the Contract Price, or to any delay or extension of the Contract Time.

When the equipment, materials, or supplies furnished by Contractor cannot be installed as specified in this Contract, Contractor shall, without any increase in the Contract Price, make all modifications required to properly install the equipment, materials, or supplies. Any such modification shall be subject to the prior review and consent of Owner.

1.5 Conditions at the Work Site; Record Drawings

Contractor represents and warrants that it has had a sufficient opportunity to conduct a thorough investigation of the Work Site and the surrounding area and has completed such investigation to its satisfaction. Contractor shall have no claim for damages, for compensation in excess of the Contract Price, or for a delay or extension of the Contract Time based upon conditions found at, or in the vicinity of, the Work Site. When information pertaining to subsurface, underground or other concealed conditions, soils analysis, borings, test pits, utility locations or conditions, buried structures, condition of existing structures, and other investigations is or has been provided by Owner, or is or has been otherwise made available to Contractor by Owner, such information is or has been provided or made available solely for the convenience of Contractor and is not part of this Contract. Owner assumes no responsibility whatever in respect to the sufficiency or accuracy of such information, and there is no guaranty or warranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the Work or the Work Site, or that the conditions indicated are representative of those existing at any particular location, or that the conditions indicated may not change, or that unanticipated conditions may not be present.

Contractor shall be solely responsible for locating all existing underground installations by prospecting no later than two workdays prior to any scheduled excavation or trenching, whichever is earlier. Contractor shall check all dimensions, elevations, and quantities indicated in this Contract within the same time period as set forth above for prospecting underground installations. Contractor shall lay out the Work in accordance with this Contract and shall establish and maintain such locations, lines and levels. Wherever pre-existing work is encountered, Contractor shall verify and be responsible for dimensions and location of such pre-existing work. Contractor shall notify Owner of any discrepancy between the dimensions, elevations and quantities indicated in this Contract and the conditions of the Work Site or any other errors, omissions or discrepancies which Contractor may discover during such inspections. Full instructions will be furnished by Owner should such error, omission, or discrepancy be discovered, and Contractor shall carry out such instructions as if originally specified and without any increase in Contract Price.

All Required Submittals shall be provided to Engineer no later than the time, if any, specified in this Contract for their submission or, if no time for submission is specified, in sufficient time, in Engineer's sole opinion, to permit Engineer to review the same prior to the commencement of the part of the Work to which they relate and prior to the purchase of any equipment, materials, or supplies that they describe

Engineer shall review all Required Submittals as soon as reasonably possible after their submission and shall have the right to require resubmittal of, and such corrections in and additions to, any or all Required Submittals as may be necessary to make the Required Submittals conform to this Contract.

Contractor shall be responsible for any delay in the Work due to delay in providing Required Submittals conforming to this Contract. In the event more than two re-submittals of any Required Submittal is necessary to make such Required Submittal conform to this Contract, Contractor shall be charged the total cost incurred by Engineer for all subsequent reviews of

Required Submittals. If the amount due Contractor is not sufficient to cover such costs, Contractor shall reimburse Owner for such costs upon demand.

Before Final Acceptance of the Work, Contractor shall submit to Owner two sets of Drawings of Record, unless a greater number is specified elsewhere in this Contract, indicating all field deviations.

1.6 Technical Ability to Perform

Contractor represents and warrants that it is sufficiently experienced and competent, and has the necessary capital, facilities, plant, organization, and staff, to provide, perform and complete the Work in full compliance with, and as required by or pursuant to, this Contract.

1.7 Financial Ability to Perform

Contractor represents and warrants that it is financially solvent, and Contractor has the financial resources necessary to provide, perform and complete the Work in full compliance with, and as required by or pursuant to, this Contract.

1.8 Contractor's Certification.

Contractor certifies that all the facts and information submitted by Contractor in connection with this Contract and its procurement are true and correct in all respects and, in particular, the statements contained in Contractor's Certification are true and correct.

1.9 Time

Contractor represents and warrants that it is ready, willing, able and prepared to begin the Work on the Commencement Date and that the Contract Time is sufficient time to permit completion of the Work in full compliance with, and as required by or pursuant to, this Contract for the Contract Price, all with due regard to all natural and man-made conditions that may affect the Work or the Work Site and all difficulties, hindrances, and delays that may be incident to the Work. Contractor shall promptly, continuously, diligently, vigorously, and systematically provide and perform the Work and all component parts of the Work, within such time or times as may be set forth in this Contract.

1.10 Safety at the Work Site

Contractor shall be solely and completely responsible for providing and maintaining safe conditions at the Work Site, including the safety of all persons and property during performance of the Work. This requirement shall apply continuously and shall not be limited to normal working hours. Contractor shall take all safety precautions as shall be necessary to comply with all applicable laws and to prevent injury to persons and damage to property.

Contractor shall conduct all of its operations without interruption or interference with vehicular and pedestrian traffic on public and private rights-of-way, unless it has obtained

permits therefor from the proper authorities. If any public or private right-of-way shall be rendered unsafe by Contractor's operations, Contractor shall make such repairs or provide such temporary ways or guards as shall be acceptable to the proper authorities.

1.11 Cleanliness of the Work Site and Environs

Contractor shall keep the Work Site and adjacent areas clean at all times during performance of the Work and shall remove and properly dispose of all waste and surplus materials from the Work Site each workday in such a manner as may be necessary to conform to Law. Contractor shall sweep and clean the Work Site, and shall remove from the Work Site all hoses, cables, extension cords and similar materials, as may be necessary to leave the Work Site and adjacent areas in a clean and orderly condition at the end of each workday. If Contractor fails to comply with its obligations under this Section, Owner shall have the right to perform, or to have performed, such obligations and to withhold or recover the cost thereof from Contractor.

1.12 Damage to the Work, the Work Site, and Other Property

The Work and everything pertaining thereto shall be provided, performed, completed, and maintained at the sole risk and cost of Contractor from the Commencement Date until Final Payment. Contractor shall be fully responsible for the protection of all public and private property and all persons. Without limiting the foregoing, Contractor shall, at its own cost and expense, provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work in order to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing is not explicitly specified, and support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbs, sidewalks, fixtures and landscaping of all kinds and all other public or private property that may be encountered or endangered in providing, performing and completing the Work. Contractor shall have no claim against Owner because of any damage or loss to the Work or to Contractor's equipment, materials, or supplies from any cause whatsoever, including damage or loss due to simultaneous work by others. Contractor shall, promptly and without charge to Owner, repair or replace, to the satisfaction of Owner, any damage done to, and any loss suffered by, the Owner, the Work and any damage done to, and any loss suffered by, the Work Site or other property as a result of the Work. Notwithstanding any other provision of this Contract, Contractor's obligations under this Section shall exist without regard to, and shall not be construed to be waived by, the availability or unavailability of any insurance, either of Owner or Contractor, to indemnify, hold harmless, or reimburse Contractor for the cost of any repair or replacement work required by this Section.

1.13 Administration of the Work

Contractor shall have full and sole responsibility for administration of the Work. Contractor's field organization shall include fully qualified and adequate management, supervisory and technical personnel to insure competent and expeditious handling of all matters related to the Work. Contractor shall have full and sole responsibility for keeping all personnel, equipment, materials, supplies, and other things required to provide, perform, and complete the Work within the designated construction area limits of the Work Site and out of areas not designated for Contractor's use. On all other lands, Contractor shall have no rights unless it obtains them from the proper parties.

Owner shall have the authority to order Contractor to remove from the Work Site any of Contractor's employees or any Subcontractors' employees who fail to discharge responsibilities, refuse to obey instructions, who are incompetent, abusive, threatening, or disorderly in their conduct, or who otherwise fail to perform that part of the Work undertaken in a manner satisfactory to Owner. Any such Person so removed shall not be employed again on the Work. No adjustment in the Contract Price or Contract Time shall be made as a result of such removal.

1.14 Subcontractors and Suppliers

Approval and Use of Subcontractors and Suppliers. Contractor shall perform the Work with its own personnel and under the management, supervision, and control of its own organization unless otherwise approved by Owner in writing. All subcontractors, suppliers, and subcontracts used by Contractor shall be acceptable to, and approved in advance by, Owner. Owner's approval of any subcontractor, supplier, and subcontract shall not relieve Contractor of full responsibility and liability for the provision, performance, and completion of the Work in full compliance with, and as required by or pursuant to, this Contract. All Work performed under any subcontract shall be subject to all of the provisions of this Contract in the same manner as if performed by employees of Contractor. Every reference in this Contract to "Contractor" shall be deemed also to refer to all subcontractors and suppliers of Contractor. Every subcontract shall include a provision binding the subcontractor or supplier to all provisions of this Contract.

C. Removal of Subcontractors and Suppliers. If any subcontractor or supplier fails to perform the part of the Work undertaken by it in a manner satisfactory to Owner, Contractor shall immediately upon notice from Owner terminate such subcontractor or supplier. Contractor shall have no claim for damages, for compensation in excess of the Contract Price, or for a delay or extension of the Contract Time as a result of any such termination.

D. Subcontractors and Suppliers. Contractor shall be responsible for all Subcontractors and Suppliers and shall supervise and control all Subcontractors and Suppliers. All of Contractor's agreements with Subcontractors and Suppliers shall be subject to the applicable terms and conditions of this Contract. Contractor shall have the duty to coordinate all Subcontractors and Suppliers so as to avoid hindrance or interference among them and to ensure that the Work will be completed in full compliance with, and as required by or pursuant to, this Contract and within the Contract Time.

1.15 Simultaneous Work By Others

Owner shall have the right to perform or have performed such other work as Owner may desire in, about, or near the Work Site during the performance of the Work by Contractor. Contractor shall make every reasonable effort to perform the Work in such manner as to enable both the Work and such other work to be completed without hindrance or interference from each other. Contractor shall afford Owner and other contractors reasonable opportunity for the execution of such other work and shall properly coordinate the Work with such other work.

1.16 Occupancy Prior to Final Payment

Owner shall have the right, at its election, to occupy, use, or place in service any part of the Work prior to Final Payment. Such occupancy, use, or placement in service shall be conducted in such manner as not to damage any of the Work or to unreasonably interfere with the progress of the Work. No such occupancy, use, or placement in service shall be construed as an acceptance of any of the Work or a release or satisfaction of Contractor's duty to insure and protect the Work, nor shall it, unless conducted in an unreasonable manner, be considered as an interference with Contractor's provision, performance, or completion of the Work.

