

Memo

To: Paula Schumacher, Village Administrator
From: Mike Warmus, Street Supervisor
Subject: **The Munger Road culvert replacement Project**
Date: September 11th, 2023

On August 24th, 2023, a notice to bidders was published on the village website soliciting bids for "The Munger Road Culvert Replacement Project".

The bid opening was held on September 7th and the village received five (5) bid proposals from prospective bidders, all of which qualified for review. A bid tabulation sheet is attached for reference.

The bids ranged from \$383,564.00 to \$540,187.75 with Martam Construction, Inc. being the lowest bidder. Martam Construction, Inc. is a well-known construction contractor in the Chicagoland Suburbs and has satisfactorily completed construction projects of all types and sizes for municipalities in the surrounding area.

RECOMMENDATION

Staff recommend awarding the contract for the Munger Road Culvert Replacement Project to Martam Construction, Inc.

MOTION

I MOVE TO APPROVE RESOLUTION # 2023-____-R, A RESOLUTION APPROVING THE MUNGER ROAD CULVERT REPLACEMENT PROJECT AGREEMENT BETWEEN THE VILLAGE OF BARTLETT AND MARTAM CONSTRUCTION, INC.

Christopher B. Burke Engineering, Ltd.
 9575 West Higgins Road, Suite 600
 Rosemont, Illinois 60018
 (CBBEL Project Number: 220518)

