

SECTION 00 52 00

AGREEMENT

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THIS AGREEMENT is by and between **CITY OF CREST HILL, ILLINOIS**

(hereinafter called OWNER) and **FER-PAL CONSTRUCTION USA, LLC**

(hereinafter called CONTRACTOR).

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

OWNER and CONTRACTOR, in consideration of the mutual covenants set forth herein, agree as follows:

Article 1. WORK

1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

***CIPP WATER MAIN REHABILITATION PHASE 1***

Article 2. THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

***CONTRACT 3-2024***

Article 3. ENGINEER

3.01 OWNER has retained Strand Associates, Inc.® ("ENGINEER") to act as OWNER's representative, assume all duties and responsibilities of ENGINEER, and have the rights and authority assigned to ENGINEER in the Contract.

3.02 The part of the Project that pertains to the Work has been designed by ENGINEER.

## Article 4. CONTRACT TIMES

### 4.01 Time of the Essence

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

### 4.02 Dates for Substantial Completion and Final Payment

A. The Work will be substantially complete on or before September 30, 2025, and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before October 30, 2025.

In addition to the required substantial and final completion times, there are milestones by which certain items of work must be completed. See General Requirements for milestone requirements.

Milestone 1	Completed within 45 Calendar Days from start of work at the intersection of Theodore Street and US Route 53.
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### 4.03 Liquidated Damages

A. CONTRACTOR and OWNER recognize that time is of the essence as stated in Paragraph 4.01 above and that OWNER will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: CONTRACTOR shall pay OWNER \$3,500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete. This amount is comprised of \$1,500 per day for engineering, construction administration services, and construction observation services, and \$2,000 per day for administration, labor, expenses, and other costs that will be incurred by OWNER.

2. Completion of Remaining Work: After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, CONTRACTOR shall pay OWNER \$3,500 for each day that expires after such time until the Work is completed and ready for final payment. This amount is comprised of \$1,500 per day for engineering, construction administration services, and construction observation services, and \$2,000 per day for administration, labor, expenses, and other costs that will be incurred by OWNER.

3. Milestones: CONTRACTOR shall pay OWNER \$2,000 for each day that expires after the time (as duly pursuant to the Contract) specified above for achievement of Milestone 1, until Milestone 1 is achieved, or until the time specified for Substantial Completion is reached, at which time the rate indicated in Paragraph 4.03.A.1 will apply, rather than the Milestone rate.

4. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.

## Article 5. CONTRACT PRICE

5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds as follows, subject to adjustment under the Contract:

***TWO MILLION, FOUR HUNDRED SEVENTY-FIVE THOUSAND, NINE HUNDRED SEVENTY DOLLARS AND 70/100 (\$2,479,975.70)***

A. For all Work, at the prices stated in CONTRACTOR's Bid, attached hereto as an exhibit. The awarded Contract amount includes the Computed Total Base Bid (\$2,043,865.30) plus Bid Alternative No. 1 (\$436,110.40).

B. All specific Cash Allowances are included in the Contract Price and have been computed in accordance with Paragraph 13.02 of the General Conditions.

## Article 6. PAYMENT PROCEDURES

### 6.01 Submittal and Processing of Payments

A. CONTRACTOR shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

### 6.02 Progress Payments; Retainage

A. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as established at the preconstruction conference during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established in Paragraph 2.05.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

1. OWNER will retain an amount equal to 10% of each progress payment application until 50% of the Work has been completed. At 50% completion, OWNER shall reduce the retainage so that no more than 5% of the Work completed is withheld. For subsequent progress payment applications beyond 50% completion, OWNER will retain an amount equal to 5% of the payment being requested.

### 6.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said Paragraph 15.06.

### 6.04 Consent of Surety

A. OWNER will not make final payment unless CONTRACTOR submits written consent of the surety to such payment.

## Article 7. HIERARCHY

7.01 In resolving inconsistencies among two or more sections of the Contract Documents, precedence shall be given in the following order:

- |          |   |
|----------|---|
| First:   | WRITTEN AMENDMENTS                                |
| Second:  | CHANGE ORDERS/FIELD ORDERS/WORK CHANGE DIRECTIVES |
| Third:   | ADDENDA   |
| Fourth:  | AGREEMENT   |
| Fifth:   | SUPPLEMENTARY CONDITIONS                          |
| Sixth:   | GENERAL CONDITIONS                                |
| Seventh: | SPECIFICATIONS                                    |
| Eighth:  | DRAWINGS  |

For categories that have the same order of precedence, the document that includes the latest date shall control. Figure dimensions (numerical) on Drawings shall take precedence over dimensions measured utilizing a scale.

## Article 8. REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

### 8.01 CONTRACTOR's Representations

A. In order to induce OWNER to enter into this Contract, CONTRACTOR makes the following representations:

1. CONTRACTOR has examined and carefully studied the Contract Documents, including Addenda.
2. CONTRACTOR has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. CONTRACTOR is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. CONTRACTOR has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site, if any, that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
5. CONTRACTOR has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. CONTRACTOR has considered the information known to CONTRACTOR itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR; and (c) CONTRACTOR's safety precautions and programs.