1.17 Owner's Right to Terminate or Suspend Work for Convenience

A. Termination or Suspension for Convenience. Owner shall have the right, for its convenience, to terminate or suspend the Work in whole or in part at any time by written notice to Contractor. Every such notice shall state the extent and effective date of such termination or suspension. On such effective date, Contractor shall, as and to the extent directed, stop Work under this Contract, cease all placement of further orders or subcontracts, terminate or suspend Work under existing orders and subcontracts, cancel any outstanding orders or subcontracts that may be cancelled, and take any action necessary to protect any property in its possession in which Owner has or may acquire any interest and to dispose of such property in such manner as may be directed by Owner.

B. Payment for Completed Work. In the event of any termination pursuant to Subsection 1.15A above, Owner shall pay Contractor (1) such direct costs, excluding overhead, as Contractor shall have paid or incurred for all Work done in compliance with, and as required by or pursuant to, this Contract up to the effective date of termination together with ten percent of such costs for overhead and profit; and (2) such other costs pertaining to the Work, exclusive of overhead and profit, as Contractor may have reasonably and necessarily incurred as the result of such termination. Any such payment shall be offset by any prior payment or payments and shall be subject to Owner's rights to withhold and deduct as provided in this Contract.

ARTICLE II
CHANGES AND DELAYS

2.1 **Changes**

Owner shall have the right, by written order executed by Owner, to make changes in the Contract, the Work, the Work Site, and the Contract Time ("Change Order"). If any Change Order causes an increase or decrease in the amount of the Work, an equitable adjustment in the Contract Price or Contract Time may be made. All claims by Contractor for an equitable adjustment in either the Contract Price or the Contract Time shall be made within two business days following receipt of such Change Order, and shall, if not made prior to such time, be conclusively deemed to have been waived. No decrease in the amount of the Work caused by any Change Order shall entitle Contractor to make any claim for damages, anticipated profits, or other compensation. Any Change Order that authorizes or necessitates an increase of fifty per cent or more in (a) the original Contract Price or (b) the original prices of any subcontractor under this Contract, shall be subject to bidding in the same manner as the original Contract or subcontract was bid.

2.2 **Delays**

A. Extensions for Unavoidable Delays. For any delay that may result from causes that could not be avoided or controlled by Contractor, Contractor shall, upon timely written application, be entitled to issuance of a Change Order providing for an extension of the Contract Time for a period of time equal to the delay resulting from such unavoidable cause. No extension of the Contract Time shall be allowed for any other delay in completion of the Work.

B. No Compensation for Delays. No payment, compensation, damages, or adjustment of any kind, other than the extension of the Contract Time provided in Subsection 2.2A above, shall be made to, or claimed by, Contractor because of hindrances or delays from any cause in the commencement, prosecution, or completion of the Work, whether caused by Owner or any other party and whether avoidable or unavoidable.

ARTICLE III
CONTRACTOR'S RESPONSIBILITY FOR DEFECTIVE WORK

3.1 **Inspection; Testing; Correction of Defects**

A. Inspection. Until Final Payment, all parts of the Work shall be subject to inspection and testing by Owner or its designated representatives. Contractor shall furnish, at its own expense, all reasonable access, assistance, and facilities required by Owner for such inspection and testing.

B. Re-Inspection. Re-inspection and re-testing of any Work may be ordered by Owner at any time, and, if so ordered, any covered or closed Work shall be uncovered or opened by Contractor. If the Work is found to be in full compliance with this Contract, then Owner shall pay the cost of uncovering, opening, re-inspecting, or re-testing, as the case may be. If such Work is not in full compliance with this Contract, then Contractor shall pay such cost.

C. Correction. Until Final Payment, Contractor shall, promptly and without charge, repair, correct, or replace all or any part of the Work that is defective, damaged, flawed, or unsuitable or that in any way fails to conform strictly to the requirements of this Contract.

3.2 Warranty of Work

A. Scope of Warranty. Contractor warrants that the Work and all of its components shall be free from defects and flaws in design, workmanship, and materials; shall strictly conform to the requirements of this Contract; and shall be fit, sufficient and suitable for the purposes expressed in, or reasonably inferred from, this Contract. The warranty herein expressed shall be in addition to any other warranties expressed in this Contract, or expressed or implied by law, which are hereby reserved unto Owner.

B. Length of Warranty; Repairs; Extension of Warranty. Contractor shall, promptly and without charge, correct any failure to fulfill the above warranty that may be discovered or develop at any time within one year after Final Payment or such longer period as may be prescribed in Attachment B or Attachment D to this Contract or by law. The above warranty shall be extended automatically to cover all repaired and replacement parts and labor provided or performed under such warranty and Contractor's obligation to correct Work shall be extended for a period of one year from the date of such repair or replacement. The time period established in this Subsection 3.2B relates only to the specific obligation of Contractor to correct Work and shall not be construed to establish a period of limitation with respect to other obligations that Contractor has under this Contract.

C. Subcontractor and Supplier Warranties. Whenever a subcontractor or supplier is required to provide a guaranty or warranty, Contractor shall be solely responsible for obtaining said guaranty or warranty in form satisfactory to Owner and assigning said warranty or guaranty to Owner. Acceptance of any assigned warranties or guaranties by Owner shall be a precondition to Final Payment and shall not relieve Contractor of any of its guaranty or warranty obligations under this Contract.

3.3 Owner's Right to Correct

If, within two business days after Owner gives Contractor notice of any defect, damage, flaw, unsuitability, nonconformity, or failure to meet warranty subject to correction by Contractor pursuant to Section 3.1 or Section 3.2 of this Contract, Contractor neglects to make, or undertake with due diligence to make, the necessary corrections, then Owner shall be entitled to make, either with its own forces or with contract forces, the corrections and to recover from Contractor all resulting costs, expenses, losses, or damages, including attorneys' fees and administrative expenses.

ARTICLE IV
FINANCIAL ASSURANCES

4.1 **Bonds**

Contemporaneous with Contractor's execution of this Contract, Contractor shall provide a Performance Bond and a Labor and Material Payment Bond, on forms provided by, or otherwise acceptable to, Owner, from a surety company licensed to do business in the State of Illinois with a general rating of A minus and a financial size category of Class X or better in Best's Insurance Guide, each in the penal sum of the Contract Price ("Bonds"). Contractor shall, at all times while providing, performing, or completing the Work, including, without limitation, at all times while correcting any failure to meet warranty pursuant to Section 3.2 of this Contract, maintain and keep in force, at Contractor's expense, the Bonds required hereunder.

4.2 **Insurance**

A. Contemporaneous with Contractor's execution of this Contract, Contractor shall provide certificates and, if requested by the Village, policies of insurance evidencing the minimum insurance coverages and limits set forth in Attachment A. For good cause shown, Owner may extend the time for submission of the required certificates and policies of insurance upon such terms, and with such assurances of complete and prompt performance, as Owner may impose in the exercise of its sole discretion, however the Work may not begin until such certificates and policies are submitted. Such certificates and policies shall be in a form, and from companies, acceptable to Owner and from companies with a general rating of A-minus, and a financial size category of Class X or better, in Best's Insurance Guide. Such policies shall name the Village as an additional insured and cancellation notice recipient, including without limitation naming the Village as an additional insured. Such insurance shall provide that no change, modification in, or cancellation of any insurance shall become effective until the expiration of thirty (30) days after written notice thereof shall have been given by the insurance company to Owner. In the event of any such cancellation or non-renewal, Bidder shall provide, with the notice thereof, evidence of replacement insurance. In the event of any change of or modification of coverage, Bidder shall notify Village within thirty (30) days after Bidder receives such notice from the Village. Contractor shall, at all times while providing, performing, or completing the Work, including, without limitation, at all times while correcting any failure to meet warranty pursuant to Section 3.2 of this Contract, maintain and keep in force, at Contractor's expense, the minimum insurance coverages and limits set forth in Attachment A. Bidder and a representative of Bidder's insurer must execute the certification of insurance coverage attached as Exhibit D.

B. Additional Coverages. The insurance coverages and limits required by Attachment A shall be deemed to be minimum coverages and limits and shall not be construed in any way as a limitation on Contractor's duty to carry adequate insurance as required by Attachment A or on Contractor's liability for losses and damages under this Contract. Contractor shall at all

times carry such additional coverages and limits as may be necessary to fully comply with this contract. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss

C. Subcontractor Insurance. Unless otherwise provided in the Special Provisions of Contract or unless otherwise approved by Owner, Contractor 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 of Contractor by this Section.

D. Required Coverages. Contractor shall, prior to and at all times while providing, performing, or completing the Work, including, without limitation, at all times while repairing, correcting, or replacing all or any part of the Work that is defective, damaged, flawed, unsuitable, nonconforming, or that fails to meet warranty subject to correction by Contractor pursuant to the Contract, procure, maintain, and keep in force, at Contractor's expense, all insurance necessary to protect and save harmless Owner, the Work, the Work Site, and all property located at or about the Work Site, including but not limited to the insurance coverages specified in Attachment A.

E. Additional Insured Endorsement. Bidder shall also provide the Village with a copy of the actual additional insured endorsement demonstrating that the Village is named as an additional insured. The policy of insurance shall contain no provisions that invalidate the naming of the Village of Grayslake as additional insured

4.3 Indemnification

Contractor shall indemnify, save harmless, and defend Owner against any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses, including attorneys' fees and administrative expenses, that may arise, or be alleged to have arisen, out of or in connection with Contractor's performance of, or failure to perform, the Work or any part thereof, whether or not due or claimed to be due in whole or in part to the active, passive, or concurrent negligence or fault of Contractor, except to the extent caused by the sole negligence of Owner. The provision of insurance as required by this Contract shall not be a limit on the Contractor's obligation under this Section 4.3.

4.4 Claims

If the Work or any of Contractor's operations or property is damaged by any other Person, Contractor shall make its claim directly against such Person. If a dispute develops between Contractor and any such other Person concerning the responsibility for any such damage, the dispute shall be resolved with such other Person by whatever method may be available and appropriate, but such dispute shall not be cause for delay in the restoration of the damaged Work, and Contractor shall restore the Work immediately. Failure of Contractor to comply with this Contractor shall entitle Owner to perform, or to have performed, all Work necessary for compliance with this Contractor and to withhold or recover from Contractor the cost of such Work.

ARTICLE V **PAYMENT**

5.1 Contract Price

Owner shall pay to Contractor, in accordance with and subject to the terms and conditions set forth in this Article V and Attachment B, and Contractor shall accept in full satisfaction for providing, performing, and completing the Work, the amount or amounts set forth in Attachment B (the "Contract Price"), subject to any additions, deductions, or withholdings provided for in this Contract.