VILLAGE OF BARTLETT
 MUNGER ROAD CULVERT REPLACEMENT

BID TABULATION
 Date: September 7, 2023

CODE	PAY ITEM DESCRIPTION	UNIT	QUANTITY	ENGINEER'S ESTIMATE		MARTAM CONSTRUCTION, INC.		HERLIHY MID-CONTINENT COMPANY		COPENHAVER CONSTRUCTION, INC.		LORIG CONSTRUCTION COMPANY		BERGER CONTRACTORS, INC.	
				UNIT COST	COST	UNIT COST	COST	UNIT COST	COST	UNIT COST	COST	UNIT COST	COST	UNIT COST	COST
20700220	POROUS GRANULAR EMBANKMENT	CU YD	265	\$ 135.00	\$ 35,775.00	\$ 49.00	\$ 12,985.00	\$ 77.40	\$ 20,511.00	\$ 47.00	\$ 12,455.00	\$ 100.00	\$ 26,500.00	\$ 1.00	\$ 265.00
20800150	TRENCH BACKFILL	CU YD	67	\$ 50.00	\$ 3,350.00	\$ 72.00	\$ 4,824.00	\$ 56.00	\$ 3,752.00	\$ 49.00	\$ 3,283.00	\$ 100.00	\$ 6,700.00	\$ 1.00	\$ 67.00
21101625	TOPSOIL FURNISH AND PLACE, 6"	SQ YD	170	\$ 12.00	\$ 2,040.00	\$ 18.00	\$ 3,060.00	\$ 17.60	\$ 2,992.00	\$ 6.00	\$ 1,020.00	\$ 15.00	\$ 2,550.00	\$ 15.00	\$ 2,550.00
25000100	SEEDING, CLASS 1	ACRE	0.1	\$ 20,000.00	\$ 2,000.00	\$ 10,000.00	\$ 1,000.00	\$ 5,415.00	\$ 541.50	\$ 15,000.00	\$ 1,500.00	\$ 9,000.00	\$ 900.00	\$ 9,000.00	\$ 900.00
25000314	SEEDING, CLASS 4B	ACRE	0.1	\$ 11,400.00	\$ 1,140.00	\$ 10,000.00	\$ 1,000.00	\$ 5,080.00	\$ 508.00	\$ 20,000.00	\$ 2,000.00	\$ 9,000.00	\$ 900.00	\$ 9,000.00	\$ 900.00
25100630	EROSION CONTROL BLANKET	SQ YD	129	\$ 7.00	\$ 903.00	\$ 4.00	\$ 516.00	\$ 3.55	\$ 457.95	\$ 5.00	\$ 645.00	\$ 3.00	\$ 387.00	\$ 3.00	\$ 387.00
25100635	HEAVY DUTY EROSION CONTROL BLANKET	SQ YD	41	\$ 3.50	\$ 143.50	\$ 8.00	\$ 328.00	\$ 6.50	\$ 266.50	\$ 10.00	\$ 410.00	\$ 6.00	\$ 246.00	\$ 6.00	\$ 246.00
28000250	TEMPORARY EROSION CONTROL SEEDING	POUND	4	\$ 20.00	\$ 80.00	\$ 25.00	\$ 100.00	\$ 80.00	\$ 320.00	\$ 0.01	\$ 0.04	\$ 20.00	\$ 80.00	\$ 20.00	\$ 80.00
28001100	TEMPORARY EROSION CONTROL BLANKET	SQ YD	170	\$ 2.00	\$ 340.00	\$ 4.00	\$ 680.00	\$ 3.55	\$ 603.50	\$ 1.00	\$ 170.00	\$ 3.50	\$ 595.00	\$ 3.50	\$ 595.00
28100107	STONE RIPRAP, CLASS A4	SQ YD	36	\$ 125.00	\$ 4,500.00	\$ 120.00	\$ 4,320.00	\$ 101.00	\$ 3,636.00	\$ 125.00	\$ 4,500.00	\$ 200.00	\$ 7,200.00	\$ 175.00	\$ 6,300.00
28200200	FILTER FABRIC	SQ YD	36	\$ 15.00	\$ 540.00	\$ 5.00	\$ 180.00	\$ 15.74	\$ 566.64	\$ 6.00	\$ 216.00	\$ 8.00	\$ 288.00	\$ 20.00	\$ 720.00
44201771	CLASS D PATCHES, TYPE IV, 10 INCH	SQ YD	72	\$ 130.00	\$ 9,360.00	\$ 145.00	\$ 10,440.00	\$ 250.47	\$ 18,033.84	\$ 140.00	\$ 10,080.00	\$ 180.00	\$ 12,960.00	\$ 265.00	\$ 19,080.00
50105220	PIPE CULVERT REMOVAL	FOOT	45	\$ 25.00	\$ 1,125.00	\$ 60.00	\$ 2,700.00	\$ 42.00	\$ 1,890.00	\$ 110.00	\$ 4,950.00	\$ 45.00	\$ 2,025.00	\$ 135.00	\$ 6,075.00
50200100	STRUCTURE EXCAVATION	CU YD	330	\$ 60.00	\$ 19,800.00	\$ 32.00	\$ 10,560.00	\$ 53.00	\$ 17,490.00	\$ 70.00	\$ 23,100.00	\$ 60.00	\$ 19,800.00	\$ 1.00	\$ 330.00
50300225	CONCRETE STRUCTURES	CU YD	7.9	\$ 2,000.00	\$ 15,800.00	\$ 3,200.00	\$ 25,280.00	\$ 1,750.00	\$ 13,825.00	\$ 2,400.00	\$ 18,960.00	\$ 5,000.00	\$ 39,500.00	\$ 2,350.00	\$ 18,565.00
50800205	REINFORCEMENT BARS, EPOXY COATED	POUND	1,390	\$ 4.00	\$ 5,560.00	\$ 5.00	\$ 6,950.00	\$ 4.74	\$ 6,588.60	\$ 5.00	\$ 6,950.00	\$ 5.00	\$ 6,950.00	\$ 12.00	\$ 16,680.00
54001001	BOX CULVERT END SECTIONS, CULVERT NO. 1	EACH	2	\$ 7,000.00	\$ 14,000.00	\$ 12,200.00	\$ 24,400.00	\$ 20,133.00	\$ 40,266.00	\$ 24,000.00	\$ 48,000.00	\$ 25,000.00	\$ 50,000.00	\$ 30,600.00	\$ 61,200.00
54010704	PRECAST CONCRETE BOX CULVERTS 7' X 4'	FOOT	29	\$ 735.00	\$ 21,315.00	\$ 1,450.00	\$ 42,050.00	\$ 1,050.00	\$ 30,450.00	\$ 1,455.00	\$ 42,195.00	\$ 1,350.00	\$ 39,150.00	\$ 4,800.00	\$ 139,200.00
