AGREEMENT

THIS AGREEMENT is dated this _____ day of _____, 20___, by and between the City of Elgin, an Illinois Municipal Corporation (herein called "City") and _____ (herein called "Contractor"), a corporation with a principal place of business at _____.

WHEREAS, the City has requested and Contractor has provided a proposal for a construction agreement to provide for the installation of storm sewer, sanitary sewer, water main, and associated restoration primarily along Chicago St from Melrose Ave to Union St and other locations within the City of Elgin; and

WHEREAS, Contractor submitted a proposal for such work dated *November 5, 2026*, consisting of _____(___) pages, attached hereto as Attachment A ("Contractor's Proposal"); and

WHEREAS, the City Council has determined that it to be in the best interests of the City to award the contract to the Contractor for the *Chicago Street Combined Sewer Separation Project* (hereinafter referred to as the "Work").

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, the sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

Article 1. Work.

Contractor shall complete the Work as specified in the Contract Documents. The Work is generally described as follows:

This project includes but is not limited to furnishing all labor, materials, equipment, traffic control, and other as included items necessary for the completion of the following base bid quantities:

This project in general (approximately 6,200 linear feet in length) includes but is not limited to furnishing all labor, materials, equipment and other as included items necessary for the completion of the following:

- Installation of approximately 4,000’ of 12” to 48” storm sewer;
- Installation of approximately 200’ of 10” to 36” sanitary sewer;
- Installation of approximately 5,100’ of 4” to 16” water main;
- Approximately 5,500’ of 6” to 36” sanitary sewer lining;
- Approximately 6,700 SY of pavement removal;
- Approximately 25,400 SY of pavement patching;
- Approximately 18,300 SY pavement surface milling;
- Approximately 900’ of curb and gutter removal and replacement;
- Approximately 5,200 sq. ft. of sidewalk removal and replacement;
- Removal and/or abandonment of existing water and sewer mains;
- Water and sewer main adjustments;
- Water and sanitary service-re-establishment;

- Parkway restoration and other miscellaneous items of work in accordance with the Contract Plans and Specifications.

Article 2. City Representative.

The Work has been designed by *HR Green, Inc.* ("Engineer"). Engineer shall act as City's representative and shall assume and provide such duties and obligations of the Engineer to the extent provided in the Contract Documents.

Article 3. Work Completion, Liquidated Damages, Delays and Damages.

3.1. Work Completion. The Work shall be completed as provided in the Contract Documents. The Contractor shall schedule and complete all work as specified in the contract, on or before the completion date of *November 19, 2027*. The Contractor shall also schedule and complete items identified under the substantial completion date as specified in the contract, on or before the substantial completion date of *October 22, 2027*. In the event of any conflict between these dates and dates elsewhere in the Contract Documents, these dates shall prevail. Time is of the essence of this Agreement.

3.2. Liquidated Damages. The City and Contractor agree that as reasonable liquidated damages for delay (but not as a penalty) Contractor shall pay City $2,300 for each day beyond the time specified for Substantial Completion in the Contract Documents. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the times specified in the Contract Documents (hereinafter referred to as "Contract Times") or any proper extension thereof granted by City, Contractor shall pay City $2,300 for each day beyond the time for Final Completion. Contractor agrees and acknowledges that such liquidated damages constitute a reasonable estimate of City's actual damages. Such liquidated damages shall constitute City's sole recourse for and shall constitute full satisfaction of City's actual damages resulting from Contractor's delay. Contractor further acknowledges and agrees that in the event any provisions in any of the Contract Documents conflict with the provisions of this paragraph or otherwise provide for damages resulting from Contractor's delay, the provisions of this paragraph shall control, and such conflicting provisions and any Contract Documents shall not constitute, and shall not be construed as, a basis by which to render the provisions of this paragraph unenforceable.

3.3. Delays and Damages. In the event Contractor is delayed in the prosecution and completion of the Work or achievement of any Contract Times because of any delays caused by City or Engineer, Contractor shall have no claim against City or Engineer for damages or contract adjustment other than an extension of the Contract Times as provided herein and the waiving of liquidated damages during the period occasioned by the delay.

Article 4. Contract Price.

City shall pay Contractor $_____ as indicated in the Contractor's Proposal for completion of the Work in accordance with the Contract Documents.

Article 5. Payments.