5.2 Taxes and Benefits

Owner is exempt from and shall not be responsible to pay, or reimburse Contractor for, any state or local sales, use, or excise taxes. The Contract Price includes all other applicable federal, state, and local taxes of every kind and nature applicable to the Work as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or other similar benefits. All claim or right to claim additional compensation by reason of the payment of any such tax, contribution, or premium is hereby waived and released by Contractor.

5.3 Progress Payments

A. Payment in Installments. The Contract Price shall be paid in monthly installments in the manner set forth in Attachment A ("Progress Payments"), and subject to retainage as provided in Section 5.3.F below.

B. Pay Requests. Contractor shall, as a condition precedent to its right to receive each Progress Payment, submit to Owner a pay request in the form provided by Owner ("Pay Request"). The first Pay Request shall be submitted not sooner than thirty (30) days following commencement of the Work. Owner may, by written notice to Contractor, designate a specific day of each month on or before which Pay Requests must be submitted. Each Pay Request shall include (a) Contractor's certification of the value of, and partial or final waivers of lien covering, all Work for which payment is then requested and (b) Contractor's certification that all prior Progress Payments have been properly applied to the payment or reimbursement of the costs with respect to which they were paid.

C. Overtime Engineering Costs. Owner shall have the right to charge Contractor for engineering and inspection services in connection with any Overtime Work. Such charge shall be equal to the total cost incurred by Engineer for the number of Engineer's personnel reasonably required to be present during such Overtime Work. If the amount due Contractor is not sufficient to cover such charge, Contractor shall reimburse Owner upon demand.

D. Certified Payroll Records. Contractor shall submit to Owner, on a monthly basis, the certified payroll records required by Section 5 of the Prevailing Wage Act, as amended. 820 ILCS 130/5.

E. Work Entire. This Contract and the Work are entire and the Work as a whole is of the essence of this Contract. Notwithstanding any other provision of this Contract, each and every part of this Contract and of the Work are interdependent and common to one another and to Owner's obligation to pay all or any part of the Contract Price or any other consideration for the Work. Any and all Progress Payments made pursuant to this Article are provided merely for the convenience of Contractor and for no other purpose.

F. Retainage. For each Progress Payment, Contractor shall receive 90% of the Progress Payment amount, and the Village shall hold 10% of such Progress Payment as retainage (the "Retainage Amount"). The Village may utilize the Retainage Amount to cure any deficiency in the Contractor's performance that is identified prior to Final Acceptance (as defined below). Not less than three days prior to the Village utilizing any of the Retainage Amount, the Village shall notify the Contractor of (i) the deficiency in Contractor's performance, (ii) the Village's intention to utilize the Retainage Amount or some portion thereof, (iii) the nature and anticipated time of commencement of the Village's curative activities, and (iv) an estimate of the Retainage Amount to be used. If, prior to the commencement of the Village's curative activities, the Contractor notifies the Village of its intent to cure its deficiency in a timely fashion (as determined by the Village's anticipated time of commencing curative activities), then the Village shall defer proceeding with its curative activities and allow the Contractor to undertake its own corrective action.

5.4 Final Acceptance and Final Payment

A. Notice of Completion. When the Work has been completed and is ready in all respects for acceptance by Owner, Contractor shall notify Owner and request a final inspection ("Notice of Completion"). Contractor's Notice of Completion shall be given sufficiently in advance of the Completion Date to allow for scheduling of the final inspection and for completion or correction before the Completion Date of any items identified by such inspection as being defective, damaged, flawed, unsuitable, nonconforming, incomplete, or otherwise not in full compliance with, or as required by or pursuant to, this Contract ("Punch List Work").

B. Punch List and Final Acceptance. The Work shall be finally accepted when, and only when, the whole and all parts thereof shall have been completed to the satisfaction of Owner in full compliance with, and as required by or pursuant to, this Contract. Upon receipt of Contractor's Notice of Completion, Owner shall make a review of the Work and notify Contractor in writing of all Punch List Work, if any, to be completed or corrected. Following Contractor's completion or correction of all Punch List Work, Owner shall make another review of the Work and prepare and deliver to Contractor either a written notice of additional Punch List Work to be completed or corrected or a written notice of final acceptance of the Work ("Final Acceptance").

C. Final Payment. As soon as practicable after Final Acceptance, Contractor shall submit to Owner a properly completed final Pay Request in the form provided by Owner ("Final Pay Request"). Owner shall pay to Contractor the balance of the Contract Price (including

the balance of the Retainage Amount), after deducting therefrom all charges against Contractor as provided for in this Contract ("Final Payment"). Final Payment shall be made not later than sixty (60) days after Owner approves the Final Pay Request. The acceptance by Contractor of Final Payment shall operate as a full and complete release of Owner of and from any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses of, by, or to Contractor for anything done, furnished for, arising out of, relating to, or in connection with the Work or for or on account of any act or neglect of Owner arising out of, relating to, or in connection with the Work, except the claim against Owner for the unpaid balance, if any, of any amounts retained by Owner pursuant to Contract.

5.5 Liens

A. Title. Nothing in this Contract shall be construed as vesting in Contractor any right of property in any equipment, materials, supplies, and other items provided under this Contract after they have been installed in, incorporated into, attached to, or affixed to, the Work or the Work Site. All such equipment, materials, supplies, and other items shall, upon being so installed, incorporated, attached or affixed, become the property of Owner, but such title shall not release Contractor from its duty to insure and protect the Work in accordance with the requirements of this Contract.

B. Waivers of Lien. Contractor shall, from time to time at Owner's request and in any event prior to Final Payment, furnish to Owner such receipts, releases, affidavits, certificates, and other evidence as may be necessary to establish, to the reasonable satisfaction of Owner, that no lien against the Work or the public funds held by Owner exists in favor of any person whatsoever for or by reason of any equipment, material, supplies, or other item furnished, labor performed, or other thing done in connection with the Work or this Contract ("Lien") and that no right to file any Lien exists in favor of any person whatsoever.

C. Removal of Liens. If at any time any notice of any Lien is filed, then Contractor shall, promptly and without charge, discharge, remove, or otherwise dispose of such Lien. Until such discharge, removal, or disposition, Owner shall have the right to retain from any money payable hereunder an amount that Owner, in its sole judgment, deems necessary to satisfy such Lien and to pay the costs and expenses, including attorneys' fees and administrative expenses, of any actions brought in connection therewith or by reason thereof.

D. Protection of Owner Only. This Section shall not operate to relieve Contractor's surety or sureties from any of their obligations under the Bonds, nor shall it be deemed to vest any right, interest, or entitlement in any subcontractor or supplier. Owner's retention of funds pursuant to this Section shall be deemed solely for the protection of its own interests pending removal of such Liens by Contractor, and Owner shall have no obligation to apply such funds to such removal but may, nevertheless, do so where Owner's interests would thereby be served.

5.6 Deductions

A. Owner's Right to Withhold. Notwithstanding any other provision of this Contract and without prejudice to any of Owner's other rights or remedies, Owner shall have the

right at any time or times, whether before or after approval of any Pay Request, to deduct and withhold from any Progress or Final Payment that may be or become due under this Contract such amount as may reasonably appear necessary to compensate Owner for any actual or prospective loss due to: (1) Work that is defective, damaged, flawed, unsuitable, nonconforming, or incomplete; (2) damage for which Contractor is liable under this Contract; (3) state or local sales, use, or excise taxes from which Owner is exempt; (4) Liens or claims of Lien regardless of merit; (5) claims of subcontractors, suppliers, or other persons regardless of merit; (6) delay in the progress or completion of the Work; (7) inability of Contractor to complete the Work; (8) failure of Contractor to properly complete or document any Pay Request; (9) any other failure of Contractor to perform any of its obligations under this Contract; or (10) the cost to Owner, including attorneys' fees and administrative costs, of correcting any of the aforesaid matters or exercising any one or more of Owner's remedies set forth in Section 6.3 of this Contract.

B. Use of Withheld Funds. Owner shall be entitled to retain any and all amounts withheld pursuant to Subsection 5.6A above until Contractor shall have either performed the obligations in question or furnished security for such performance satisfactory to Owner. Owner shall be entitled to apply any money withheld or any other money due Contractor under this Contract to reimburse itself for any and all costs, expenses, losses, damages, liabilities, suits, judgments, awards, attorneys' fees and administrative expenses incurred, suffered, or sustained by Owner and chargeable to Contractor under this Contract.

ARTICLE VI

DISPUTES AND REMEDIES

6.1 Dispute Resolution Procedure

A. Notice of Disputes and Objections. If Contractor disputes or objects to any requirement, direction, instruction, interpretation, determination, or decision of Owner, Contractor may notify Owner in writing of its dispute or objection and of the amount of any equitable adjustment to the Contract Price or Contract Time to which Contractor claims it will be entitled as a result thereof; provided, however, that Contractor shall, nevertheless, proceed without delay to perform the Work as required, directed, instructed, interpreted, determined, or decided by Owner, without regard to such dispute or objection. Unless Contractor so notifies Owner within two (2) business days after receipt of such requirement, direction, instruction, interpretation, determination, or decision, Contractor shall be conclusively deemed to have waived all such disputes or objections and all claims based thereon.

B. Negotiation of Disputes and Objections. To avoid and settle without litigation any such dispute or objection, Owner and Contractor agree to engage in good faith negotiations. Within three business days after Owner's receipt of Contractor's written notice of dispute or objection, a conference between Owner and Contractor shall be held to resolve the dispute. Within three (3) business days after the end of the conference, Owner shall render its final decision, in writing, to Contractor. If Contractor objects to the final decision of Owner, then it shall, within three (3) business days, give Owner notice thereof and, in such notice, shall state its final demand for settlement of the dispute. Unless Contractor so notifies Owner, Contractor shall

be conclusively deemed (1) to have agreed to and accepted Owner's final decision and (2) to have waived all claims based on such final decision.

6.2 Contractor's Remedies

If Owner fails or refuses to satisfy a final demand made by Contractor pursuant to Section 6.1 of this Contract, or to otherwise resolve the dispute which is the subject of such demand to the satisfaction of Contractor, within ten (10) days following receipt of such demand, then Contractor shall be entitled to pursue such remedies, not inconsistent with the provisions of this Contract, as it may have in law or equity.