59100100	GEOCOMPOSITE WALL DRAIN	SQ YD	25	\$ 45.00	\$ 1,125.00	\$ 54.00	\$ 1,350.00	\$ 26.00	\$ 650.00	\$ 45.00	\$ 1,125.00	\$ 30.00	\$ 750.00	\$ 100.00	\$ 2,500.00
63000001	STEEL PLATE BEAM GUARDRAIL, TYPE A, 6 FOOT POSTS	FOOT	441	\$ 35.00	\$ 15,435.00	\$ 28.00	\$ 12,348.00	\$ 26.83	\$ 11,832.03	\$ 30.00	\$ 13,230.00	\$ 26.83	\$ 11,832.03	\$ 25.50	\$ 11,245.50
63000350	LONG-SPAN GUARDRAIL OVER CULVERT, 12 FT 6 IN SPAN	FOOT	25	\$ 85.00	\$ 2,125.00	\$ 60.00	\$ 1,500.00	\$ 38.40	\$ 960.00	\$ 60.00	\$ 1,500.00	\$ 38.40	\$ 960.00	\$ 50.00	\$ 1,250.00
63100045	TRAFFIC BARRIER TERMINAL, TYPE 2	EACH	4	\$ 1,750.00	\$ 7,000.00	\$ 1,800.00	\$ 7,200.00	\$ 1,596.00	\$ 6,384.00	\$ 1,900.00	\$ 7,600.00	\$ 1,596.00	\$ 6,384.00	\$ 1,975.00	\$ 7,900.00
67100100	MOBILIZATION	L SUM	1	\$ 5,100.00	\$ 5,100.00	\$ 22,000.00	\$ 22,000.00	\$ 27,000.00	\$ 27,000.00	\$ 31,000.00	\$ 31,000.00	\$ 30,000.00	\$ 30,000.00	\$ 20,000.00	\$ 20,000.00
78000200	THERMOPLASTIC PAVEMENT MARKING - LINE 4"	FOOT	89	\$ 3.50	\$ 311.50	\$ 48.00	\$ 4,272.00	\$ 40.00	\$ 3,560.00	\$ 26.00	\$ 2,314.00	\$ 45.00	\$ 4,005.00	\$ 49.00	\$ 4,361.00
X0327576	TEMPORARY PATCHING	SQ YD	72	\$ 130.00	\$ 9,360.00	\$ 48.00	\$ 3,456.00	\$ 1.00	\$ 72.00	\$ 40.00	\$ 2,880.00	\$ 20.00	\$ 1,440.00	\$ 150.00	\$ 10,800.00
X0900064	MEMBRANE WATERPROOFING SYSTEM FOR BURIED STRUCTURES	SQ YD	40	\$ 70.00	\$ 2,800.00	\$ 45.00	\$ 1,800.00	\$ 80.00	\$ 3,200.00	\$ 250.00	\$ 10,000.00	\$ 84.00	\$ 3,360.00	\$ 130.00	\$ 5,200.00
X7010216	TRAFFIC CONTROL AND PROTECTION, (SPECIAL)	L SUM	1	\$ 5,100.00	\$ 5,100.00	\$ 38,400.00	\$ 38,400.00	\$ 8,730.00	\$ 8,730.00	\$ 41,000.00	\$ 41,000.00	\$ 120,000.00	\$ 120,000.00	\$ 15,000.00	\$ 15,000.00
X7010237	CHANGEABLE MESSAGE SIGN, SPECIAL	CAL DAY	66	\$ -	\$ -	\$ 45.00	\$ 2,970.00	\$ 40.00	\$ 2,640.00	\$ 40.00	\$ 2,640.00	\$ 32.00	\$ 2,112.00	\$ 40.00	\$ 2,640.00
X7200053	REMOVE, STORE AND RE-ERECT SIGN PANEL (SPECIAL)	EACH	1	\$ 5,000.00	\$ 5,000.00	\$ 350.00	\$ 350.00	\$ 300.00	\$ 300.00	\$ 500.00	\$ 500.00	\$ 600.00	\$ 600.00	\$ 300.00	\$ 300.00
Z0013798	CONSTRUCTION LAYOUT	L SUM	1	\$ 2,550.00	\$ 2,550.00	\$ 8,000.00	\$ 8,000.00	\$ 17,309.52	\$ 17,309.52	\$ 16,000.00	\$ 16,000.00	\$ 15,000.00	\$ 15,000.00	\$ 11,500.00	\$ 11,500.00
Z0055905	TEMPORARY CONSTRUCTION FENCE	FOOT	445	\$ 15.00	\$ 6,675.00	\$ 6.00	\$ 2,670.00	\$ 5.10	\$ 2,269.50	\$ 10.00	\$ 4,450.00	\$ 7.00	\$ 3,115.00	\$ 6.25	\$ 2,781.25
Z1	BYPASS PUMPING	L SUM	1	\$ 25,000.00	\$ 25,000.00	\$ 6,000.00	\$ 6,000.00	\$ 35,330.42	\$ 35,330.42	\$ 8,000.00	\$ 8,000.00	\$ 100.00	\$ 100.00	\$ 15,000.00	\$ 15,000.00
Z2	COFFERDAMS, DEWATERING, AND SEDIMENT FILTER BAG	L SUM	1	\$ 65,000.00	\$ 65,000.00	\$ 8,000.00	\$ 8,000.00	\$ 55,000.00	\$ 55,000.00	\$ 35,000.00	\$ 35,000.00	\$ 5,000.00	\$ 5,000.00	\$ 40,000.00	\$ 40,000.00
Z3	FERTILIZER NUTRIENTS	POUND	25	\$ 50.00	\$ 1,250.00	\$ 5.00	\$ 125.00	\$ 5.70	\$ 142.50	\$ 1.00	\$ 25.00	\$ 4.00	\$ 100.00	\$ 4.00	\$ 100.00
Z4	HELICAL PILES	EACH	22	\$ 2,000.00	\$ 44,000.00	\$ 2,200.00	\$ 48,400.00	\$ 2,400.00	\$ 52,800.00	\$ 2,200.00	\$ 48,400.00	\$ 2,400.00	\$ 52,800.00	\$ 2,450.00	\$ 53,900.00
Z5	ITEMS AS ORDERED BY THE ENGINEER	UNIT	50,000	\$ 1.00	\$ 50,000.00	\$ 1.00	\$ 50,000.00	\$ 1.00	\$ 50,000.00	\$ 1.00	\$ 50,000.00	\$ 1.00	\$ 50,000.00	\$ 1.00	\$ 50,000.00
Z6	ROLLED EROSION CONTROL PRODUCT	FOOT	890	\$ 65.00	\$ 57,850.00	\$ 15.00	\$ 13,350.00	\$ 14.05	\$ 12,504.50	\$ 6.00	\$ 5,340.00	\$ 14.00	\$ 12,460.00	\$ 13.00	\$ 11,570.00
				TOTAL =	\$ 443,453.00	TOTAL =	\$ 383,564.00	TOTAL =	\$ 453,383.00	TOTAL =	\$ 461,438.04	TOTAL =	\$ 536,749.03	TOTAL =	\$ 540,187.75

