

## AGREEMENT

This Agreement, made and entered into on the last day of signature below between KENDALL COUNTY, ILLINOIS (hereinafter "Kendall County"), with its principal place of business at 111 W. Fox Street, Yorkville, Illinois, 60560 and \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ (hereinafter referred to as "Contractor"). In consideration of the mutual covenants hereinafter set forth, and other good and valuable consideration, the parties hereto agree as follows:

**Incorporation.** The following documents are incorporated herein: (1) the Invitation to Bid, including the Scope of Work and Instructions to Bidder, ("Invitation to Bid"), attached as Exhibit A, and (2) the Bid submitted by Contractor ("Bid"), attached as Exhibit B. In the event of a conflict between these documents, they should be considered in the following order of priority: The Agreement, the Invitation to Bid, and the Bid.

**Term.** This Agreement shall be effective as of the date of final signature below and shall continue in force and effect until the project has been fully completed to the satisfaction of Kendall County but no later than \_\_\_\_\_ or as terminated by either party pursuant to the terms in the Agreement, whichever occurs first.

**Services.** Pursuant to, and as set forth in this Agreement, Contractor will provide Kendall County with the products and services identified in the Agreement, the Invitation to Bid, and the Bid.

**Payment.** As consideration for the services to be performed by Contractor, the County agrees to pay Contractor pursuant to the following schedule [Insert Payment Schedule]. Payment shall be made in accordance with the Illinois Local Government Prompt Payment Act, as amended (50 ILCS 505/1, et seq.)

**Non-Discrimination.** Contractor, its officers, employees, and agents agree not to commit unlawful discrimination and agree to comply with all applicable provisions of the Illinois Human Rights Act, Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act, Section 504 of the Federal Rehabilitation Act, and all applicable rules and regulations.

**Certification.** Contractor certifies that Contractor, its parent companies, subsidiaries, and affiliates are not barred from entering into this Agreement as a result of a violation of either 720 ILCS 5/33E-3 or 5/33E-4 (bid rigging or bid rotating) or as a result of a violation of 820 ILCS 130/1 et seq. (the Illinois Prevailing Wage Act). Contractor further certifies by signing the contract documents that Contractor, its parent companies, subsidiaries, and affiliates have not been convicted of, or are not barred for attempting to rig bids, price-fixing or attempting to fix prices as defined in the Sherman Anti-Trust Act and Clayton Act. 15 U.S.C. § 1 et seq.; and has not been convicted of or barred for bribery or attempting to bribe an officer or employee of a unit of state or local government or school district in the State of Illinois in that Officer's or employee's official capacity. Nor has Contractor made an admission of guilt of such conduct that is a matter of record, nor has any official, officer, agent, or employee of the Contractor been so convicted nor made such an admission.

**Conflict of Interest.** Both parties affirm no Kendall County officer or elected official has a direct or indirect pecuniary interest in Contractor or this Agreement, or, if any Kendall County officer or elected official does have a direct or indirect pecuniary interest in Contractor or this Agreement, that interest, and the procedure followed to effectuate this Agreement has and will comply with 50 ILCS 105/3.

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

Indemnification. Contractor shall indemnify, hold harmless and defend with counsel of Kendall County’s own choosing, Kendall County, its past, present and future elected officials, department heads, employees, insurers, and agents (hereinafter collectively referred to as “Releasees”) from and against all liability, claims, suits, causes of action, demands, proceedings, set-offs, liens, attachments, debts, expenses, judgments, or other liabilities including costs, reasonable fees and expense of defense, arising from any loss, damage, injury, death, or loss or damage to property, of whatsoever kind or nature as well as for any breach of any covenant in the Agreement or ancillary documents and any breach by Contractor of any representations or warranties made within the contract documents (collectively, the “Claims”), to the extent such Claims result from any act or omission, neglect, willful acts, errors, or misconduct of Contractor in its performance under this Agreement. Pursuant to 55 ILCS 5/3-9005, no attorney may be assigned to represent the Releasees pursuant to this Section of the Agreement unless the attorney has been approved in writing by the Kendall County State’s Attorney. Releasees’ participation in their defense shall not remove Contractor’s duty to indemnify, defend, and hold Releasees harmless, as set forth above. Releasees do not waive their defenses or immunities under the Local Government and Governmental Employees Tort Immunity Act (745 ILCS 10/1 et seq.) by reason of this indemnification provision. Indemnification shall survive the termination of this Agreement.

Confidentiality. It is understood and agreed to by the parties that all contracts entered into by a government body, such as Kendall County, are open to public review and as such will be on file with the County Clerk’s office and may be discussed in open session pursuant to the Illinois Open Meetings Act (5 ILCS 120/1 et seq.) and/or may be released pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.).