6.3 Owner's Remedies

If it should appear at any time prior to Final Payment that Contractor has failed or refused to prosecute, or has delayed in the prosecution of, the Work with diligence at a rate that assures completion of the Work in full compliance with the requirements of this Contract on or before the Completion Date, or has attempted to assign this Contract or Contractor's rights under this Contract, either in whole or in part, or has falsely made any representation or warranty in this Contract, or has otherwise failed, refused, or delayed to perform or satisfy any other requirement of this Contract or has failed to pay its debts as they come due ("Event of Default"), and has failed to cure any such Event of Default within five (5) business days after Contractor's receipt of written notice of such Event of Default, then Owner shall have the right, at its election and without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

1. Owner may require Contractor, within such reasonable time as may be fixed by Owner, to complete or correct all or any part of the Work that is defective, damaged, flawed, unsuitable, nonconforming, or incomplete; to remove from the Work Site any such Work; to accelerate all or any part of the Work; and to take any or all other action necessary to bring Contractor and the Work into strict compliance with this Contract.
2. Owner may perform or have performed all Work necessary for the accomplishment of the results stated in Paragraph 1 above and withhold or recover from Contractor all the cost and expense, including attorneys' fees and administrative costs, incurred by Owner in connection therewith.
3. Owner may accept the defective, damaged, flawed, unsuitable, nonconforming, incomplete, or dilatory Work or part thereof and make an equitable reduction in the Contract Price.

4. Owner may terminate this Contract without liability for further payment of amounts due or to become due under this Contract.
5. Owner may, without terminating this Contract, terminate Contractor's rights under this Contract and, for the purpose of completing or correcting the Work, evict Contractor and take possession of all equipment, materials, supplies, tools, appliances, plans, specifications, schedules, manuals, drawings, and other papers relating to the Work, whether at the Work Site or elsewhere, and either complete or correct the Work with its own forces or contracted forces, all at Contractor's expense.
6. Upon any termination of this Contract or of Contractor's rights under this Contract, and at Owner's option exercised in writing, any or all subcontracts and supplier contracts of Contractor shall be deemed to be assigned to Owner without any further action being required, but Owner shall not thereby assume any obligation for payments due under such subcontracts and supplier contracts for any Work provided or performed prior to such assignment.
7. Owner may withhold from any Progress Payment or Final Payment, whether or not previously approved, or may recover from Contractor, any and all costs, including attorneys' fees and administrative expenses, incurred by Owner as the result of any Event of Default or as a result of actions taken by Owner in response to any Event of Default.
8. Owner may recover any damages suffered by Owner.

6.4 Owner's Special Remedy for Delay

If the Work is not completed by Contractor, in full compliance with, and as required by or pursuant to, this Contract, within the Contract Time as such time may be extended by Change Order, then Owner may invoke its remedies under Section 6.3 of this Contract or may, in the exercise of its sole and absolute discretion, permit Contractor to complete the Work but charge to Contractor, and deduct from any Progress or Final Payments, whether or not previously approved, administrative expenses and costs for each day completion of the Work is delayed beyond the Completion Date, computed on the basis of the "Per Diem Administrative Charge" set forth in Attachment A, as well as any additional damages caused by such delay.

6.5 Terminations and Suspensions Deemed for Convenience

Any termination or suspension of Contractor's rights under this Contract for an alleged default that is ultimately held unjustified shall automatically be deemed to be a termination or suspension for the convenience of Owner under Section 1.15 of this Contract.

**ARTICLE VII
LEGAL RELATIONSHIPS AND REQUIREMENTS**

7.1 Binding Effect

This Contract shall be binding upon Owner and Contractor and upon their respective heirs, executors, administrators, personal representatives, and permitted successors and assigns. Every reference in this Contract to a party shall also be deemed to be a reference to the authorized officers, employees, agents, and representatives of such party.

7.2 Relationship of the Parties

Contractor shall act as an independent contractor in providing and performing the Work. Nothing in, nor done pursuant to, this Contract shall be construed (1) to create the relationship of principal and agent, partners, or joint venturers between Owner and Contractor or (2) except as provided in Paragraph 6.3(6) above, to create any relationship between Owner and any subcontractor or supplier of Contractor.

7.3 No Collusion/Prohibited Interests

Contractor hereby represents that the only persons, firms, or corporations interested in this Contract as principals are those disclosed to Owner prior to the execution of this Contract, and that this Contract is made without collusion with any other person, firm, or corporation. If at any time it shall be found that Contractor has, in procuring this Contract, colluded with any other person, firm, or corporation, then Contractor shall be liable to Owner for all loss or damage that Owner may suffer thereby, and this Contract shall, at Owner's option, be null and void.

Contractor hereby represents and warrants that neither Contractor nor any person affiliated with Contractor or that has an economic interest in Contractor or that has or will have an interest in the Work or will participate, in any manner whatsoever, in the Work is acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by the United States Treasury Department as a Specially Designated National and Blocked Person, or for or on behalf of any person, group, entity or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism, and neither Contractor nor any person affiliated with Contractor or that has an economic interest in Contractor or that has or will have an interest in the Work or will participate, in any manner whatsoever, in the Work is, directly or indirectly, engaged in, or facilitating, the Work on behalf of any such person, group, entity or nation.

7.4 **Assignment**

Contractor shall not (1) assign this Contract in whole or in part, (2) assign any of Contractor's rights or obligations under this Contract, or (3) assign any payment due or to become due under this Contract without the prior express written approval of Owner, which approval may be withheld in the sole and unfettered discretion of Owner; provided, however, that Owner's prior written approval shall not be required for assignments of accounts, as defined in the Illinois Commercial Code, if to do so would violate Section 9-318 of the Illinois Commercial Code, 810 ILCS 5/9-318. Owner may assign this Contract, in whole or in part, or any or all of its rights or obligations under this Contract, without the consent of Contractor.

7.5 **Confidential Information**

All information supplied by Owner to Contractor for or in connection with this Contract or the Work shall be held confidential by Contractor and shall not, without the prior express written consent of Owner, be used for any purpose other than performance of the Work.

7.6 **No Waiver**

No examination, inspection, investigation, test, measurement, review, determination, decision, certificate, or approval by Owner, nor any order by Owner for the payment of money, nor any payment for, or use, occupancy, possession, or acceptance of, the whole or any part of the Work by Owner, nor any extension of time granted by Owner, nor any delay by Owner in exercising any right under this Contract, nor any other act or omission of Owner shall constitute or be deemed to be an acceptance of any defective, damaged, flawed, unsuitable, nonconforming or incomplete Work, equipment, materials, or supplies, nor operate to waive or otherwise diminish the effect of any warranty or representation made by Contractor; or of any requirement or provision of this Contract; or of any remedy, power, or right of Owner.

7.7 **No Third Party Beneficiaries**

No claim as a third party beneficiary under this Contract by any person, firm, or corporation other than Contractor shall be made or be valid against Owner.

7.8 **Notices**

All notices required or permitted to be given under this Contract shall be in writing and shall be deemed received by the addressee thereof when delivered in person on a business day at the address set forth below or on the third business day after being deposited in any main or branch United States post office, for delivery at the address set forth below by properly addressed, postage prepaid, certified or registered mail, return receipt requested.

Notices and communications to Owner shall be addressed to, and delivered at, the following address:

Village of Grayslake
10 South Seymour Avenue
Grayslake, Illinois 60030
Attention: Michael J. Ellis

Notices and communications to Contractor shall be addressed to, and delivered at, the following address:

Mark Meade Excavators Inc

31446 N Alleghany Road Unit 4

Grayslake IL 60030

The foregoing shall not be deemed to preclude the use of other non-oral means of notification or to invalidate any notice properly given by any such other non-oral means.

By notice complying with the requirements of this Section, Owner and Contractor each shall have the right to change the address or addressee or both for all future notices to it, but no notice of a change of address shall be effective until actually received.

7.9 **Governing Laws**

This Contract and the rights of Owner and Contractor under this Contract shall be interpreted according to the internal laws, but not the conflict of laws rules, of the State of Illinois.

7.10 **Changes in Laws**

Unless otherwise explicitly provided in this Contract, any reference to laws shall include such laws as they may be amended or modified from time to time.

7.11 **Compliance with Laws and Grants**

Contractor shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the Work is provided, performed, and completed in accordance with all required governmental permits, licenses or other approvals and authorizations that may be required in connection with providing, performing, and completing the Work, and with all applicable

statutes, ordinances, rules, and regulations, including without limitation the Prevailing Wage Act, 820 ILCS 130/0.01 et seq. (in furtherance of which, a copy of Owner's ordinance ascertaining the prevailing rate of wages, in effect as of the date of this Contract, has been attached as an Appendix to this Contract; if the Illinois Department of Labor revises the prevailing rate of hourly wages to be paid, the revised rate shall apply to this Contract); any other prevailing wage laws; the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes requiring preference to laborers of specified classes, including, without limitation, the Employment of Illinois Workers on Public Works Act, 30 ILCS 570/0.01 et seq.; the Illinois Steel Products Procurement Act, 30 ILCS 565/1 et seq.; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex, or other prohibited classification, including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., and the Discrimination in Public Contracts Act, 775 ILCS 10/1 et seq.; and any statutes regarding safety or the performance of the Work, including the Illinois Structural Work Act, the Illinois Underground Utility Facilities Damage Prevention Act, and the Occupational Safety and Health Act. Contractor shall also comply with all conditions of any federal, state, or local grant received by Owner or Contractor with respect to this Contract or the Work. Contractor shall keep itself fully informed of all Laws affecting this Contract; affecting those engaged or employed on the Work; affecting the equipment, materials, and supplies used in the Work; affecting the conduct of the Work; and affecting the rights, duties, powers, or obligations of Owner or of Contractor; and shall also keep itself fully informed of all orders, decrees, and other requirements of bodies or tribunals having any jurisdiction or authority over any of the foregoing. Contractor shall display all permits, licenses, and other approvals and authorizations as required by Law. Contractor shall, at all times, cause all of its Subcontractors and Suppliers to observe and comply with all such Laws.

To the extent that the Prevailing Wage Act applies to this Contract, it is the Contractor's obligation to pay (and require every Subcontractor to pay) prevailing wages as established by the Illinois Department of Labor for each craft or type of work needed to execute the Contract in accordance with the Act. The established prevailing wage rates are available at www.state.il.us/agency/idol/rates/rates.HTM. If the contractor determines the Prevailing Wage Act is applicable to a project, they shall post or provide notice of the prevailing wage rates in accordance with the Act. Any increases in costs to the Contractor due to changes in the prevailing rate of wages during the terms of this Contract shall be at the expense of the Contractor and not at the expense of the Owner. Any change order shall be computed using the prevailing wage rates applicable at the time the change order work is scheduled to be performed. The Contractor shall be solely responsible to maintain and file accurate records in the manner set forth in, and as required by the Act. The Contractor shall be solely liable for any violation of the Act and shall be required to (i) pay the difference between prevailing wages and any wages actually received by laborers, workmen and/or mechanics engaged in the Work and (ii) defend and indemnify the Owner against any and all claims arising under or related to the Act, including any damages, attorneys' fees, and penalties or fines.