*INDICATES SPECIAL PROVISION
 INDICATES DEVIATION FROM CALCULATED TOTAL BASED ON UNIT PRICE SUBMITTED



CHRISTOPHER B. BURKE ENGINEERING, LTD.

9575 West Higgins Road Suite 600 Rosemont, Illinois 60018 TEL (847) 823-0500 FAX (847) 823-0520

September 8, 2023

Village of Barlett
228 S. Main Street
Barlett, IL 60103

Attention: Daniel Dinges

Subject: Munger Road Culvert Replacement (CBBEL Project No. 220518)

Dear Mr. Dinges,

On Thursday, September 7th, at 10:00 a.m. bids were received and opened for the aforementioned project. Five (5) bids were received, and they have been summarized below.

<u>COMPANY</u>	<u>BID (AS READ)</u>
ENGINEER'S ESTIMATE	\$443,453.00
MARTAM CONSTRUCTION, INC.	\$383,564.00
HERLIHY MID-CONTINENT COMPANY	\$453,383.00
COPENHAVER CONSTRUCTION, INC.	\$461,438.04
LORIG CONSTRUCTION COMPANY	\$536,749.03
BERGER CONTRACTORS, INC.	\$540,187.75

Martam Construction, Inc. is the low bidder with a bid amount of \$383,564.00. Martam Construction, Inc. has performed satisfactory work for the Village in the past and CBBEL believes their bid to be in order. Martam Construction, Inc. bid included a Bid Bond of 5% of the bid price when the specifications require a Bid Bond in the amount of 10% of the bid price. In our opinion, Martam misread the requirements, but this technicality does not pose any danger to the work or warrant a rejection of the bid. Per the contract documents, the Village reserves the right to waive technicalities.

Therefore, our office recommends accepting Martam Construction, Inc.'s bid for the amount of \$383,564.00.

Enclosed for your review are the bid tabulations. If you have any further questions, please do not hesitate to contact me at (847) 823-0500.

Sincerely,

Lee M Fell, PE
Assistant Department Head, Civil Engineering Design

cc: Kevin Wilson – CBBEL (letter only)

RESOLUTION 2023 - _____

A RESOLUTION APPROVING OF THE MUNGER ROAD CULVERT REPLACEMENT PROJECT AGREEMENT BETWEEN THE VILLAGE OF BARTLETT AND MARTAM CONSTRUCTION, INC.