Insurance. All coverage shall be placed with insurers authorized to conduct business in Illinois with a current A.M. Best’s rating of no less than A:VII. Each insurance policy shall not be cancelled or changed without thirty (30) calendar days prior written notice, given by the insurance carrier to Kendall County at the address set forth herein.

Minimum Scope and Limit of Insurance. All coverage shall be at least as broad as the following:

Commercial General Liability (“CGL”): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be \$2,000,000.

Umbrella/Excess Liability: Limits of liability equal to or greater than \$5,000,000 per occurrence and \$5,000,000 in aggregate.

Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

Workers' Compensation Insurance: Insurance as required by the State of Illinois, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, Kendall County shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Kendall County.

Additional Insured Status: Kendall County and its, past, present, and future its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

Primary Coverage: For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance primary coverage at least as broad as ISO CG 20 01 04 13 with respect to Kendall County, its past present and future officers, officials, employees, and volunteers. Any insurance maintained by Kendall County, its past present or future officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Waiver of Subrogation: Contractor hereby grants to Kendall County and its, past, present, and future its officers, officials, employees, and volunteers a waiver of any right to subrogation which any insurer of said Contractor may acquire against Kendall County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Kendall County has received a waiver of subrogation endorsement from the insurer.

Verification of Coverage: Contractor shall furnish Kendall County with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to Kendall County before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. Kendall County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors: Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Kendall County is an additional insured on insurance required from subcontractors.

Compliance With State and Federal Laws. Contractor agrees to comply with all applicable federal, state and local laws and regulatory requirements and to secure such licenses as may be required for its employees and to conduct business in the state, municipality, county and location. Such obligation includes, but is not limited to, environmental laws, civil rights laws, prevailing wage and labor laws.

Drug Free Workplace. Contractor and its consultants, employees, contractors, subcontractors, and agents agree to comply with all provisions of the Substance Abuse Prevention on Public Works Act, 820 ILCS 265/1 et seq. and the Illinois Drug Free Workplace Act, 30 ILCS 580/1 et seq.

Employment of Illinois Workers on Public Works Act. If at the time the Agreement is executed, or if during the term of the Agreement, there is a period of excessive unemployment in Illinois as defined in the Employment of Illinois Workers on Public Works Act, 30 ILCS 570/0.01 et seq., (hereinafter referred to as "the Act"), the Contractor, its consultants, contractors, subcontractors and agents agree to employ Illinois laborers on this Project in accordance with the Act. The Contractor understands that the Act defines (a) "period of excessive unemployment" as "as any month following two consecutive calendar months during which the level of unemployment in the State of Illinois has exceeded 5%, as measured by the United States Bureau of Labor Statistics in its monthly publication of employment and unemployment figures", and (b) "Illinois laborer" as "any person who has resided in Illinois for at least thirty (30) days and intends to become or remain an Illinois resident." See 30 ILCS 570/1. The Contractor understands and agrees that its failure to comply with this provision of the Agreement may result in immediate termination of the Agreement.

Background Checks/Security. Contractor shall exercise general and overall control of its officers, employees and/or agents. Contractor agrees that no one shall be assigned to perform work at Kendall County's facilities on behalf of Contractor, Contractor's consultants, subcontractors and their respective officers, employees, agents and assigns unless Contractor has completed a criminal background investigation for each individual to be performing work at the site. In the event that the individual's criminal background investigation reveals that the individual has a conviction record that has not been sealed, expunged or impounded under Section 5.2 of the Criminal Identification Act, Contractor agrees that the individual shall not be assigned to perform work on or at Kendall County's facilities absent prior written consent from Kendall County. Kendall County, at any time, for any reason and in Kendall County's sole discretion, may require Contractor and/or Contractor's consultants, and/or subcontractors to remove any individual from performing any further work under this Agreement.

Independent Contractor Relationship. It is understood and agreed that Contractor is an independent contractor and is not an employee of, partner of, agent of, or in a joint venture with Kendall County. Contractor understands and agrees that Contractor is solely responsible for paying all wages, benefits and any other compensation due and owing to Contractor's officers, employees, and agents for the performance of services set forth in the Agreement. Contractor further understands and agrees that Contractor is solely responsible for making all required payroll deductions and other tax and wage withholdings pursuant to state and federal law for Contractor's officers, employees and/or agents who perform services as set forth in the Agreement. Contractor also acknowledges its obligation to obtain appropriate insurance coverage for the benefit of Contractor, Contractor's officers, employees and agents and agrees that Kendall County is not responsible for providing any insurance coverage for the benefit of Contractor, Contractor's officers, employees and agents. Contractor hereby agrees to defend with counsel of Kendall County's own choosing, indemnify and waive any right to recover alleged damages,

penalties, interest, fees (including attorneys' fees), and/or costs from Kendall County, its past, present and future board members, elected officials, employees, insurers, and agents for any alleged injuries that Contractor, its officers, employees and/or agents may sustain while performing services under the Agreement.