Contractor shall be solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise, or be alleged to have arisen, out of or in connection with Contractor's, or its subcontractors' or suppliers', performance of, or failure to perform, the Work or any part thereof.

Every provision of law required by law to be inserted into this Contract shall be deemed to be inserted herein.

7.12 Compliance with Patents

A. Assumption of Costs, Royalties, and Fees. Contractor shall pay or cause to be paid all costs, royalties, and fees arising from the use on, or the incorporation into, the Work, of patented equipment, materials, supplies, tools, appliances, devices, processes, or inventions.

B. Effect of Contractor Being Enjoined. Should Contractor be enjoined from furnishing or using any equipment, materials, supplies, tools, appliances, devices, processes, or inventions supplied or required to be supplied or used under this Contract, Contractor shall promptly offer substitute equipment, materials, supplies, tools, appliances, devices, processes, or inventions in lieu thereof, of equal efficiency, quality, suitability, and market value, for review by Owner. If Owner should disapprove the offered substitutes and should elect, in lieu of a substitution, to have supplied, and to retain and use, any such equipment, materials, supplies, tools, appliances, devices, processes, or inventions as may by this Contract be required to be supplied, Contractor shall pay such royalties and secure such valid licenses as may be requisite and necessary for Owner to use such equipment, materials, supplies, tools, appliances, devices, processes, or inventions without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof. Should Contractor neglect or refuse to make any approved substitution promptly, or to pay such royalties and secure such licenses as may be necessary, then Owner shall have the right to make such substitution, of being contacted by the Village or Owner may pay such royalties and secure such licenses and charge the cost thereof against any money due Contractor from Owner or recover the amount thereof from Contractor and its surety or sureties notwithstanding that Final Payment may have been made.

7.13 Time

The Contract Time is of the essence of this Contract. Except where otherwise stated, references in this Contract to days shall be construed to refer to calendar days.

7.14 Severability

The provisions of this Contract shall be interpreted when possible to sustain their legality and enforceability as a whole. In the event any provision of this Contract shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, in whole or in part, neither the validity of the remaining part of such provision, nor the validity of any other provisions of this Contract shall be in any way affected thereby.

7.15 Entire Agreement

This Contract sets forth the entire agreement of Owner and Contractor with respect to the accomplishment of the Work and the payment of the Contract Price therefor, and there are no other understandings or agreements, oral or written, between Owner and Contractor with respect to the Work and the compensation therefor.

Nothing in this Contract shall be construed to waive or limit any aspect of Owner's lawful authority to regulate the activities of Contractor, its subcontractors, or any other person or to regulate the Work, the Work Site, or any other matter falling within its lawful regulatory jurisdiction and powers. No review, inspection, test, audit, measurement, order, determination, decision, disapproval, approval, payment for or use or acceptance of the Work, or any other act or omission of Owner shall imply, create any interest in, be deemed to be the issuance or require Owner to issue any license or permit to Contractor or any subcontractor.

7.16 Amendments

No modification, addition, deletion, revision, alteration or other change to this Contract shall be effective unless and until such change is reduced to writing and executed and delivered by Owner and Contractor.

IN WITNESS WHEREOF, Owner and Contractor have caused this Contract to be executed in five original counterparts as of the day and year first written above.

(SEAL)

Attest/Witness:

By:

Title: Deputy Village Clerk



VILLAGE OF GRAYSLAKE

By:

Michael J. Ellis

Title: Village Manager

Attest/Witness:

By:

Title: Secretary

MARK MEADE EXCAVATORS, INC.

By:

Title: President



STATE OF ILLINOIS)
) SS
COUNTY OF _____)

CONTRACTOR'S CERTIFICATION

_____, being first duly sworn on oath, deposes and states that all statements herein made are made on behalf of Contractor, that this deponent is authorized to make them, and that the statements contained herein are true and correct.

Contractor deposes, states, and certifies that Contractor is not barred from contracting with a unit of state or local government as a result of (i) a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless Contractor is contesting, in accordance with the procedures established by the appropriate Revenue Act, its liability for the tax or the amount of tax, as set forth in 65 ILCS 5/11-42.1-1; or (ii) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961, 720 ILCS 5/33E-1 et seq.; or (iii) a violation of the USA Patriot Act of 2001, 107 Public Law 56 (October 26, 2001) (the "Patriot Act") or other statutes, orders, rules, and regulations of the United States government and its various executive departments, agencies and offices related to the subject matter of the Patriot Act, including, but not limited to, Executive Order 13224 effective September 24, 2001.

DATED this 7 day of December, 2015.

Attest/Witness:

MARK MEADE EXCAVATORS, INC.

By: Kathy Meade

By: [Signature]

Title: Secretary

Title: President

Subscribed and Sworn to
before me this 7 day
of December, 2015.

My Commission Expires: 03/25/2017

Margaret R. Flores
Notary Public

[SEAL]



**ATTACHMENT A
SUPPLEMENTARY SCHEDULE OF CONTRACT TERMS**

- I. Project: Please see Attachment C.
- II. Work Site: Please see Attachment C.
- III. Permits, Licenses, Approvals, and Authorizations: Bidder shall obtain all required governmental permits, licenses, approvals, and authorizations. The Owner will submit initial application materials for said permits. However, the Bidder will be responsible for meeting all requirements of any such permits, including the posting any required bonds and/or sureties.
- IV. Commencement Date: The date of execution of the Contract by Owner.
- V. Completion Date: Please see Attachment C.
- VI. Insurance Limit Requirements

1. Workers' Compensation and Employer's Liability

Limits shall not be less than:

Worker's Compensation: Statutory

Employer's Liability:

\$500,000 ea. accident-injury

\$500,000 ea. employee-disease

\$500,000 disease-policy

Such insurance shall evidence that coverage applies to the State of Illinois and provide a waiver of subrogation in favor of the Village.

2. Comprehensive Motor Vehicle Liability

Limits for vehicles owned, non-owned or rented shall not be less than:

\$1,000,000 Bodily Injury and Property Damage Combined Single Limit

3. Comprehensive General Liability

Limits shall not be less than:

\$1,000,000 Bodily Injury and Property Damage Combined Single Limit.

Coverage is to be written on an "occurrence" basis.

Coverage to include:

- Premises Operations
- Products/Completed Operations
- Independent Contractors
- Personal Injury (with Employment Exclusion deleted)
- Broad Form Property Damage Endorsement
- "X," "C," and "U"
- Contractual Liability

Contractual Liability coverage shall specifically include the indemnification set forth below.

4. Umbrella Liability

Limits shall not be less than:

\$2,000,000 Bodily Injury and Property Damage Combined Single Limit.
This Coverage shall apply in excess of the limits stated in 1, 2, and 3 above.

Contractor is required to name the Village of Grayslake as the additional insured for Comprehensive General Liability and Comprehensive Motor Vehicle Liability as required in the Contract and provide the Village with the certificate of insurance and additional insured endorsements including the completion of Attachment D (Certifications of Insurance Coverage).

IX. Per Diem Administrative Charge:

- A. General. Two hundred and fifty dollars (\$250.00) per day for each day after the completion date.

X. Contract Bonds Required:

No

**ATTACHMENT B
SCHEDULE OF PRICES**

PLEASE PROCEED TO THE FOLLOWING PAGE(S)

COMPLETE TABLE AS INDICATED

EQUIPMENT/LABOR	WEEKDAYS 7:00 AM – 5:00 PM	WEEKDAYS 5:00 PM – 7:00 AM	SATURDAYS	SUNDAYS & HOLIDAYS	RESPONSE TIME
Small Back Hoe + Operator	\$ 180,00	\$ 230,00	\$ 230,00	\$ 300,00	2 hours
Large Back Hoe + Operator	\$ 210,00	\$ 260,00	\$ 260,00	\$ 365,00	
Single Axle Dump Truck + Driver	\$ 130,00	\$ 166,00	\$ 166,00	\$ 217,00	
Tandem Axle Dump Truck + Driver	\$ 140,00	\$ 200,00	\$ 200,00	\$ 255,00	
Semi Dump Truck + Driver	\$ 150,00	\$ 214,00	\$ 214,00	\$ 261,00	
Laborer	\$ 110,00	\$ 155,00	\$ 155,00	\$ 200,00	
Foreman	\$ 155,00	\$ 180,00	\$ 180,00	\$ 240,00	
Total	\$ 1,075,00	\$ 1,405,00	\$ 1,405,00	\$ 1,838,00	

SPECIFICATIONS

The following Specifications are an integral part of the Contract together with the Specifications shall govern performance of the Work. Submission of a Proposal implies that the bidder is fully conversant with all requirements of the Contract and Specifications. No claim for additional compensation will be considered or paid because of the Contractor's negligence or failure to be so informed.

I. AWARD OF CONTRACT

The Village reserves the right to accept the bid from the lowest responsible bidder for performance of the Work as listed in the Schedule of Prices. In addition, the Village may reserve the right to select up to the next three lowest responsible bidders for performance of the Work as listed in the Schedule of Prices.

II. DESCRIPTION OF WORK

The Village is seeking proposals to provide emergency contractual assistance for water main requiring excavation. The primary work responsibilities will focus on the excavation and repair of underground water mains throughout the year. The work will be based upon the hourly labor/equipment rates. The selected bid proposal will be based on the average labor/equipment rates.

The awarded Contractor(s) will be called upon to perform emergency repairs for Village water main on an "as-needed basis". The Contractor shall provide all labor and equipment for these repairs.

The Village may require the Contractor(s) to perform repairs during regular hours, after hours, on weekend, or on holidays.

III. DEFINING THE SCOPE OF WORK

Since work will be of an emergency nature and vary on each occasion, the Village and the Contractor shall attempt to define the purpose, methods and safety constraints of the work prior to mobilization and refine as necessary before commencement and during progression of the work.

IV. CONTRACT TIME

Contractor shall perform the Work on or around November 15, 2015 through April 30, 2017. The Contract Prices may increase by the Chicagoland Consumer Price Index, as defined by the United States Bureau of Labor Statistics, up to 2.5% on May 1 each year upon mutual agreement between the Village and the Contractor.

V. PROTECTION FROM DAMAGE-PUBLIC & PRIVATE PROPERTY

Contractor shall take all necessary precautions to prevent damage to areas adjacent to the site including the right-of-ways, trees and shrubs, lawns, curbs, walks, and other real or personal property. Contractor shall be solely responsible for any damage to public or private property caused as a result of the performance of the Work under this Contract.