BE IT RESOLVED by the President and Board of Trustees of the Village of Bartlett, Cook, DuPage and Kane Counties, Illinois, as follows:

SECTION ONE: The Munger Road Culvert Replacement Project Agreement dated September 19, 2023, between the Village of Bartlett and Martam Construction, Inc. (the "Agreement"), a copy of which is appended hereto and expressly incorporated herein by this reference, is hereby approved.

SECTION TWO: That the Village President and the Village Clerk are hereby authorized and directed to sign and attest, respectively, the Agreement on behalf of the Village of Bartlett.

SECTION THREE: SEVERABILITY. The various provisions of this Resolution are to be considered as severable, and of any part or portion of this Resolution shall be held invalid by any Court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Resolution.

SECTION FOUR: REPEAL OF PRIOR RESOLUTIONS. All prior Ordinances and Resolutions in conflict or inconsistent herewith are hereby expressly repealed only to the extent of such conflict or inconsistency.

SECTION FIVE: EFFECTIVE DATE. This Resolution shall be in full force and effect upon passage and approval.

ROLL CALL VOTE:

AYES:

NAYS:

ABSENT:

PASSED: September 19, 2023

APPROVED: September 19, 2023

Kevin Wallace, Village President

ATTEST:

Lorna Giles, Village Clerk

CERTIFICATION

I, the undersigned, do hereby certify that I am the Village Clerk of the Village of Bartlett, Cook, DuPage and Kane Counties, Illinois, and that the foregoing is a true, complete and exact copy of Resolution 2023 - _____ enacted on September 19, 2023, and approved on September 19, 2023, as the same appears from the official records of the Village of Bartlett.

Lorna Giles, Village Clerk

CONSTRUCTION AGREEMENT

This Construction Agreement ("**Agreement**") dated this 19th day of September, 2023 ("**Effective Date**") is hereby entered into by and between the Village of Bartlett, an Illinois home rule municipal corporation ("**Village**"), and Martam Construction, Inc., an Indiana corporation ("**Contractor**"). At times, the Village and Contractor will be referred to individually as "**Party**" or jointly as "**Parties**" throughout this Agreement.

RECITALS

WHEREAS, Contractor will be performing construction services on the Village's Munger Road Culvert located on Munger Road, one-half (1/2) mile south of the intersection of Stearns Road, Bartlett, Illinois ("**Property**"), with such construction services including the removal and disposal of the existing corrugated metal pipe (CMP), construction of a new box culvert, the necessary incidental repair of the road and right of way, and the disposal of all debris and trash (such services will be referred to collectively as the "**Work**"); and

WHEREAS, Contractor may have subcontractors, material suppliers, and one or more employees engaged in the performance of said Work; and

WHEREAS, this Agreement comprises the terms and conditions upon which the Contractor will perform the Work for the Village.

NOW THEREFORE, IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth in this Agreement, and pursuant to the Village's home rule authority, the parties hereby agree as follows:

SECTION 1. CONTRACTOR AND SCOPE OF SERVICES.

A. Engagement of Contractor. The Village hereby engages the Contractor to perform the Work described in the Specifications for the Bartlett Munger Road Culvert.

B. Scope of Services.

1. The Contractor shall provide the materials, services, and equipment to fully execute the Work described in the Specifications.
2. The Work shall be furnished and completed pursuant to the terms and conditions of this Agreement and as described in the Specifications.
3. The Contractor shall supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work.

4. Contractor shall employ all necessary measures to avoid damage to existing surrounding public and private property during Work. Persons other than those actually engaged in construction operations, inspections, or supervision thereof shall be prohibited from the Property.
5. Contractor shall conduct the Work and any debris removal in such a manner as to minimize interference with road, streets, walks, and other adjacent occupied facilities.
6. The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Village the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Village has made a timely and reasonable objection.
7. Contractor shall bind all subcontractors by the terms and obligations set forth in this Agreement. Contractor is liable for the acts of any subcontractors when performing the Work, as if the Work was conducted by the Contractor itself.
8. Contractor will provide the Village with the warranties described in the Proposal upon completion of the Work.