5.1. Payments. City shall make payments on the basis of Contractor's Applications for Payment as recommended by Engineer, in conformance with the City of Elgin's accounts payable schedule. All payments shall be based on the progress of the Work measured by the schedules provided in the Contract Documents. Notwithstanding anything to the contrary in any Contract Documents, City shall be entitled to withhold any payments pending the submission of partial or full waivers of lien and/or certifications verifying the receipt of payment for all work performed by all subcontractors up to the date of Contractor's application for partial or final payment in City's sole discretion. City shall further be entitled to make such payments directly to any subcontractors as may be necessary to obtain such lien waivers and/or certifications. In the event City makes any such payments directly to any subcontractors, the amount of such payments shall be deducted from the total amount due to Contractor pursuant to this Agreement; and Contractor shall provide a written release to City in the amount of any such payments upon ten (10) days written demand. Concurrent with all applications for payment, Contractor shall provide City with a sworn certification of all work performed by all subcontractors and amounts paid to all subcontractors as of the date of application.

5.2. Retainage. City may withhold, from all payments prior to Substantial Completion, an amount equal to up to ten percent (10%) of work completed, at City's sole discretion. Upon Substantial Completion, City may release a portion of the retainage to Contractor, retaining at all times an amount sufficient to cover the cost of the Work remaining to be completed, at City's sole discretion. The time for payment of any retainage from City to Contractor shall be at City's sole discretion. Such payment shall not be unreasonably withheld.

5.3. Final Payment. The City shall not be required to make final payment prior to completion and acceptance of the Work by the City.

Article 6. Contract Documents.

There are no Contract Documents other than those listed below. The Contract Documents which comprise the entire agreement between City and Contractor concerning the Work consist of the following:

a. This Agreement.
b. Contractor's Proposal, attached hereto as Attachment A.
c. General Conditions, based upon EJCDC No. 1910-8 (1996 Edition) as modified by the City of Elgin, Illinois, attached hereto as Attachment B.
d. Supplementary Conditions Regarding Insurance, attached hereto as Attachment C.
e. Schedule for the Work, attached hereto as Attachment D.
f. City Forms attached hereto as Attachment E.
g. Certificates of Insurance.
h. Bonds
i. Notice to Proceed.
j. Any subsequent Written Amendments to any documents listed above and other documents amending, modifying or supplementing the Contract Documents, which may

be delivered or issued after the Effective Date of the Agreement and are not attached hereto.

This Agreement and the Contract Documents listed above comprise the sole and exclusive Agreement between the parties hereto. There are no other agreements between the parties hereto either oral or written, and neither this Agreement nor any Contract Documents shall be modified or amended without the written consent of the authorized representatives of the parties hereto.

Article 7. Prevailing Wage.

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

Article 8. Affirmative Action.

The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, ancestry, order of protection status, familial status, martial status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service which would not interfere with the efficient performance of the job in question. Contractor shall take affirmative action to comply with the provisions of Elgin Municipal Code Section 5.02.040 and will require any subcontractor to submit to the City a written commitment to comply with those provisions. Contractor shall distribute copies of this commitment to all persons who participate in recruitment, screening, referral and selection of job applicants and prospective subcontractors. Contractor agrees that the provisions of Section 5.02.040 of the Elgin Municipal Code, 1976, as amended, is hereby incorporated by reference, as if set out verbatim.

Article 9. Miscellaneous.

a. Terms used in this Agreement shall have the meanings indicated in the General Conditions.

b. No assignment or delegation by a party hereto of any rights under, obligations or interests in the Contract Documents shall be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law); and unless

specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any duty or responsibility under the Contract Documents.

c. City and Contractor each binds itself, its partners, successors, employees, assigns, and agents to the other party hereto, its partners, successors, employees, assigns, and agents in respect of all covenants, agreements, and obligations contained in the Contract Documents.

d. The business address of Contractor is hereby designated as the place to which all notices, letters, and other communication to Contractor shall be mailed or delivered. The address of City is hereby designated as the place to which all notices, letters, and other communication to the City shall be mailed or delivered. Such notices, letters and other communications shall be directed to the City's General Services Manager. Either party may change its address at any time by an instrument in writing delivered to Engineer and to the other party.

e. The terms and provisions of this Agreement shall be severable. In the event any of the terms or provisions of this Agreement shall be deemed to be void or otherwise unenforceable for any reason, the remainder of this Agreement shall remain in full force and effect.

f. This Agreement shall be subject to and governed by the laws of the State of Illinois. Venue for the resolution of any disputes and the enforcement of any rights arising out of or in connection with the Agreement shall be in the Circuit Court of Kane County, Illinois.