Non-Appropriation. In the event Kendall County is in default under the Agreement because funds are not appropriated for a fiscal period subsequent to the one in which the Agreement was entered into which are sufficient to satisfy all or part of the County's obligations under this Agreement during said fiscal period, the County agrees to provide prompt written notice of said occurrence to Contractor. In the event of a default due to non-appropriation of funds, either party has the right to terminate the Agreement upon providing thirty (30) days written notice to the other party. No additional payments, penalties and/or early termination charges shall be required upon termination of the Agreement.Warranties. Contractor warrants to owner that all construction and related services provided shall be performed in a good and workman like manner, in accordance with the terms of the contract documents, and all applicable laws, codes, regulations and other requirements, including safety standards. All services to be undertaken by Contractor shall be carried out by competent and properly trained personnel of Contractor to the highest standards and to the satisfaction of Kendall County. All services, materials and components shall conform to relevant manufacturers' and equipment suppliers' specifications, and all materials and spare parts shall be obtained from the original equipment manufacturers or from suppliers approved by them. No warranties implied or explicit may be waived or denied.

Termination. This Agreement may be terminated by Kendall County upon written notice delivered to Contractor at least thirty (30) calendar days prior to the effective date of termination. No additional payments, penalties and/or early termination charges shall be required upon termination of the Agreement. Kendall County shall reimburse the Contractor for any services completed and any services partially completed prior to the termination date. Upon receipt of a termination notice, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the costs associated with termination of services. Kendall County shall not be liable for those costs and expenses resulting from Contractor's failure to mitigate such losses. Further, Kendall County shall not be responsible for salaries, overhead and fees accrued after the Agreement's termination. Kendall County shall not be liable for any other additional payments, penalties and/or early termination charges.

Notice. Any notice required or permitted to be given pursuant to this Agreement shall be duly given if sent by fax, certified mail, or courier service and received, in the case of notice to Kendall County, County Administration, Attention: Scott Koepfel, 111 W. Fox Street, Yorkville, Illinois, 60560, fax (630) 553-\_\_\_\_ with copy sent to: Kendall County State's Attorney, 807 John Street, Yorkville, Illinois, 60560, fax (630) 553-4204. And, in the case of Contractor, to:\_\_\_\_\_.

Choice of Law and Venue. This Agreement shall be construed in accordance with the law and Constitution of the State of Illinois and if any provision is invalid for any reason such invalidations shall not render invalid other provisions which can be given effect without the invalid provision. The parties agree that the venue for any legal proceedings between them shall be the Circuit Court of Kendall County, Illinois, Twenty-Third Judicial Circuit, State of Illinois. In any action with respect to this Agreement, the parties are free to pursue any legal remedies at law or in equity. If Kendall County is required to take legal action to enforce performance of any of the terms, provisions, covenants and conditions of this Agreement, and by reason thereof, Kendall County is required to use the services of an attorney, then Kendall County shall

be entitled to reasonable attorneys' fees, court costs, expenses and expert witness fees incurred by Kendall County pertaining thereto and in enforcement of any remedy, including costs and fees relating to any appeal.

Assignment. Neither party shall assign, sublet, sell, or transfer its interest in this Agreement without the prior written consent of the other.

Force Majeure. Neither party will be responsible to the other for damage, loss, injury, or interruption of work if the damage, loss, injury, or interruption of work is caused solely by conditions that are beyond the reasonable control of the parties, and without the intentional misconduct or negligence, of that party (hereinafter referred to as a "force majeure event"). To the extent not within the control of either party, such force majeure events include: acts of God, acts of any governmental authorities, fire, explosions or other casualties, vandalism, and riots or war. A party claiming a force majeure event ("the claiming party") shall promptly notify the other party in writing, describing the nature and estimated duration of the claiming party's inability to perform due to the force majeure event. The cause of such inability to perform will be remedied by the claiming party with all reasonable dispatch.

Waiver. Kendall County and/or the Contractor's waiver of any term, condition, or covenant or breach of any term, condition, or covenant, shall not constitute a waiver of any other term, condition, or covenant, or the breach thereof.

Entire Agreement. This Agreement represents the entire Agreement between the parties and there are no other promises or conditions in any other Agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties and may not be modified except in writing acknowledged by both parties.

Counterparts. This Agreement may be executed in counterparts (including facsimile signatures), each of which shall be deemed to be an original and both of which shall constitute one and the same Agreement.

Authority To Execute Agreement. The County of Kendall and Contractor each hereby warrant and represent that their respective signatures set forth below have been and are on the date of this Agreement duly authorized by all necessary and appropriate corporate and/or governmental action to execute this Agreement.

The parties hereto caused this Agreement to be executed on the dates inserted below.

	<b>KENDALL COUNTY, ILLINOIS</b>
BY:	BY:
NAME:	NAME:
TITLE:	TITLE:
DATE:	DATE: