

**VILLAGE OF GILBERTS**

**GENERAL CONTRACTOR AGREEMENT FOR VILLAGE-RELATED IMPROVEMENTS TO THE VILLAGE'S WATER TREATMENT PLANT**

**THIS AGREEMENT** is entered into by and between **Gilberts Development, LLC**, an Illinois limited liability company ("**Contractor**") and the **Village of Gilberts**, an Illinois municipal corporation ("**Village**").

**WHEREAS**, Contractor is the developer of the Conservancy Development, which development is subject to the provisions of an Annexation Agreement, as amended, as well as various zoning approvals; and

**WHEREAS**, the Annexation Agreement, as amended, requires Contractor to construct and complete, at Contractor's sole cost, certain improvements to the Village's Water Treatment Plant located at 320 Raymond Road, Gilberts, Illinois in order to expand the capacity of the Water Treatment Plant, among other improvements; and

**WHEREAS**, the Village desires to construct certain Village-related improvements to the Water Treatment Plant and has determined that it would be efficient and cost-effective for the Village to have those improvements constructed at the same time as the Contractor's expansion project; and

**WHEREAS**, the parties have agreed to coordinate the construction of the Contractor's expansion project and the Village-related improvements, and the Contractor has agreed to contract with the Village to complete the Village-related improvements in connection with the Contractor's expansion project; and

**WHEREAS**, specifically, Contractor has agreed to provide and construct (1) a 24 x 56 foot dumpster storage room; (2) three variable frequency drives on the two existing and one new high service pumps; and (3) an epoxy coated Tremec flooring system for the backwash treatment room and dumpster storage room of the Village's Water Treatment Plant (collectively, the "**Work**") as more fully set forth in the Village of Gilberts Water Treatment Plan Expansion Project Manual, plans, and drawings, prepared by Lintech Engineering Inc., (collectively the "**Project Documents**"), which are attached hereto and incorporated herein as **Exhibit A**; and

**WHEREAS**, Contractor intends to contract with subcontractors and material suppliers to perform the Work; and

**WHEREAS**, the Project Documents and this Agreement comprise the terms of the engagement of the Contractor by the Village and are hereby incorporated into this Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration received and to be received, the Parties agree as follows:

1. **Commencement and Completion Dates.** Contractor shall commence the Work 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 Agreement. The Work must be completed, and the Contractor must provide a Notice of Completion as set forth in Section 5 of this Agreement, no later than May 31, 2020 (“**Completion Date**”). The time of commencement, rate of progress, and time of completion are referred to in this Agreement as the “**Contract Time.**”
2. **Contract Price.** The Village shall pay to Contractor, in accordance with and subject to the terms and conditions set forth in this Agreement, and Contractor shall accept in full satisfaction for providing, performing, and completing the Work, a not-to-exceed amount of **\$513,500.00** (the “**Contract Price**”). In no event will Contractor be entitled to any additional compensation or payments for the providing, performing, and completing the Work above or beyond the Contract Price. The Contract Price includes the cost of all surety bonds required of Contractor.
3. **Taxes and Benefits.** The Village 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.
4. **Final Acceptance and Payment.**
  - A. **Notice of Completion.** When the Work has been completed and is ready in all respects for acceptance by the Village, Contractor shall notify the Village 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 Agreement or the Project Documents. (“**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 the Village in full compliance with, and as required by or pursuant to, this Agreement and the Project Documents. Upon receipt of Contractor's Notice of Completion, the Village 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, the Village 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. **Payment.** As soon as practicable after Final Acceptance, Contractor shall submit to the Village a properly completed final Pay Request ("*Final Pay Request*"). The Final Pay Request shall include (i) Contractor's certification of the value of, and final waivers of lien covering, all Work for which payment is then requested, including from all subcontractors performing any of the Work; (ii) copies of the certified payrolls for the Work evidencing payment of prevailing wages as required by this Agreement by Contractor and all subcontractors. The Village will pay to Contractor the Contract Price, after deducting therefrom all charges against Contractor as provided for in this Agreement and the Project Documents ("*Final Payment*"). Contractor will not be entitled to any progress payments. Final Payment shall be made not later than 60 days after the Village approves the Final Pay Request. The acceptance by Contractor of Final Payment shall operate as a full and complete release of the Village 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 the Village arising out of, relating to, or in connection with the Work.
5. **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 Agreement and the Project Documents.
6. **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 Agreement and the Project Documents.
7. **Time.** Contractor represents and warrants that it is ready, willing, able and prepared to begin the Work 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 Agreement and the Project Documents 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
8. **Changes.** The Village shall have the right, by written order executed by The Village, 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.

**9. 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, 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 the Village or any other party and whether avoidable or unavoidable.

**10. 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 Agreement and the Project Documents; and shall be fit, sufficient and suitable for the purposes expressed in, or reasonably inferred from, this Agreement and the Project Documents. The warranty herein expressed shall be in addition to any other warranties expressed in this Agreement, or expressed or implied by law, which are hereby reserved unto the Village.
- B. 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 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 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 Agreement or the Project Documents.
- 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 the Village and assigning said warranty or guaranty to the Village. Acceptance of any assigned warranties or guaranties by the Village shall be a precondition to Final Payment and shall not relieve Contractor of any of its guaranty or warranty obligations under this Agreement.

- D. The Village's Right to Correct. If, within two business days after the Village gives Contractor notice of any defect, damage, flaw, unsuitability, nonconformity, or failure to meet warranty subject to correction by Contractor pursuant this Section or Contractor neglects to make, or undertake with due diligence to make, the necessary corrections, then the Village 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.

**11. Liens**

- A. Title. Nothing in this Agreement or the Project Documents shall be construed as vesting in Contractor any right of property in any equipment, materials, supplies, and other items provided under this Agreement or the Project Documents 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 The Village, but such title shall not release Contractor from its duty to insure and protect the Work in accordance with the requirements of this Agreement.
- B. Waivers of Lien. Contractor shall, from time to time at the Village's request and in any event prior to Final Payment, furnish to the Village such receipts, releases, affidavits, certificates, and other evidence as may be necessary to establish, to the reasonable satisfaction of the Village, that no lien against the Work or the public funds held by the Village 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 Agreement ("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, the Village shall have the right to retain from any money payable hereunder an amount that the Village, 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 The Village Only. This Section shall not operate to relieve Contractor's surety or sureties from any of their obligations under the any bonds required by this Agreement, nor shall it be deemed to vest any right, interest, or entitlement in any subcontractor or supplier. The Village'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 the Village shall have no obligation to apply such funds to such removal but may, nevertheless, do so where the Village's interests would thereby be served.

**12. Deductions**

A. The Village's Right to Withhold. Notwithstanding any other provision of this Agreement or the Project Documents, and without prejudice to any of the Village's other rights or remedies, the Village 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 Agreement such amount as may reasonably appear necessary to compensate the Village 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 Agreement or the Project Documents; (3) state or local sales, use, or excise taxes from which the Village 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 Agreement; or (10) the cost to the Village, including attorneys' fees and administrative costs, of correcting any of the aforesaid matters or exercising any one or more of the Village's remedies set forth in Section 14 of this Agreement.

B. Use of Withheld Funds. The Village shall be entitled to retain any and all amounts withheld pursuant to Section until Contractor shall have either performed the obligations in question or furnished security for such performance satisfactory to the Village. The Village shall be entitled to apply any money withheld or any other money due Contractor under this Agreement 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 the Village and chargeable to Contractor under this Agreement.

13. The Village'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 Agreement and the Project Documents on or before the Completion Date, or has attempted to assign this Agreement or Contractor's rights under this Agreement, either in whole or in part, or has falsely made any representation or warranty in this Agreement, or has otherwise failed, refused, or delayed to perform or satisfy any other requirement of this Agreement 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 business days after Contractor's receipt of written notice of such Event of Default, then the Village 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:

A. The Village may require Contractor, within such reasonable time as may be fixed by the Village, 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 Agreement and the Project Documents.

- B.** The Village may perform or have performed all Work necessary for the accomplishment of the results stated in Paragraph A above and withhold or recover from Contractor all the cost and expense, including attorneys' fees and administrative costs, incurred by the Village in connection therewith.
- C.** The Village may accept the defective, damaged, flawed, unsuitable, nonconforming, incomplete, or dilatory Work or part thereof and make an equitable reduction in the Contract Price.
- D.** The Village may terminate this Agreement without liability for further payment of amounts due or to become due under this Agreement.
- E.** The Village may, without terminating this Agreement, terminate Contractor's rights under this Agreement 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.
- F.** Upon any termination of this Agreement or of Contractor's rights under this Agreement, and at the Village's option exercised in writing, any or all subcontracts and supplier contracts of Contractor shall be deemed to be assigned to the Village without any further action being required, but the Village 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.
- G.** The Village may withhold from Final Payment, whether or not previously approved, or may recover from Contractor, any and all costs, including attorneys' fees and administrative expenses, incurred by the Village as the result of any Event of Default or as a result of actions taken by the Village in response to any Event of Default.
- H.** The Village may recover any damages suffered by the Village.
- I.** If the Work is not completed by Contractor, in full compliance with, and as required by or pursuant to, this Agreement and the Project Documents, within the Contract Time as such time may be extended by Change Order, then the Village may invoke its remedies under this Section 14 or may, in the exercise of its sole and absolute discretion, permit Contractor to complete the Work but charge to Contractor, and deduct from Final Payments, whether or not previously approved, administrative expenses and costs for each day completion of the Work is delayed beyond the

Completion Date, as well as any additional damages caused by such delay.

- J. Any termination or suspension of Contractor's rights under this Agreement t for an alleged default that is ultimately held unjustified shall automatically be deemed to be a termination or suspension for the convenience of the Village.

14. **Compliance with Laws.** Contractor will comply with all applicable laws, regulations, and rules promulgated by any Federal, State, County, Municipal and or other governmental unit or regulatory body now in effect during the performance of the work. By way of example, the following are included within the scope of the laws, regulations and rules referred to in this paragraph, but in no way to operate as a limitation on the laws, regulations and rules with which Contractor must comply, are all forms of Workers Compensation Laws, all terms of the Equal Employment Opportunity Clause of the Illinois Fair Employment Practices Commission, the Illinois Preference Act, the Social Security Act, Statutes relating to contracts let by units of government, all applicable Civil Rights and Anti-Discrimination Laws and Regulations, and traffic and public utility regulations. By signing this Agreement, Contractor certified that it is in compliance with all laws applicable to this Agreement.
15. **Indemnification.** Contractor will, to the fullest extent permitted by law, to waive any and all rights of contribution against the Village and to indemnify and hold harmless the Village and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including, but not limited to, legal fees (attorney's and paralegal's fees, expert fees and court costs) arising out of or resulting from the performance of the Contractor's work, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or injury to or destruction of property, other than the work itself, including the loss of use resulting therefrom, or is attributable to misuse or improper use of trademark or copyright protected material or otherwise protected intellectual property, to the extent it is caused in whole or in part by any wrongful or negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right to indemnity which the Village would otherwise have. The Contractor shall similarly, protect, indemnify and hold and save harmless, the Village, its officers, officials, employee, volunteers and agents against and from any and all claims, costs, causes, actions and expenses, including, but not limited to, legal fees, incurred by reason of Contractor's breach of any of its obligations under, or Contractor's default of any provisions of this Agreement.. The indemnification obligations under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under Workers' Compensation or Disability Benefit Acts or Employee Benefit Acts.
16. **Insurance.** Contractor will keep in force, to the satisfaction of the Village, at all times during the performance of the Work referred to above, Workers Compensation and Employer's Liability Insurance, Commercial General Liability Insurance, and Automobile Insurance in at least the type and amounts as follows:



- A. Workers' Compensation:
  - 1. State: Statutory
  - 2. Applicable Federal (e.g., Longshoremen's): Statutory
  - 3. Employer's Liability
    - \$500,000.00 Per Accident
    - \$500,000.00 Disease, Policy Limit
    - \$500,000.00 Disease, Each Employee
  
- B. Commercial General Liability:
  - 1. \$2,000,000.00 General Aggregate
  - 2. \$1,000,000.00 Products Completed Operations Aggregate
  - 3. \$1,000,000.00 Personal and Advertising Injury
  - 4. \$1,000,000.00 Each Occurrence
  - 5. \$ 50,000.00 Fire Damage (any one fire)
  - 6. \$ 5,000.00 Medical Expense (any one person)
  
- C. Business Automobile Liability (including owned, non-owned and hired vehicles):
  - 1. Bodily Injury:
    - \$1,000,000.00 Per Person
    - \$1,000,000.00 Per Accident
  - 2. Property Damage:
    - \$1,000,000.00 Per Occurrence
  
- D. Umbrella Excess Liability:
  - \$2,000,000.00 over Primary Insurance

17. **Proof of Insurance.** Contractor will have all policies of insurance purchased or maintained in fulfillment hereof name of the Village of Gilberts as an additional insured thereunder and the Contractor shall provide Certificates of Insurance and Policy Endorsements evidencing the coverages and the addition of the Village as an insured. No such policy of insurance shall have a deductible or self-insurance retention amount in excess of \$5,000.00 per occurrence. All insurance shall be written on an "occurrence" basis rather than a "claims-made" basis. Failure of the Village to demand any certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Village to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance. The Contractor agrees that the obligation to provide the insurance required by these documents is solely its responsibility and that this is a requirement which cannot be waived by any conduct, action, inaction or omission by the Village. Upon request, the Contractor will provide copies of any or all policies of insurance maintained in fulfillment hereof. Nothing contained in the insurance requirements of this Agreement or the Project Documents is to be construed as limiting the liability of the Contractor, the liability of any Subcontractor or any tier or either of their respective insurance carriers. All the insurance required of the Contractor shall state that the coverage afforded to

the additional insureds shall be primary insurance of the additional insureds with respect to claims arising out of operations performed by or on their behalf. If the "additional insureds" have other insurance or self-insured coverage which is applicable to the loss, it shall be on an excess or contingent basis.

The Village will have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the Village.

Contractor will cause each subcontractor employed by Contractor to purchase and maintain insurance of the types specified above. When requested by the Village, Contractor will furnish copies of certificates of insurance evidence coverage for each subcontractor.

All certificates of insurance will provide for 30 days written notice to the Village prior to the cancellation or material change of any insurance referred to herein.

18. **Prevailing Wages.** Contractor will pay and require every Subcontractor to pay prevailing wages, as required under the Prevailing Wage Act and as established by the Illinois Department of Labor for each craft or type of work needed to complete the Work in accordance with 820 ILCS 130/.01 *et seq.* Contractor shall prominently post the current schedule of prevailing wages at the Contract site and shall notify immediately in writing all of its Subcontractors, of all changes in the schedule of prevailing wages. Any increases in costs to Contractor due to changes in the prevailing rate of wage during the terms of any contract shall be at the expense of Contractor and not at the expense of the Village. The change order shall be computed using the prevailing wage rates applicable at the time the change order work is scheduled to be performed. Contractor shall be solely responsible to maintain accurate records as required by the prevailing wage statute and to obtain and furnish all such certified records to the Village as required by Statute. Contractor shall be solely liable for paying the difference between prevailing wages and any wages actually received by laborers, workmen and/or mechanics engaged in the Work and in every way defend and indemnify the Village against any claims arising under or related to the payment of wages in accordance with the Prevailing Wage Act. The Illinois Department of Labor publishes the prevailing wage rates on its website at: <https://www.illinois.gov/idol/Laws-Rules/CONMED/Pages/Rates.aspx>. The Department revises the prevailing wage rates and the Contractor/ subcontractor has an obligation to check the Department's web site for revisions.
19. **Bond Requirements.** Contractor, before commencing the Work, shall furnish a Performance Bond and a Labor and Material Payment Bond. The Performance Bond shall be in an amount equal to 100% of the full amount of the Agreement Sum as security for the faithful performance of the obligations of this Agreement and the Project Documents, and the Labor and Material Payment Bond shall be in an amount equal to 100% of the full amount of the Agreement Sum as security for the payment of all persons performing labor and furnishing

materials in connection with the Work and compliance with all applicable law, including the Prevailing Wage Act to the extent it applies. Such bonds shall be on standard AIA Documents, shall be issued by a surety satisfactory to the Village, and shall name the Village as a primary co-obligee. The cost of the bonds is to be included in the Contract Sum. The Performance Bond and Labor and Material Payment Bond will become a part of this Agreement. The failure of Contractor to supply the required Bonds within ten (10) days after the execution of this Agreement or within such extended period as the Village may grant if the forms do not meet its approval shall constitute a default.