g. This Agreement shall not be construed so as to create a partnership, joint venture, employment or agency relationship between the parties hereto except as may be specifically provided for herein.

h. In the event of any conflict between any of the terms or provisions of this Agreement and any other Contract Documents, the terms and provisions of this Agreement shall control.

i. Indemnification. To the fullest extent permitted by law, Contractor agrees to and shall indemnify, defend and hold harmless the City, the Engineer, Engineer's consultants and the officers, employees, boards and commissions of each and any of them from and against any and all claims, suits, judgments, costs, attorneys' fees, damages or any and all other relief or liability arising out of or resulting from or through, or alleged to arise out of, any acts or negligent acts or omissions of Contractor or Contractor's officers, employees, agents or subcontractors in the performance of this Agreement, or arising out of or in connection with litigation based on any mechanic's lien or other claims, suits, judgments and/or demands for damages by subcontractors. In the event of any action against the City, its officers, employees, agents, boards or commissions covered by the foregoing duty to indemnify, defend and hold harmless, such action shall be defended

by legal counsel of City's choosing. In the event and to the extent that any legal work is performed by City's in-house legal counsel pursuant to the provisions of this section, City shall be reimbursed by Contractor for such legal work at the rate of $200 per hour, which rate Contractor hereby agrees and acknowledges to be a reasonable rate for such in-house attorneys' fees. The provisions of this paragraph shall survive any expiration and/or termination of this Agreement.

j. Compliance with Laws. Notwithstanding any other provision of this Contract it is expressly agreed and understood that in connection with the performance of this Contract that the Contractor shall comply with all applicable Federal, State, City and other requirements of law, including, but not limited to, any application requirements regarding prevailing wages, minimum wage, workplace safety and legal status of employees. Contractor shall also at its expense secure all permits and licenses, pay all charges and fees and give all notices necessary and incident to the due and lawful prosecution of the work, and/or the products and/or services to be provided for in this Contract. The City shall have the right to audit any records in the possession or control of the Contractor to determine Contractor's compliance with the provisions of this section. In the event the City proceeds with such an audit the Contractor shall make available to the City the Contractor's relevant records at no cost to the City. Contractor shall pay any and all costs associated with any such audit. Without limiting the foregoing, Contractor hereby certifies, represents and warrants to the City that all Contractor's employees and/or agents who will be providing products and/or services with respect to this Contract shall be legally authorized to work in the United States.

k. No Interest. Contractor hereby waives any and all claims to interest on money claimed to be due pursuant to this Agreement, and all such rights to interest to which it may otherwise be entitled pursuant to law, including, but not limited to, pursuant to the Local Government Prompt Payment Act (50 ILCS 505/1, *et seq.*), as amended, or the Illinois Interest Act (815 ILCS 205/1, *et seq*.), as amended.

l. Limitation of Actions. Contractor agrees that any cause of action, lawsuit or other legal claim by the Contractor arising out of this Agreement must be filed within one year of the date the alleged cause of action, lawsuit or other legal claim arose or the same will be time barred and waived and released by the Contractor.

m. Registration. Contractor hereby warrants and represents that it is registered with the Illinois Secretary of State's Office or has been incorporated in the State of Illinois; and such entity further hereby warrants and represents that it is in good standing in the state of its incorporation or organization.

n. Counterparts and Execution. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same Agreement. For the purposes of executing this Agreement, any signed copy of this Agreement transmitted by fax machine or e-mail shall be treated in all manners and respects as an original document. The signature of any party on a copy of this Agreement transmitted by fax machine or e-mail shall be considered for these purposes as an original signature

and shall have the same legal effect as an original signature. Any such faxed or e-mailed copy of this Agreement shall be considered to have the same binding legal effect as an original document. At the request of either party any fax or e-mail copy of this Agreement shall be re-executed by the parties in an original form. No party to this Agreement shall raise the use of fax machine or e-mail as a defense to this Agreement and shall forever waive such defense.

IN WITNESS WHEREOF, City and Contractor have signed this Agreement.

This Agreement shall be effective on _____20___.

CONTRACTOR:	CITY: City of Elgin
_____	_____
By: _____	By: _____
Title: _____	Title: City Manager
Address for giving notices:	Address for giving notices:
_____ _____ _____	City of Elgin 150 Dexter Court Elgin, Illinois 60120
Attn: _____	Attn: _____
FEIN #_____	