C. Labor and Materials

1. The Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.
2. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
3. Execution of this Agreement by the Contractor is a representation by the Contractor that it has conducted such investigations as may have been necessary to enable the Contractor to determine the cost of the Work and that it has sufficient information to complete the Work in accordance with applicable laws and regulations, and otherwise to fulfill all its obligations hereunder, including, but not limited to, Contractor's obligations to perform the Work for an amount not in excess of the Contract Sum. The Contractor further acknowledges and declares that it has visited and examined the project site, examined all physical and other conditions affecting the Work and is fully familiar with all of the conditions thereon and thereunder effecting the same. In connection therewith, Contractor specifically represents and warrants to Village that prior to the submission of its bid it: (a) thoroughly examined the location of the work to be performed, is familiar with local conditions, and thoroughly understands the physical conditions prevalent or likely to be

encountered in the performance of the work at such location; (b) examined the nature, location, and character of the general area in which the project is located, including without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (3) examined the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to complete the Work within the Contract Sum.

D. Commencement; Time of Performance. The Work shall commence within seven (7) days of receipt by the Contractor of written notice that this Agreement has been fully executed by both Parties ("**Commencement Date**"). The Contractor must substantially complete the Work by December 31, 2023. Time is of the essence for all matters concerning this Agreement.

E. Reporting. The Contractor will regularly report to the Village regarding the progress of the Work during the term of this Agreement.

F. Term; Termination.

1. **Term.** The term of this Agreement, unless terminated pursuant to Section D (2) herein, will expire upon the date the Village determines that the Work has been fully completed by the Contractor pursuant to this Agreement. A determination of completion will not constitute a waiver of any rights or claims that the Village has accrued prior to or following completion of the Work, with respect to any breach of this Agreement by the Contractor or any right of indemnification of the Village by the Contractor.

2. **Termination.** Notwithstanding any other provision hereof, the Village may terminate this Agreement, at any time and for any reason, upon seven (7) days' prior written notice to the Contractor. In the event this Agreement is terminated by the Village, the Village hereby agrees to compensate the Contractor for the Work actually performed and reimbursable expenses actually incurred, if any, prior to the termination date.

SECTION 2. INDEMNIFICATION.

To the fullest extent permitted by law, Contractor agrees to waive any and all rights of contribution against the Village and to defend, indemnify and hold harmless the Village and its officers, elected and appointed 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 Contractor's performance of the 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, 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, defend, indemnify and hold and save harmless, the Village, its officers, elected and appointed officials, employees, 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 hereunder, 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. The rights and obligations of this Section shall survive the voluntary or involuntary termination of this Agreement.

SECTION 3. INSURANCE; PERFORMANCE AND PAYMENT BOND.

A. Minimum. The Contractor will, at its sole cost, obtain and keep in force at all times during the performance of the Work and any part thereof, Workers Compensation and Employer's Liability Insurance, Commercial Liability Insurance, and Automobile Insurance in at least the type and amounts set forth below. The cost of such insurance will be borne by the Contractor.

1. Workers' Compensation:

- (a) State: Statutory
- (b) Employer's Liability
 - \$500,000.00 Per Occurrence
 - \$500,000.00 Disease, Policy Limit
 - \$500,000.00 Disease, Each Employee

2. Commercial General Liability:

- \$2,000,000.00 General Aggregate

3. Business Automobile Liability (including owned, non-owned, and hired vehicles):

- (a) Bodily Injury
 - \$1,000,000.00 Per Person
 - \$1,000,000.00 Per Accident
- (b) Property Damage
 - \$1,000,000.00 Per Occurrence
- (c) Umbrella Excess Liability
 - \$2,000,000.00 over Primary Insurance

B. Evidence of Insurance.

- 1. Prior to beginning the Work, Contractor shall furnish the Village with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

2. 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 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.
3. The Village shall have the right, but not the obligation, of prohibiting Contractor from commencing the Work until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received by the Village.
4. Failure to maintain the required insurance may result in termination of this contract at the Village's option.

C. Miscellaneous.

1. All policies of insurance purchased or maintained in fulfillment of this Agreement shall name the Village of Bartlett, its elected and appointed officers, employees, volunteers, and agents as additional insureds thereunder and the Contractor shall provide Certificates of Insurance and Policy Endorsements evidencing the coverages required under this Agreement.
2. Any deductible or self-insured retentions must be declared to, and approved by, the Village. At the option of the Village, Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the Village, its officers, elected and appointed officials, and employees or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration, and defense expenses.
3. All insurance shall be written on an "occurrence" basis rather than a "claims-made" basis.
4. Upon request, the Contractor will provide copies of any or all policies of insurance maintained in fulfillment hereof.
5. 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.

