



# Standard Form of Agreement Between Owner and Design-Builder - Lump Sum

*This document has important legal consequences. Consultation with an attorney is recommended with respect to its completion or modification.*

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This **AGREEMENT** is made as of the 19th day of March in the year of 2026, by and between the following parties, for services in connection with the Project identified below.

**OWNER:**

**Village of Lombard**

**255 E Wilson Ave  
Lombard, IL 60148**

**DESIGN-BUILDER:**

**BAXTER & WOODMAN / BOLLER CONSTRUCTION, LLC.**

**8678 Ridgfield Road  
Crystal Lake, IL 60012**

**PROJECT:**

**Meter/Pressure Adjusting Station 14E Design-Build Project**

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

## **Article 1**

### **Scope of Work**

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

## **Article 2**

### **Contract Documents**

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments, minor changes and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder (2022 Edition)* ("General Conditions of Contract");

2.1.2 The Basis of Design Documents, including the Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any, contained in the Design-Builder's Proposal, which shall specifically identify any and all deviations from Owner's Project Criteria;

2.1.3 This Agreement, including all exhibits and attachments, executed by Owner and Design-Builder (such as scope of work and preliminary design drawings, markup exhibits, allowances, contingencies, or unit prices);

2.1.4 The General Conditions of Contract; and

2.1.5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.

## **Article 3**

### **Interpretation and Intent**

3.1 Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. Conflicts existing within Section 2.1.2 shall be resolved by giving precedence first to the Deviation List, if any, then the Owner's Project Criteria, and then the Design-Builder's Proposal.

**3.3** Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

**3.4** If Owner's Project Criteria contain design specifications: (a) Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any performance specifications; and (b) Design-Builder shall be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

**3.5** The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

## Article 4

### Ownership of Work Product

**4.1 Work Product.** All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

**4.2 Owner's Limited License Upon Project Completion and Payment in Full to Design-Builder.** Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder transfers to Owner all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Work Product. Such transfer is conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligations to provide the indemnity set forth in Section 4.5 below.

**4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate.** If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

**4.3.1** Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below; and

**4.4 Owner's Limited License upon Design-Builder's Default.** If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

**4.5 Owner's Indemnification for Use of Work Product.** If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

## Article 5

### Contract Time

**5.1 Date of Commencement.** The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

**5.2 Substantial Completion and Final Completion.**

**5.2.1** Substantial Completion of the entire Work shall be achieved on or before June 15, 2028 contingent upon substantial completion of the South Elevated Tank Design-Build Project construction on site.

**5.2.3** Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.8 of the General Conditions of Contract.

**5.2.4** All of the dates set forth in this Article 5 (collectively the "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

**5.3 Time is of the Essence.** Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

**5.4 [Intentionally Deleted]**

**5.5** In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 of the General Conditions of Contract, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price for those events set forth in Section 8.2.1 of the General Conditions of Contract, provided, however, for Force Majeure Events, Design-Builder shall only be entitled to an increase in the Contract Price if said events exceed 30 cumulative days. Said additional compensation shall be limited to the direct costs and expenses Design-Builder can demonstrate it has reasonably and actually incurred as a result of such event.

**5.8 Owner's Review Time.** The parties have established the following maximum and minimum amount of time for the Owner to review Design Submissions and the Project Schedule or any updates thereto unless the parties agree in writing otherwise.

**5.8.1** The Owner shall have a minimum of 7 days of receipt by the Owner to review all Design Submissions, the Project Schedule, and any updates thereto.

**5.8.2** The Owner shall have a maximum of 14 days of receipt by the Owner to review all Design Submissions, the Project Schedule, and any updates thereto.

## **Article 6**

### **Contract Price**

**6.1 Contract Price.** Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of Nine Million Three Hundred Six Thousand Six Hundred and Forty-two Dollars (\$ 9,306,642.00) ("Contract Price"), subject to adjustments made in accordance with the General Conditions of Contract. There is no Owner Contingency included in this sum. Refer to Attachment 1 for base pricing, additional scope items, and Contingency. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

**6.2 Markups for Changes.** If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Section 9.4.1 of the General Conditions of Contract, the following markups shall be allowed on such changes:

**6.2.1** For additive Change Orders or Contingency Items under Section 6.3., including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of up to eighteen percent (18%) of the additional costs incurred for that Change Order.

**6.2.2** For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include no additional reduction to account for Design-Builder's Fee or any other markup.

### **6.3 Contingency Items and Contingency Values.**

**6.3.1** Any and all Contingency Items, as well as their corresponding Contingency Values, are set forth in an Exhibit hereto.