VI. REPORTS ON DELIVERED SERVICES

The Contractor shall complete and furnish a report (along with its invoice) for each repair it performs for the Village. The Contractor's report shall include:

- A description of the repair work performed
- The date and time the Contractor was notified by the Village to undertake the repair
- The date and time the Contractor arrived at the repair location
- The date and time the Contractor completed the repair
- The date and time the Contractor made the water main fully-operational (i.e., if different from the previous item)
- The type and model of each piece of equipment the Contractor used for the repair
- The positions of the Contractor's employees who performed the repair
- The materials supplied by the Contractor for the repair (if applicable)

Failure to provide a report as described above could result in a delay of payment or the termination of this Contract.

VII. PERMITS AND LICENSES

Contractor represents that it, its employees, agents, and subcontractors shall hold all required licenses, permits, qualifications and certificates, and have duly registered and otherwise complied in all respects with all applicable federal, state and local laws, regulations and ordinances applicable to the performance of this Contract.

VIII. WORKING HOURS

Work may be performed any hours requested by the Village, and include evenings, overnight hours, weekends, and holidays, as required.

IX. RESPONSE TIME

The Village will contact the contractor by phone after the decision to use the firm's services has been made. Upon being contacted, the contractor shall inform the Village if his/her crew is available to perform the work. If multiple contractors are selected, firms will be contacted based on the cost of their services, least costly to most costly. Upon notifying the Village that

his/her crew is available, the contractor must be on site with all equipment and labor needed to perform the work and working on the repair (with all agreed upon pieces of equipment and employees) within a maximum of two (2) hours, or sooner, of being contacted by the Village as indicated on the bid proposal.

X. RESPONSIBILITY OF THE CONTRACTOR

The Contractor shall provide all mobile equipment, safety equipment, shoring, basic traffic control/barricading and lighting to accomplish the work. The Contractor shall also be responsible for large scale traffic control or road closure measures, unless separately agreed to by the Village and the Contractor.

XI. CONTRACTOR'S OBLIGATION

The Contractor shall continue work until the agreed upon work objectives are completed, unless directed otherwise by the Village, or unless safety or legal concerns dictate otherwise. If, in the Contractor's opinion such safety or legal concerns require Contractor to cease work, Contractor shall submit such opinion in writing to the Village. In this event Contractor shall make every reasonable effort to maintain work site in safe and orderly condition until Contractor's concerns are reviewed and responded to by the Village.

XII. CONTRACTOR'S REPRESENTATIVE & EMERGENCY NUMBERS

A. Contractor shall designate an individual who must be present, at all times, on the site and who will serve as the Contractor's authorized representative throughout the completion of the Work and who shall be readily available to respond to Village communications. This individual must be a competent, English-speaking individual who is capable of reading and understanding the Contract documents. This representative shall be subject to receive instructions and have full authority to execute the directions of the Village, without delay, and promptly supply any necessary labor, equipment, material or incidentals to do so. If any person employed shall refuse or neglect to obey the directions of the Village, in anything relating to the Work, or shall appear to be incompetent, disorderly, or unfaithful, he/she shall, upon request of the Village, be at once discharged and shall not be employed again on any part of the Work without consent of the Village.

B. Contractor shall provide the Village with the name and phone number of the Contractor's representative who, in the case of an off-hours emergency can be readily accessible and be available for quick response to the site. If that person does not respond within the period of time requested to be present by the Village, then the Village shall have the right to hire or use other personnel to remedy the emergency situation. All reasonable costs, including the payment of overtime wages or charges, incurred by the Village in doing so, shall be deducted from payments due the Contractor. Contractor shall immediately notify the Village in writing of any change in the identity and telephone number of the Contractor's representative.

XIII. EQUIPMENT

Upon request, all equipment, parts or components not specifically mentioned in the Specifications shall be furnished by the successful Bidder to the Village indicating the items of equipment which the Bidder proposes to use on the project, together with a statement noting which of these items of equipment the Bidder owns, and separately those items which it does not own but is certain it will be able to rent or otherwise have access to use.

XIV. ADDITIONAL SAFETY STANDARDS

Contractor shall perform all Work in compliance with all applicable Federal, State and local laws and regulations including but not limited to the following:

All equipment used under this contract shall be maintained in good operating condition and be appropriately licensed and inspected by the State of Illinois.

XV. INSPECTIONS

The Village shall have the right to inspect, or to have inspected by its representative, any Work, material, component equipment, supplies, services, or completed Work specified herein before acceptance. Any of said items not complying with the Contract are subject to rejection. Any items rejected shall be removed from the site and replaced at the sole expense of the Contractor. Contractor will make every effort and means available to facilitate the inspection of the Work. Any work or material, which may be determined by the Village to be defective, must be rebuilt, replaced, or removed at the Contractor's own expense. Any omission to reject or condemn any Work or material at the time of its construction or arrival at the worksite shall not be construed to mean an acceptance of the Work.

Contractor shall maintain a clean work area and at the end of each day make sure that all debris and scrap materials no longer needed for the Work are removed from the work areas.

XVI. WARRANTY & GUARANTEES

Contractor warrants that the Work shall be done in a workmanlike manner in strict accordance with the Contract and guarantees that the labor, material, and equipment will be free of defects for the period stated in the Contract, but in no event less than one (1) year from the date of completion.

XVII. SILENCE OF SPECIFICATIONS

The apparent silence of Specifications as to any detail or apparent omission from a detailed description concerning any portion of the Work shall be interpreted as meaning that only the best commercial material or practice shall prevail and that only items of the best material or workmanship to be used.

XVIII. HOURLY RATE

Labor and equipment hourly rates shall commence at the time of arrival of the Contractor's equipment and personnel at the worksite and cease upon Contractor's equipment and personnel leaving the site. The Village and the Contractor shall record and jointly sign off on arrival and departure times. The Contractor shall begin work as soon as safety and operational preparedness allow.

XIX. TIME LOST AND DELAYS

The Contractor shall not be responsible for time lost due to delays in utility location or other delays required for the Village or other parties to secure the work site. The Village shall not be responsible for any time lost due to mechanical breakdown or maintenance requirements of Contractor's equipment.

In the event that for a particular situation the Village and Contractor agree that arrival or departure times are not suitable for commencement or cessation of labor, such agreement shall be recorded and jointly signed off.

XX. MATERIALS AND SUPPLIES

The Contractor may be asked to provide all reasonable supplemental supplies including all common repair items relevant to the type of work being performed. The Village, at its discretion, may choose to supply materials and repair parts, which will be clearly communicated to Contractor prior to commencing the work activity.

XXI. PAYMENT

Each request for payment of the Contract Price shall be itemized so as to indicate the portion of the requested payment that is allocable to Work performed by Contractor.

Once the Village Representative has certified the completion and quality of the Work, payment will be made to Contractor.

Contractor shall be paid at the unit prices as specified in the Schedule of Prices.

ELITEPAC COMMERCIAL AUTOMOBILE EXTENSION

COMMERCIAL AUTO
CA 77 35 02 10

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This Supplemental Schedule is provided when the BUSINESS AUTO COVERAGE FORM includes the Commercial Automobile Extension endorsement CA 77 35. This Schedule supplements the Business Auto Declarations.

EXTENSIONS OF COVERAGE AND ADDITIONAL COVERAGES

DESCRIPTION

Limited Liability Companies	Coverage Extension
Newly Acquired Or Formed Organizations	Coverage Extension
Employees - Non-Ownership	Coverage Extension
Non-Ownership Extension - Public Entities	Coverage Extension
Blanket Additional Insureds	Coverage Extension
Expenses For Bail Bonds And Loss Of Earnings	
Bail Bonds	\$3,000 Limit of Insurance
Loss Of Earnings	\$1,000 Per Day Limit of Insurance
Employer's Liability Amendment	Coverage Extension
Fellow Employee Amendment	Coverage Extension
Care, Custody Or Control Amendment	Coverage Extension
Towing And Labor	Coverage Extension
Glass Breakage	Coverage Extension
Hired Car Physical Damage Coverage	Coverage Extension
Auto Loan/Lease Gap Coverage	Coverage Extension
Personal Effects	\$500 Limit of Insurance
Deductible Reimbursement - Public Entities	Coverage Extension
Additional Transportation Expenses	\$60 per disablement up to a maximum \$1,900 Limit of Insurance
Airbag Coverage	Coverage Extension
Expanded Audio, Visual, And Data Electronic Equipment	Coverage Extension

Contractors ElitePac® Extension

COMMERCIAL GENERAL LIABILITY
CG 79 88 05 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. BLANKET ADDITIONAL INSURED

a. Ongoing Operations

SECTION II — WHO IS AN INSURED is amended to include as an additional insured any person or organization you have agreed in a written contract, written agreement, or written permit to add as an additional insured on your policy, but only with respect to liability arising out of your ongoing operations performed under that contract, agreement, or permit when that contract, agreement, or permit requires the additional insured be added with respect to liability arising out of your ongoing operations. If the written contract, written agreement, or written permit does not require that the additional insured be added with respect to liability arising out of your ongoing operations, then **SECTION II — WHO IS AN INSURED** is amended to include as an additional insured any person or organization you have agreed in a written contract, written agreement, or written permit to add as an additional insured on your policy, but only with respect to "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by your ongoing operations performed under that contract, agreement, or permit.

b. Completed Operations

SECTION II — WHO IS AN INSURED is amended to include as an additional insured any person or organization you have agreed in a written contract, written agreement, or written permit to add as an additional insured on your policy, but only with respect to their liability arising out of "your work" performed under that contract, agreement, or permit and included in the "products-completed operations hazard" when that contract, agreement, or permit requires the additional insured be added with respect to liability arising out of "your work" performed under that contract, agreement, or permit and included in the "products-completed operations hazard". If the written contract,

written agreement, or written permit does not require that the additional insured be added with respect to liability arising out of "your work" performed under that contract, agreement, or permit and included in the "products-completed operations hazard", then **SECTION II — WHO IS AN INSURED** is amended to include as an additional insured any person or organization you have agreed in a written contract, written agreement, or written permit to add as an additional insured on your policy, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by "your work" performed under that contract, agreement, or permit and included in the "products-completed operations hazard".