6. For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Village has the right to reject insurance written by an insurer it deems unacceptable.
7. Nothing contained in this Agreement is to be construed as limiting the liability of the Contractor. The Village does not, in any way, represent that the coverages or limits of insurance specified is sufficient or adequate to protect the Village, or the Contractor, but are merely minimums.

D. Performance and Payment Bond. Contractor shall provide a Surety Bond (guaranteeing both faithful performance and payment to subcontractors and material suppliers for labor and materials), naming the Village of Bartlett as Obligee, for not less than one hundred percent (100%) of the contract amount listed under Section 4(A) of this Agreement, will be required prior to beginning construction and in a form approved by the Village Attorney. Such bonds shall include the provision guaranteeing the faithful performance of the Prevailing Wage Act. The surety on the bond shall be a company that is licensed by the Department of Insurance authorizing it to execute surety bonds and the company shall have a financial strength rating of at least A- as rated by A.M. Best Company, Inc., Moody's Investors Service, Standard & Poor's Corporation, or a similar rating agency.

SECTION 4. COMPENSATION; PREVAILING WAGE.

A. Compensation. The Village agrees to pay the Contractor for the performance of the Work a sum of \$383,564.00. Upon completion final completion of the Work, the Contractor must submit an invoice for the Work to the Village. Any payment to the Contractor from the Village is subject to the receipt by the Village of all required documentation, including, but not limited to, final lien waivers. The Village will remit payment of the Contract Sum to the Contractor in accordance with the Local Government Prompt Payment Act.

B. Prevailing Wage. The Village has determined that the Work provided for under this Agreement is subject to the Illinois Prevailing Wage Act, and the Contractor shall comply therewith and pay, and require every Subcontractor to pay, the prevailing rates of wages as established by the Illinois Department of Labor for each craft or type of work needed to execute this Agreement in accordance with 820 ILCS 130/0.01, *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 wages during the term of this Agreement shall be at the expense of the Contractor and not at the expense of the Village. Change orders shall, however, 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 Act and to obtain and furnish all such certified

records to the Illinois Department of Labor as required by statute or regulation, including certified payroll records. 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 Village agrees to notify the Contractor or Subcontractor of the pendency of any such claim, demand, lien, or suit.

The Contractor is advised that the Illinois Department of Labor revises the prevailing wage rates. The Contractor and every Subcontractor has an obligation to check the Illinois Department of Labor's website for revisions to the prevailing wage rates. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor's website: <https://labor.illinois.gov/laws-rules/conmed/current-prevailing-rates.html>.

The Contractor shall also: (1) insert into each subcontract and the project specifications for each subcontract, a written stipulation that the Subcontractor shall not pay less than the prevailing rate of wages to all laborers, workers, and mechanics performing work under that subcontract; and (2) require each subcontractor to insured into each lower-tiered subcontract and the project specifications for each lower-tiered subcontract, a stipulation that the subcontractor shall not pay less than the prevailing rate of wages to all laborers, workers, and mechanics performing work under that lower-tiered subcontract.

SECTION 5. SPECIAL PROVISIONS.

A. Compliance with Laws. Contractor shall comply with all applicable laws, regulations, and rules promulgated by any Federal, State, County, Municipal, or other governmental unit or regulatory body now in effect during the performance of the Work, and the orders and decrees of any court, administrative body, or tribunal in any manner affecting performance under this Agreement. 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 operate as a limitation on the laws, regulations, and rules with which Contractor must comply: all forms of Workers' Compensation laws; the Illinois Human Rights Act; the Illinois Substance Abuse Prevention on Public Works Projects Act; the Social Security Act; laws related to contracts let by units of government; all applicable civil rights and anti-discrimination laws and regulations; and traffic and public utility regulations.

B. Relationship of the Parties. The Contractor will act as an independent contractor in performing the Work. Nothing in, or done pursuant to, this Agreement shall be construed (1) to create the relationship of principal and agent, employer and employee, partners, or joint venturers between the Village and Contractor; or (2) to create any relationship between the Village and any subcontractor of the Contractor.

C. Conflict of Interest. The Contractor represents and certifies that, to the best of its knowledge, (1) no Village employee or agent is interested in the business of the Contractor or this Agreement; (2) as of the date of this Agreement neither the Contractor nor any person employed or associated with the Contractor has any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement; and (3) neither the Contractor nor any person employed by or associated with the Contractor shall at any time during the term of this Agreement obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement.