**6.3.2** Design-Builder and Owner have worked together to review the Contingency Items and Contingency Values based on design information then available to determine that the Contingency Values constitute reasonable estimates for the Contingency Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Contingency Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Contingency Item in question can be performed for the Contingency Value.

**6.3.3** No work shall be performed on any Contingency Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Contingency Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

#### **6.3.4 [Intentionally Deleted]**

**6.3.5** Whenever the actual costs for an Contingency Item is more than than the stated Contingency Value, the Contract Price shall be adjusted accordingly by written authorization. The amount of the final project Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Contingency Item and the Contingency Value.

## **Article 7**

## Procedure for Payment

### 7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the twenty-fifth (25<sup>th</sup>) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment in accordance with the Local Government Prompt Payment Act (50 ILCS 505/1 *et seq.*).

### 7.2 [Intentionally Deleted]

7.3 **Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 **Interest.** No interest shall be charged.

7.5 **Record Keeping and Finance Controls.** With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to changes in the Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

## Article 8

### Termination for Convenience

8.1 If Design-Builder is terminated for convenience pursuant to Section 11.6 of the General Conditions of Contract, and the parties have agreed to a payment to Design-Builder in the case of such termination for convenience, Owner shall pay Design-Builder for the following in addition to the amount set forth in Section 11.6.1 of the General Conditions of Contract:

The fair and reasonable sums for overhead and profit on the sum of items set forth in Section 11.6.1 of the General Conditions of Contract.

**8.2** In addition to the amounts set forth in Section 8.1 above and Section 11.6.1 of the General Conditions of Contract, Design-Builder shall be entitled to receive one of the following if the parties agree to an additional payment:

**8.2.1** If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid the Design Engineering costs incurred to date.

**8.2.2** [Intentionally Deleted]

**8.3** The total amount to be paid to Design-Builder, exclusive of costs described in Section 11.6.1.2 of the General Conditions of Contract, shall not exceed the Contract Price.

## **Article 9**

### **Representatives of the Parties**

#### **9.1 Owner's Representatives.**

**9.1.1** Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Scott Niehaus  
Village Manager  
255 E. Wilson Avenue  
Lombard, IL 60148  
630-620-5700

**9.1.2** Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract:

Carl Goldsmith  
Director of Public Works  
255 E. Wilson Avenue  
Lombard, IL 60148  
630-620-5740

#### **9.2 Design-Builder's Representatives.**

**9.2.1** Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Steven Dalbec  
Managing Partner  
3045 Washington Street  
Waukegan, IL 60085  
Mobile: 847-409-1500

**9.2.2** Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:

Jason Ruffatti, PE  
Division Manager – Water/Wastewater  
3045 Washington Street  
Waukegan, IL 60085  
Mobile: 847-212-2477

## **Article 10**

### **Bonds and Insurance**

**10.1 Insurance.** Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

**10.2 Bonds and Other Performance Security.** Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

#### **Performance Bond.**

Required                       Not Required

#### **Payment Bond.**

Required                       Not Required

## **Article 11**

### **Additional Provisions**

**11.1 Design-Builder's Warranty.** Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship for period of 1 year after Final Completion.

#### **11.2 Specific Legal Requirements**

**11.2.1 Prevailing Wage.** The Design-Builder agrees that it shall perform all Work in accordance with the Prevailing Wage Act, 820 ILCS 130/1.et. seq. for all work under the Contract Documents. All bonds provided by the Design-Builder under the terms of this Agreement shall include such provisions as will guarantee the faithful performance of the Design-Builder's obligations under this clause. Should the Department of Labor revise any prevailing rate of hourly wages, such revised rate shall be applicable to the

Work; however, in no event shall the increase in any prevailing rate of hourly wages be a basis for a change order or other claim for an increase in the Price.

**11.2.2 Design-Builders Certifications.** The Design-Builder certifies that:

1. It has as a written sexual harassment policy in place in full compliance with 775 ILCS 5/2-105(A)(4).
2. It is not delinquent in the payment of any tax or fee owed to the Village or any tax administered by the Illinois Department of Revenue, or if it is:
  - a. It is contesting its liability for the tax or the amount of tax in accordance with procedures established by the approved Revenue Act; or
  - b. It has entered into an agreement with the Department of Revenue for payment of all taxes due and is currently in compliance with that agreement.
3. It is not barred from contracting with any unit of state or local government as a result of a violation of either Section 33E-3 or 33E-4 of Article 33E of the Illinois Criminal Code of 1961.
4. It is in full compliance with the Federal Highway Administration Rules on Controlled Substances and Alcohol Use and Testing, 49 CFR Parts 40 and 382.