- c. The coverages provided in Paragraphs a. and b. do not apply unless the written contract or written agreement has been executed (executed means signed by the named insured) or written permit issued prior to the "bodily injury", "property damage" or "personal and advertising injury".

d. Exclusions

- (1) With respect to the insurance afforded to additional insureds under a. **Ongoing Operations** the following is added to 2. **Exclusions** under Section I - Coverage A - **Bodily Injury And Property Damage Liability**:

This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" occurring after:

- (a) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or

(b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

(2) With respect to the insurance afforded to these additional insureds under **a. Ongoing Operations** and **b. Completed Operations**, the following is added to **2. Exclusions** under **Section I - Coverage A - Bodily Injury And Property Damage Liability**:

This insurance does not apply to:

"Bodily injury", "property damage", or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(b) Supervisory, inspection, architectural or engineering activities.

e. Conditions

With respect to the insurance afforded to these additional insureds under **a. Ongoing Operations** and **b. Completed Operations** the following is added to Paragraph **4. Other Insurance**, **a. Primary Insurance** under **SECTION IV — COMMERCIAL GENERAL LIABILITY CONDITIONS**:

This insurance is primary and will not contribute with any other insurance available to an additional insured under this coverage part provided that:

(1) The additional insured is a Named Insured under such other insurance.

(2) You have agreed in a written contract, written agreement or written permit to include that additional insured on your General Liability policy on a primary and/or non-contributory basis.

2. PROPERTY DAMAGE CARE, CUSTODY OR CONTROL

The following is added to **Exclusion j.** under **Section I - Coverage A - Bodily Injury And Property Damage Liability**:

Paragraphs **(4)** and **(5)** do not apply for the limited purpose of providing the coverage and sub-limits of liability as set forth below.

We will pay those sums that the insured becomes legally obligated to pay as damages arising out of "property damage" to:

(1) Personal property in the care, custody or control of the insured; and

(2) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations.

The most we will pay under **(1)** and **(2)** above in any one "occurrence" or for all damages during any one policy period is a sub-limit of \$100,000.

These limits are included in and not in addition to the Limits of Insurance shown in the Declarations of the Commercial General Liability Policy.

Our right and duty to defend the insured against any "suit" for damages under **(1)** and **(2)** above ends when we have used up the applicable sub-limit of liability in the payment of judgments or settlements under it.

3. OTHER INSURANCE AMENDMENT — SUPPLEMENTAL COVERAGE FOR INSURED'S INVOLVEMENT IN A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM OR SIMILAR PROJECT

The following is added to **Section IV — Commercial General Liability Conditions 4. Other Insurance b. Excess Insurance (1)(a)**:

(v) That is covered by a consolidated (wrap-up) or similar insurance program provided by the prime contractor/project manager or owner of the construction project in which you are involved for your ongoing operations or operations included within the "products-completed operations hazard".

4. FELLOW EMPLOYEE EXTENSION

Under **SECTION II — WHO IS AN INSURED 2.a.** and **2.a. (1)** are replaced by the following:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture, or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. The Employers Liability exclusion (**SECTION I — COVERAGES; Coverage A, exclusion e.**) does not apply to this provision. However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a) Arising out of his or her providing or failing to provide professional health care services.

5. CONTRACTUAL LIABILITY (RAILROADS)

Definition 9. Insured Contract is amended as follows:

Paragraph **c.** is deleted in its entirety and replaced with the following:

Any easement or license agreement;

Paragraph **f.(1)** is deleted in its entirety.

6. WAIVER OF GOVERNMENTAL IMMUNITY

We will waive, both in the adjustment of claims and in the defense of "suits" against the insured, any governmental immunity of the insured, unless the insured requests in writing that we not do so.

Waiver of immunity as a defense will not subject us to liability for any portion of a claim or judgment in excess of the applicable limit of insurance.

DESCRIPTION

Limit Of Insurance	Coverage Extension
Physical Damage Deductible - (Radio Frequency) Vehicle Tracking System	Coverage Extension
Limit Of Insurance	Coverage Extension
Multiple Deductibles	Coverage Extension
Duties In The Event Of Accident, Claim, Suit Or Loss	Coverage Extension
Waiver Of Subrogation	Coverage Extension
Concealment, Misrepresentation Or Fraud	Coverage Extension
Policy Period, Coverage Territory	Coverage Extension
Two Or More Coverage Forms Or Policies Issued By Us	Coverage Extension
Mental Anguish	Definition
Permanently Attached Equipment	Definition
Volunteer Worker	Definition

ELITEPAC COMMERCIAL AUTOMOBILE EXTENSION

COMMERCIAL AUTO
CA 77 35 02 10

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies the insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Business Auto Coverage Form apply unless modified by the endorsement.

Amendments to SECTION II — LIABILITY COVERAGE

Limited Liability Companies

The following is added to SECTION II, A. 1. — Who Is An Insured:

- d. If you are a limited liability company, you are an Insured for any covered "auto." The provisions of **WHO IS AN INSURED** applicable to anyone else using a covered "auto" you own, hire or borrow, also apply to limited liability companies. Your members and managers are also "insureds" while using a covered "auto" you don't own, hire or borrow during the course of their duties for you. But, members or managers are not an insured for any covered "autos" owned by them or members of their household.

Newly Acquired Or Formed Organizations

The following is added to SECTION II, A. 1. — Who Is An Insured:

- e. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no similar insurance available to that organization. However:
1. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 2. Coverage does not apply to "bodily injury" or "property damage" resulting from an "accident" that occurred before you acquired or formed the organization.

No person or organization is an "insured" with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

Employees - Non-Ownership

The following is added to SECTION II, A. 1. — Who Is An Insured:

- f. Any employee of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

Non-Ownership Extension - Public Entities

The following is added to SECTION II, A. 1. — Who Is An Insured:

- g. Any board member or other elected or appointed official, member of the administrative staff, student teacher or other authorized volunteer or member is an "insured" while using a covered "auto" you don't own, hire or borrow during the course of their duties for you as a School, Municipality or other Governmental Entity, or Emergency Services Organization. Anyone who supplies that "auto" is also an "insured."

Blanket Additional Insureds

The following is added to SECTION II, A. 1. — Who Is An Insured:

- h. Any person or organization with whom you agreed, because of a written contract, agreement or permit, to provide insurance such as is afforded under this Coverage Part, but only with respect to your ownership, maintenance or use of a covered "auto." This provision only applies if the written contract or agreement has been executed or permit issued prior to the "bodily injury" or "property damage."

This coverage shall be primary and not contributory with respect to the person or organization included as an "insured" under this section. Any other insurance that person or organization has shall be excess and not contributory with respect to this insurance, but this provision only applies if it is required in the written contract, agreement or permit identified in this section, and is permitted by law.

Expenses For Bail Bonds And Loss Of Earnings

The following modifies **SECTION II, A. 2. a. — Supplementary Payments:**

Paragraphs (2) and (4) of **SECTION II, A. 2. a. — Supplementary Payments** are deleted in their entirety and replaced with the following:

- (2) We will pay up to the Limit of Insurance shown on the Commercial Automobile Extension Supplemental Schedule for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) We will pay up to the Limit of Insurance shown on the Commercial Automobile Extension Supplemental Schedule all reasonable expenses incurred by the "insured" at our request, including actual loss of earnings because of time off from work.

Employer's Liability Amendment

The following is added to **SECTION II, B. 4. — Exclusions:**

- c. This exclusion also does not apply to any "volunteer worker."

For Fire Companies, Ambulance Squads and Rescue Squads, the Employee Indemnification and Employer's Liability exclusion does not apply if the "bodily injury" results from the use of a covered "auto" you own, hire or borrow. But, this coverage extension is only provided to:

1. Members of the "insured" Fire Company, Ambulance or Rescue Squad, while such member is operating within the scope of their official duties, with respect to claims made or suits brought against such member for injuries to a fellow member of the "insured" organization, or for injuries to members of other Fire Companies, Ambulance Squads or Rescue Squads; and
2. The "insured" organization with respect to claims made or suits brought against the "insured" organization for injuries to members of other Fire Companies, Ambulance Squads or Rescue Squads.

Fellow Employee Amendment

The following is added to **SECTION II, B. 5. — Exclusions:**

For "insureds" Other Than Fire Companies, Ambulance Squads and Rescue Squads, the **Fellow Employee** exclusion does not apply if the "bodily injury" results from the use of a covered "auto" you own or hire.

For Fire Companies, Ambulance Squads and Rescue Squads, the **Fellow Employee** exclusion does not apply if the "bodily injury" results from the use of a covered "auto" you own, hire or borrow. But, this coverage extension is only provided to:

1. Members of the "insured" Fire Company, Ambulance or Rescue Squad, while such member is operating within the scope of their official duties, with respect to claims made or suits brought against such member for injuries to a fellow member of the "insured" organization, or for injuries to members of other Fire Companies, Ambulance Squads or Rescue Squads; and
2. The "insured" organization with respect to claims made or suits brought against the "insured" organization for injuries to members of other Fire Companies, Ambulance Squads or Rescue Squads.

Care, Custody Or Control Amendment

The following is added to **SECTION II, B. 6. — Exclusions:**

The Care, Custody Or Control exclusion does not apply to property not owned by any insured, subject to the following:

1. The most we will pay under this exception for any one accident is \$1,000; and
2. A deductible of \$500 per accident applies to this exception.

Amendments to SECTION III — PHYSICAL DAMAGE COVERAGE

Towing And Labor

The following modifies **SECTION III, A. 2. — Towing SECTION III, A. 2. — Towing** is deleted and replaced with the following:

We will pay all reasonable towing and labor costs up to \$75 each time a covered Private Passenger Type Vehicle, Social Service Van, Social Service Bus or Light Truck is disabled and up to \$150 per disablement for Medium Weight Trucks. For labor charges to be reimbursable however, the labor must be performed at the place of disablement.

Glass Breakage

The following is added to **SECTION III, A. 3. — Glass Breakage — Hitting A Bird Or Animal — Falling Objects:**

- d. If damage to glass is repaired in lieu of being replaced, no deductible will apply for repair only.

Hired Car Physical Damage Coverage

The following is added to **SECTION III — PHYSICAL DAMAGE COVERAGE**, Paragraph **A. 4. Coverage Extensions**:

- c. If Comprehensive, Specified Causes of Loss or Collision coverage is provided by this policy, you may extend that coverage to apply to Physical Damage "loss" to hired "autos." We will provide coverage equal to the broadest coverage available to any covered "auto" shown in the Declarations. But, the most we will pay for "loss" to a hired "auto" in any one "accident" is the lesser of:
1. \$75,000; or
 2. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
 3. The actual cost of repairing or replacing the damaged or stolen property with other property of like kind or quality. A part is of like kind and quality when it is of equal or better condition than the pre-accident part. We will use the original equipment from the manufacturer when:
 - (a) The operational safety of the vehicle might otherwise be impaired;
 - (b) Reasonable and diligent efforts to locate the appropriate rebuilt, aftermarket or used part have been unsuccessful;
 - (c) A new original equipment part of like kind and quality is available and will result in the lowest overall repair cost;
 - (d) For vehicles insured under policies written on or before December 31, 2003, the vehicle has been used no more than 15,000 miles unless the pre-accident condition warrants otherwise; or
 - (e) For vehicles insured under policies written on or after January 1, 2004, the vehicle has been used no more than 20,000 miles unless the pre-accident condition warrants otherwise.