D. No Collusion. The Contractor represents and certifies that the Contractor is not barred from contracting with a unit of state or local government as a result of (1) a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless the Contractor is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax, as set forth in Section 11-42.1-1 *et seq.* of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 *et seq.*; or (2) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961, 720 ILCS 5/33E-1 *et seq.* The Contractor 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 the Contractor has, in procuring this Agreement, colluded with any other person, firm, or corporation, then the Contractor shall be liable to the Village for all loss or damage that the Village may suffer, and this Agreement shall, at the Village's option, be null and void.

E. Mutual Cooperation. The Village agrees to cooperate with the Contractor in the performance of the Work, including meeting with the Contractor and providing the Contractor with such information that the Village may have that may be relevant and helpful to the Contractor's performance of the Work. The Contractor agrees to cooperate with the Village in the performance and completion of the Work and with any other Contractors engaged by the Village.

F. Freedom of Information Act. The 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 must 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 must notify the Village and if possible, the Village will 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 Contractor documents or otherwise appropriately respond to a request under the Act, then Contractor will 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.

SECTION 6. GENERAL PROVISIONS.

A. Amendment. No amendment or modification to this Agreement shall be effective unless and until the amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed.

B. Assignment. This Agreement may not be assigned by the Contractor without the express prior written consent of the Village.

C. Binding Effect. The terms of this Agreement will bind and inure to the benefit of the Parties to this Agreement and their agents, successors, and assigns.

D. Notice. All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (1) personally, (2) by a reputable overnight courier, (3) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, or (4) by email. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; (c) three business days following deposit in the U.S. mail, as evidenced by a return receipt; (d) time-stamp email was sent. By notice complying with the requirements of this Section, each Party shall have the right to change the address or the addressee, or both, for all future notices and communications to the other party, but no notice of a change of addressee or address shall be effective until actually received.

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

Paula Schumacher
Village of Bartlett
228 S. Main Street
Bartlett, IL 60103
pschumacher@bartlett.il.gov

With a copy to:

Ancel Glink, P.C.
140 South Dearborn Street
Chicago, IL 60603
Attn: Kurt Asprooth
kasprooth@ancelglink.com

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

Ed Ismail
Martam Construction, Inc.
1200 Gasket Drive
Elgin, IL 60120
ed@martam.com

E. Third Party Beneficiary. No claim as a third-party beneficiary under this Agreement by any person, firm, or corporation shall be made or be valid against the Village.

F. Governing Laws. This Agreement will be governed by, construed and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois. Venue for any dispute arising out of relating to this Agreement will be in the Third District Court for the Circuit Court of Cook County, Illinois. In any suit or action arising under this Contract, the prevailing party shall be entitled to an award of reasonable attorney's fees and costs of litigation. No suit or action shall be maintained by the Contractor, its successors or assigns, against the Village on any claim based upon or arising out of this Contract or out of anything done in connection with this Contract unless such action shall be commenced within one year of the voluntary or involuntary termination of this Contract.

G. Entire Agreement. This Agreement constitutes the entire agreement between the parties to this Agreement and supersedes all prior agreements and negotiations between the parties, whether written or oral relating to the subject matter of this Agreement.

H. Waiver. Neither the Village nor the Contractor shall be under any obligation to exercise any of the rights granted to them in this Agreement except as it shall determine to be in its best interest from time to time. The failure of the Village or the Contractor to exercise at any time any such rights shall not be deemed or construed as a waiver of that right, nor shall the failure void or affect the Village's or the Contractor's right to enforce such rights or any other rights.

I. Exhibits. The Munger Rd Culvert Replacement Specifications are hereby this reference incorporated in and made a part of, this Agreement. In the event of a conflict between the Exhibit and the text of this Agreement, the text of this Agreement will control.

J. Interpretation. This Agreement will be construed without regard to the identity of the Party which drafted its provisions. Any rule of construction that a document is to be construed against the drafting party will not be applicable to this Agreement.

K. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will

constitute one and the same instrument, and any signatures to counterparts maybe delivered by facsimile or other electronic transmission and will have the same force and effect as original signatures.

IN WITNESS WHEREOF the Parties hereto have cause this Agreement to be executed, effective on the date first above written.

VILLAGE OF BARTLETT,
an Illinois home rule municipal corporation

By: _____
Kevin Wallace, Village President

ATTEST:

By: _____
Lorna Giles, Village Clerk

MARTAM CONSTRUCTION, INC.,
an Illinois corporation

By: _____

ATTEST:

By: _____