7. Based on the information and observations referred to in the preceding paragraph, CONTRACTOR agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.

8. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.

9. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

11. CONTRACTOR's entry into this Contract constitutes an incontrovertible representation by CONTRACTOR that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

## 8.02 CONTRACTOR's Certifications

A. CONTRACTOR certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of OWNER, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive OWNER of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of OWNER, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

## Article 9. CONTRACT DOCUMENTS

### 9.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement (pages 00 52 00-1 through 00 52 00-11, inclusive);
2. Performance bond (pages 00 61 13.13-1 through 00 61 13.13-4, inclusive);

3. Payment bond (pages 00 61 13.16-1 through 00 61 13.16-4, inclusive);
  4. Other bonds
    - a. NA (pages NA to NA , inclusive);
    - b. NA (pages NA to NA , inclusive);
    - c. NA (pages NA to NA , inclusive);
  5. General Conditions (pages 00 72 00-1 through 00 72 00-70 , inclusive);
  6. Supplementary Conditions (pages 00 73 00-1 through 00 73 00-21, inclusive);
  7. Specifications as listed in the table of contents of the Project Manual;
  8. Drawings–Sheets No. 1 through No. 57
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inclusive incorporated herein by reference with each sheet bearing the following general title:

**CIPP WATER MAIN REHABILITATION PHASE 1 FOR THE CITY OF CREST HILL,  
WILL COUNTY, ILLINOIS, CONTRACT 3-2024**

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as well as drawings listed in the table of contents that are bound at the back of these Specifications.

9. Addenda (**NO. 1, DATED MARCH 19, 2025, AND NO. 2, DATED MARCH 20, 2025**).
10. Exhibits to this Agreement (enumerated as follows):
  - a. CONTRACTOR's Bid (pages **00 41 00-1** to **00 41 00-15**);
  - b. Documentation submitted by CONTRACTOR prior to Notice of Award  
(**NA**);
  - c. (**NA**);
11. The following may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
  - a. Notice to Proceed (page **00 55 00-1**, inclusive);

- b. Erosion Control Certification (page 00 55 10-1, inclusive);
- c. Work Change Directives (not attached to this Agreement);
- d. Change Order(s) (not attached to this Agreement);

B. The Contract Documents listed in Paragraph 9.01.A. are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 11.01 of the General Conditions.

## Article 10. MISCELLANEOUS

### 10.01 Severability

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### 10.02 Integration

A. The parties' entire agreement is contained in the Contract Documents, and the provisions of the Contract Documents supersede all prior discussions or writings between the parties.

### 10.03 Compliance with IEPA Public Water Supply Loan Program

A. CONTRACTOR shall comply with all requirements of the IEPA Public Water Supply Loan Program. Failure by CONTRACTOR to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or other legally available remedies. Requirements include, but are not limited to, the following:

1. CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. CONTRACTOR shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements.

2. Audit; Access to Records

a. CONTRACTOR shall maintain books, records, documents, and other evidence directly pertinent to the performance of this Contract in accordance with generally accepted accounting principles. CONTRACTOR shall also maintain the financial information and data used by CONTRACTOR in the preparation or support of any cost submissions required by Change Order and a copy of the cost summary submitted to OWNER. The Illinois Auditor General, OWNER, the IEPA, or any of their authorized representatives shall have access to the books, records, papers, documents, and other evidence for purposes of inspection, audit, examination,

excerpts, transcriptions, and copying. CONTRACTOR shall provide facilities for access and inspection.

b. For a formally advertised, competitively awarded, fixed price contract, CONTRACTOR shall include access to records for all negotiated Change Orders and Contract amendments in excess of \$25,000 that affect the Contract price. In the case of all other prime contracts, CONTRACTOR shall agree to include access to records in all contracts and all tier subcontracts or Change Orders in excess of \$25,000 that are directly related to the Work.

c. Audits shall be in accordance with auditing standards generally accepted in the United States.

d. CONTRACTOR shall agree to the disclosure of all information and reports resulting from access to records. When the audit concerns CONTRACTOR, the auditing agency shall afford CONTRACTOR an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.

e. Records shall be maintained and made available during performance of the Work under the loan agreement and for 3 years after the date of final loan audit. In addition, records that relate to any dispute or litigation or the settlement of claims arising out of any performance, costs, or items to which an audit exception has been taken shall be maintained and made available for 3 years after resolution of the dispute, appeal, litigation, claim, or exception.

f. The right of access will generally be exercised with respect to financial records under negotiated prime contracts, negotiated Change Orders, or Contract amendments in excess of \$25,000 affecting the prices of any formally advertised, competitively awarded, fixed price Contract; and subcontracts or purchase orders under any Contract other than a formally advertised, competitively awarded, fixed price Contract.

g. Right of access will generally not be exercised with respect to a prime contract, subcontract, or purchase order awarded after effective price competition. In any event, the right of access shall be exercised under any type of contract or subcontract with respect to records pertaining directly to contract performance, excluding any financial records of CONTRACTOR; and if there is any indication that fraud, gross abuse, or corrupt practices may be involved in the award or performance of the contract or subcontract.