For each hired "auto" our obligation to pay "loss" will be reduced by a deductible equal to the highest deductible applicable to any owned "auto" for that coverage. No deductible will be applied to "loss" caused by fire or lightning. We will also pay up to \$750 per "accident" for loss of use of the hired "auto" if it results from an "accident" for which you are legally liable. The lessor must suffer an actual financial "loss" for this coverage to apply.

Hired Car Physical Damage Coverage provided by this extension is excess over any other collectible insurance.

Auto Loan/Lease Gap Coverage

The following is added to **SECTION III, A. 4. — Coverage Extensions**:

- d. If a long-term leased "auto" is a covered "auto" for the Physical Damage Coverage applicable to a total "loss," and the lessor is an additional insured under this Coverage Part, we will pay the difference between amounts you owe the lessor under the lease terms and the amount of insurance paid the lessor for the total "loss" of the covered "auto" minus: any payments overdue at the time of the loss; any financial penalties imposed due to wear and tear, high mileage or similar charges; any security deposits not refunded by the lessor; any costs for credit life, health and accident, or disability insurance; any costs for extended warranties; or any carry over balances from previous leases or loans. You are responsible for the deductible applicable to the "loss" for the covered "auto."

Personal Effects

The following is added to of **SECTION III, A. 4. — Coverage Extensions**:

- e. If Comprehensive Coverage is provided on this coverage form for a covered "auto" you own and that covered "auto" is stolen, we will pay up to the Limit of Insurance shown on the Commercial Automobile Extension Supplemental Schedule, without application of a deductible, for personal effects that are stolen with that covered "auto." Personal effects do not include jewelry, tools, money or securities. This coverage is excess over any other collectible insurance.

The Following is added to **SECTION III, A. 4. — Coverage Extensions**:

- f. If you are a Board of Education, Municipality or other Governmental Entity, or Volunteer Emergency Services Organization, we will pay up to \$1,000 or the amount of the deductible under any auto policy available to your volunteer or employee, whichever is less, for any "loss" described in this section to any "auto" owned or used by a volunteer or employee while en route to and during any official duty authorized by you. In no event will we pay for any "loss" under this Coverage to any "auto" owned, hired, or borrowed by your organization.

Additional Transportation Expenses

The following modifies **SECTION III, A. 4. a. — Transportation Expenses**

SECTION III, A. 4. a. — Transportation Expenses is deleted in its entirety and replaced with the following:

- a. We will pay up to the Maximum Limit of Insurance shown on the Commercial Automobile Extension Supplemental Schedule for temporary transportation expense incurred by you because of any "losses" to covered "autos," but only if the covered "autos" carry the coverages and meet the requirements described in 1. or 2. below:
 1. We will pay the above temporary transportation expense for total theft of a covered "auto" if you carry either Comprehensive or Specified Causes of Loss Coverage. We will only pay for such expenses incurred during the period beginning 24 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss."
 2. For "loss" other than the total theft to a covered "auto" under Comprehensive Coverage or Specified Causes of Loss Coverage, or for any "loss" under Collision Coverage to a covered "auto." We will only pay for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the number of days reasonably required to repair or replace the covered "auto," or 30 days. This provision 2. of this Extension does not apply while there are spare or reserve "autos" available to you for your operations.

Airbag Coverage

The following is added to **SECTION III, B. 3. a. — Exclusions:**

However, this exclusion relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

Expanded Audio, Visual, And Data Electronic Equipment

SECTION III, B. 4. — Exclusions does not apply to the following:

1. Global Positioning Systems; and
2. Equipment designed solely for the reproduction of sound and/or video, and accessories used with such equipment, provided such equipment is:
 - a. Permanently installed in the covered "auto" at the time of the loss;
 - b. Removable from a housing unit which is permanently installed in the covered "auto" at the time of the "loss";
 - c. Designed to be solely operated by use of the power from the "auto's" electrical system; or
 - d. Designed to be solely to be used in or upon the covered "auto."

Physical Damage Deductible - (Radio Frequency) Vehicle Tracking System

LIMIT OF INSURANCE

THE FOLLOWING MODIFIES SECTION III, C. — LIMITS OF INSURANCE

SECTION III, C. — LIMITS OF INSURANCE is deleted in its entirety and replaced with the following:

(This provision does not apply in New York.)

The most we will pay for a "loss" in any one "accident" is the lesser of:

1. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
2. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or
3. If you are a Municipality or other Governmental Entity, or an Emergency Services Organization:
 - a. The cost to replace the entire covered "auto" and its "permanently attached equipment", for covered "autos" designated in the schedule as being insured on either a stated amount or value guard basis as of the time of the "loss," with a comparable new "auto" and "permanently attached equipment" manufactured to current standards set by nationally recognized organizations such as, but not limited to, NFPA or the US Department of Transportation; but, the most we will pay under this paragraph for owned or leased "autos" you acquire after the policy begins and not described in the declarations is the least of items 1., 2., or 3.a. of this section; or
 - b. (This provision does not apply in New York.) The additional repair or replacement costs necessary to customize the damaged covered "auto" with permanently installed equipment of like kind and quality, without deduction for depreciation, if the "auto" is specifically outfitted for use by chiefs, captains, police, administrators and others in comparable positions and is scheduled, but the "auto" is not designated on the schedule as being insured on an agreed-value basis. We will also pay under this provision for the cost of installation onto a replacement "auto" if the covered "auto" is not repairable, and we will pay for property owned by "you" that is permanently installed in an "auto" not owned by you.

The following is added to **SECTION III, D. — Deductible:**

Any Comprehensive Coverage Deductible shown in the Declarations will be reduced by 50% for any "loss" caused by theft if the vehicle is equipped with a radio frequency tracking device and that device was the method of recovery of the vehicle

Amendments To SECTION IV — BUSINESS AUTOMOBILE CONDITIONS

Multiple Deductibles

The following is added to **SECTION IV, A. — Loss Conditions:**

6. If a Comprehensive or Specified Causes of Loss Coverage "loss" from one "accident" involves two or more "covered autos," only the highest deductible applicable to those coverages will be applied to the "accident," if the cause of the loss is covered for those vehicles. This provision only applies if you carry Comprehensive or Specified Causes of Loss Coverage for those vehicles, and does not extend coverage to any "covered autos" for which you do not carry such coverage.

Duties In The Event Of Accident, Claim, Suit Or Loss

The following is added to **SECTION IV, A. 2. a. — Duties In The Event Of Accident, Claim, Suit Or Loss:**

The notice requirements for reporting "accident," claim, "suit" or "loss" information to us, including provisions related to the subsequent investigation of such, "accident," claim, "suit" or "loss" do not apply until the "accident," claim, "suit" or "loss" is known to:

1. You, if you are an individual;
2. A partner, if you are a partnership;
3. An executive officer or insurance manager, if you are a corporation;
4. Your members, managers or insurance manager, if you are a limited liability company;
5. Your elected or appointed officials, trustees, board members, or your insurance manager, if you are an organization other than a partnership, joint venture, or limited liability company.

But, this section does not amend the provisions relating to notification of police, protection or examination of the property which was subject to the "loss".

Waiver Of Subrogation

The following modifies **SECTION IV, A. 5. — Transfer Of Rights Of Recovery Against Us To Others:**

SECTION IV, A. 5. — Transfer Of Rights Of Recovery Against Us To Others is deleted in its entirety and replaced with the following:

We waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury" or "property damage" arising out of a covered "auto" only when you have assumed liability for such "bodily injury" or "property damage" under "insured contract." In all other respects, if a person or organization to or from whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us.

Concealment, Misrepresentation Or Fraud

The following is added to **SECTION IV, B. 2. — Concealment, Misrepresentation Or Fraud:**

- e. If you should unintentionally fail to disclose any existing hazards in your representations to us at the inception date of the policy, or during the policy period in connection with any additional hazards, we shall not deny coverage under this Coverage Part based upon such failure.

Policy Period, Coverage Territory

The following modifies **SECTION IV, B. 7. — General Conditions:**

SECTION IV, B. 7. — Policy Period, Coverage Territory is modified as follows:

The definition of coverage territory is amended to include anywhere in the world for covered "autos" hired on a short term (30 days or less) basis. The "insured's" responsibility to pay damages must be determined in a "suit" brought in:

1. The United States of America;
2. The territories or possessions of the United States of America;
3. Puerto Rico; or
4. Canada; or

in a settlement we agree to.

Two Or More Coverage Forms Or Policies Issued By Us

The following modifies **SECTION IV, B. 8. — General Conditions:**

SECTION IV, B. 8. — Two Or More Coverage Forms Or Policies Issued By Us is deleted in its entirety and replaced with the following:

8. Two Or More Coverage Forms Or Policies Issued By Us

If a "loss" covered under this Coverage Part also involves a "loss" to other property from the same "accident," which is covered under a Commercial Property or Inland Marine Coverage Part issued by us or any member company of ours for you, only the highest deductible applicable to those coverages will be applied to the "accident".

Amendments to **SECTION V — DEFINITIONS**

The following is added to **SECTION V — DEFINITIONS**:

Q. Mental Anguish

(This provision does not apply in New York.) For jurisdictions other than New York, the definition of "bodily injury" is amended to include mental anguish resulting from any bodily injury, sickness or disease sustained by a person. (In New York, mental anguish has been determined to be "bodily injury.")

R. Permanently Attached Equipment

"Permanently attached equipment" means equipment that is welded, bolted, or permanently screwed to the dashboard, fire wall or body of the "auto". Equipment inserted on permanently installed side brackets with or without the use of setscrews or tension, or portable fire fighting and/or rescue related equipment, shall not be construed as "permanently attached equipment".

S. Volunteer Worker

"Volunteer worker" is a person who performs business duties for you, for no financial or other compensation.

WC 00 03 13
WAIVER OF OUR RIGHT TO
RECOVER FROM OTHERS ENDORSEMENT

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on _____ at 12:01 A.M., standard time, forms a part of

Policy No. **wc9010884** (DATE) Endorsement No. Premium (if any) \$

of the **Selective Insurance Group**
(NAME OF INSURANCE COMPANY)

issued to

Authorized Representative

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

Schedule

The Village of Grayslake

Contract Number: **Emergency contractual assistance for water main requiring excavation**

Contract Period:
Start date of Project: **TBD** End date of Project: **TBD**