20. **Termination.** The Village may terminate this Agreement for cause upon 24 hours written notice of breach to Contractor and for convenience and without cause upon not less than seven days' written notice to Contractor. In the event of termination for other than cause, Contractor shall be compensated for services performed prior to termination (applying a pro-rata apportionment to the anticipated schedule of services) together with reimbursable expenses then due.
21. **Compliance with FOIA.** Contractor agrees to maintain, without charge to the Village, all records and documents for projects of the Village in compliance with the Freedom of Information Act, 5 ILCS 140/1 et seq. In addition, Contractor shall produce records which are responsive to a request received by the Village under the Freedom of Information Act so that the Village may provide records to those requesting them within the time frames required. If additional time is necessary to compile records in response to a request, then Contractor shall so notify the Village and if possible, the Village shall request an extension so as to comply with the Act. In the event that the Village is found to have not complied with the Freedom of Information Act due to Contractor's failure to produce documents or otherwise appropriately respond to a request under the Act, then Contractor shall indemnify and hold the Village harmless, and pay all amounts determined to be due including but not limited to fines, costs, attorneys' fees and penalties.
22. **Binding Effect.** This Agreement shall be binding upon the Village and Contractor and upon their respective heirs, executors, administrators, personal representatives, and permitted successors and assigns. Every reference in this Agreement to a party shall also be deemed to be a reference to the authorized officers, employees, agents, and representatives of such party.
23. **Relationship of the Parties.** Contractor shall act as an independent contractor in providing and performing the Work. Nothing in, nor done pursuant to, this Agreement shall be construed (1) to create the relationship of principal and agent, partners, or joint venturers between the Village and Contractor or (2) to create any relationship between the Village and any subcontractor or supplier of Contractor.
24. **No Collusion/Prohibited Interests.** Contractor hereby represents that the only persons, firms, or corporations interested in this Agreement as principals are those disclosed to the Village prior to the execution of this Agreement, and that this Agreement 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 Agreement, colluded with any other person, firm, or corporation, then Contractor shall be liable to the Village for all loss or damage that the Village may suffer thereby, and this Contract shall, at the Village'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.

25. **Assignment.** Contractor shall not (1) assign this Agreement in whole or in part, (2) assign any of Contractor's rights or obligations under this Agreement, or (3) assign any payment due or to become due under this Agreement without the prior express written approval of the Village, which approval may be withheld in the sole and unfettered discretion of the Village. The Village may assign this Agreement, in whole or in part, or any or all of its rights or obligations under this Agreement, without the consent of Contractor.
26. **No Waiver.** No examination, inspection, investigation, test, measurement, review, determination, decision, certificate, or approval by the Village, nor any order by the Village 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 the Village, nor any extension of time granted by the Village, nor any delay by the Village in exercising any right under this Agreement, nor any other act or omission of the Village 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 Agreement; or of any remedy, power, or right of the Village.
27. **No Third Party Beneficiaries.** No claim as a third party beneficiary under this Agreement by any person, firm, or corporation other than Contractor shall be made or be valid against the Village.
28. **Notices.** All notices required or permitted to be given under this Agreement 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 the Village shall be addressed to, and delivered at, the following address:

Village of Gilberts  
87 Galligan Road  
Gilberts, Illinois  
Attention: Village Administrator

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

Troy Mertz  
Gilberts Development LLC  
340 W. Butterfield Road  
Unit 2D  
Elmhurst, IL 60126  
(847) 774-9435

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, the Village 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.

29. **Governing Laws.** This Agreement and the rights of the Village and Contractor under this Agreement shall be interpreted according to the internal laws, but not the conflict of laws rules, of the State of Illinois. Venue for any dispute relating to this Agreement will be in the Circuit Courts of Kane County, Illinois.
30. **Changes in Laws.** Unless otherwise explicitly provided in this Agreement, any reference to laws shall include such laws as they may be amended or modified from time to time.
31. **Severability.** The provisions of this Agreement shall be interpreted when possible to sustain their legality and enforceability as a whole. In the event any provision of this Agreement 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 Agreement shall be in any way affected thereby.
32. **Entire Agreement; Conflict.** This Agreement and the Project Documents set forth the entire agreement of the Village and Contractor with respect to the accomplishment of the Work and the payment of the Contract Price therefor, and there are no other understandings

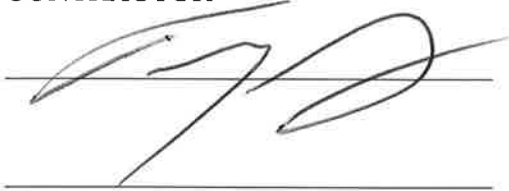
or agreements, oral or written, between the Village and Contractor with respect to the Work and the compensation therefore. In the event of any conflict between the terms and conditions of this Agreement and the Project Documents, the most stringent and demanding requirements as applied to the Contractor shall control.

33. **Amendments**. No modification, addition, deletion, revision, alteration or other change to this Agreement shall be effective unless and until such change is reduced to writing and executed and delivered by the Village and Contractor.

*[signature page follows]*

IN WITNESS WHEREOF, THE PARTIES have executed this Agreement this  
18 day of June, 2019.

CONTRACTOR



\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

VILLAGE OF GILBERTS

  
\_\_\_\_\_  
Village President  
\_\_\_\_\_  
Village Clerk

**EXHIBIT A**  
**Project Documents**