3. CONTRACTOR shall warrant that no person or selling agency has been employed.



IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

This Agreement will be effective on \_\_\_\_\_, \_\_\_\_\_ (which is the Effective Date of the Contract).

OWNER                    **CITY OF CREST HILL, ILLINOIS**

\_\_\_\_\_

Signature and Title

ATTEST:

By: \_\_\_\_\_

Signature and Title

Address for Giving Notices:

Name: \_\_\_\_\_

Street: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-mail: \_\_\_\_\_

Designated Representative: \_\_\_\_\_

CONTRACTOR **FER-PAL CONSTRUCTION USA, LLC**

\_\_\_\_\_  
Signature and Title

ATTEST:

By: \_\_\_\_\_  
Signature and Title

Address for Giving Notices:

Name: \_\_\_\_\_

Street: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-mail: \_\_\_\_\_

Designated Representative: \_\_\_\_\_

License No.: \_\_\_\_\_  
(Where applicable)

(If CONTRACTOR is a corporation, limited liability company, or a partnership, attach evidence of authority to sign.)

## INSTRUCTIONS FOR EXECUTING CONTRACT

The full name and business address of CONTRACTOR should be inserted and the Agreement should be signed with CONTRACTOR's official signature. Please have the name of the signing party printed under all signatures to the Agreement.

If CONTRACTOR is operating as a partnership, each partner should sign the Agreement. If the Agreement is not signed by each partner, there should be attached to the Agreement a duly authenticated power of attorney evidencing the signer's (signers') authority to sign such Agreement for and on behalf of the partnership.

If CONTRACTOR is an individual, the trade name (if CONTRACTOR is operating under a trade name) should be indicated in the Agreement and the Agreement should be signed by such individual. If signed by other than CONTRACTOR, there should be attached to the Agreement a duly authenticated power of attorney evidencing the signer's authority to execute such Agreement for and on behalf of CONTRACTOR.

If CONTRACTOR is operating as a limited liability company, and it is member-managed, each member should sign the Agreement, or an authorized member should sign. If the LLC is manager-managed, an authorized manager should sign. If the Agreement is not signed by each member, there should be attached to the Agreement a duly authenticated power of attorney evidencing the signer's (signers') authority to sign such Agreement for and on behalf of the LLC.

If CONTRACTOR is a corporation, the Secretary of the corporation should sign the certificate below. If the Agreement itself is signed by the Secretary of the corporation, the certificate below should be executed by some other officer of the corporation. In lieu of the following certificate, there may be attached to the Agreement copies of so much of the records of the corporation which will show the official character and authority of the officers signing, duly certified by the Secretary or Assistant Secretary to be true copies.

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_  
(Print Name) (Title of Officer Signing Certificate)

of the corporation named as CONTRACTOR herein above; that \_\_\_\_\_,  
(Print Name of Officer Signing Agreement)

who signed the foregoing Agreement on behalf of CONTRACTOR was then

\_\_\_\_\_ of said corporation; that said Agreement was duly signed  
(Title of Officer Signing Agreement)

for and on behalf of said Corporation by authority of its governing body, and is within the scope of its corporate powers.

\_\_\_\_\_  
(Officer Signature)

END OF SECTION

SECTION 00 55 00  
NOTICE TO PROCEED

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Dated: \_\_\_\_\_

TO: **FER-PAL CONSTRUCTION USA, LLC**  
(CONTRACTOR)

ADDRESS: **1350 GASKET DRIVE**  
**ELGIN, IL 60120**

PROJECT: **CIPP WATER MAIN REHABILITATION PHASE 1**

OWNER'S CONTRACT NO.: **3-2024**

CONTRACT FOR: **CITY OF CREST HILL, ILLINOIS**  
**CIPP WATER MAIN REHABILITATION PHASE 1, CONTRACT 3-2024**  
(Insert name of Contract as it appears in the Bidding Documents)

You are notified that the Contract Time under the above Contract will commence to run on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. On that date, you are to start performing your obligations under the Contract Documents.

Before you may start any work at the site, Paragraph 2.01.B of the General Conditions provides that you must deliver to OWNER (with copies to ENGINEER and other identified additional insureds) certificates of insurance, copies of endorsements, and other evidence of insurance which you are required to purchase and maintain in accordance with the Contract Documents.

Also before you may start any work at the site, you must \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Add Other Requirements)

**CITY OF CREST HILL, ILLINOIS**  
(OWNER)

By: \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Title)

END OF SECTION