**11.2.3 Human Rights Act; Equal Employment Opportunity Clause.** Design/Builder agrees that this Contract Documents shall be performed in compliance with all requirements of the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., and the rules and regulations (the "Rules and Regulations") of the Illinois Department of Human Rights (the "Department"), and that the Design-Builder and its subcontractors shall not engage in any prohibited form of discrimination in employment as defined in that Act. The Design-Builder shall maintain, and require that its subcontractors maintain, policies of equal employment opportunity which shall prohibit discrimination against any employee or applicant for employment on the basis of race, religion, color, sex, national origin, ancestry, citizenship status, age, marital status, physical or mental disability unrelated to the individual's ability to perform the essential functions of the job, association with a person with a disability, or unfavorable discharge from military service. The Design-Builder and all subcontractors shall comply with all requirements of the Act and of the Rules of the Illinois Department of Human Rights with regard to posting information on employees' rights under the Act. The Design-Builder and all subcontractors shall place appropriate statements identifying their companies as equal opportunity employers in all advertisements for workers to be employed in Work to be performed under the Contract Documents.

During the performance of this Agreement, the Design/Builder agrees as follows:

1. It will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, sexual orientation, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
2. If it hires additional employees in order to perform this Agreement or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
3. In all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination on the basis of race, color, religion, sex, marital status, national origin or ancestry, age, sexual orientation,

physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.

4. It will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding a notice advising such labor organization or representative of the Design-Builder's obligations under the Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Design-Builder in its efforts to comply with such Act and Rules and Regulations, the Design-Builder will promptly so notify the Department and the Owner and will recruit employees from other sources when necessary to fulfill its obligations thereunder.

5. It will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the Owner, and in all respects comply with the Human Rights Act and the Department's Rules and Regulations.

6. It will permit access to all relevant books, records, accounts and work sites by personnel for the Owner and the Department for purposes of investigation to ascertain compliance with the Human Rights Act and the Department's Rules and Regulations.

7. It will include verbatim or by reference the provisions of this Subsection in every subcontract it awards under which any portion of this Agreement's obligations are undertaken or assumed so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this Agreement, the Design/Builder will be liable for compliance with applicable provisions of this Subsection by such subcontractors, and it will promptly notify the Owner and the Department in the event any subcontractor fails to or refuses to comply therewith. In addition, the Design-Builder will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

**11.2.4 Drug-Free Workplace.** The Design-Builder certifies and agrees that it will provide a drug-free workplace as required by the Drug Free Workplace Act (30 ILCS 580/1 et seq.) and that it will comply with all provisions thereof.

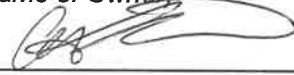
**11.2.5 Sexual Harassment Policy.** Pursuant to Section 2-105 (A)(4) of the Illinois Human Rights Act, the Design-Builder and each subcontractor shall adopt and maintain written sexual harassment policies that shall include, at a minimum, the following information: (1) the illegality of sexual harassment; (2) the definition of sexual harassment under state law; (3) a description of sexual harassment, utilizing examples; (4) the Design-Builder/subcontractor's internal complaint process, including penalties; (5) the legal recourse, investigative and complaint process available through the Department and Commission (of Human Rights); (6) directions on how to contact the Department and the Commission; and (7) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act. A copy of these policies shall be provided to the Owner on request.

**11.2.6 Public Works Employment Discrimination Act.** The Design-Builder certifies and agrees that it will comply with the Public Works Employment Discrimination Act (775 ILCS 10/1 et seq.). In confirmation and furtherance of the foregoing, the Design/Builder agrees that no person shall be refused or denied employment in any capacity on the ground of unlawful discrimination, as that term is defined in the Human Rights Act, nor be subjected to unlawful discrimination in any manner, in connection with the contracting for or the performance of any work or service of any kind, by, for, on behalf of, or for the benefit of the Owner, including without limitation, the services to be provided pursuant to this Agreement.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

**OWNER:**

Village of Lombard  
(Name of Owner)

  
(Signature)

Anthony Puccio  
(Printed Name)

Village President  
(Title)

Date: 3/19/26

**DESIGN-BUILDER:**

Baxter & Woodman / Boller Construction, LLC.  
(Name of Design-Builder)

  
(Signature)

DEREK J. NOLD  
(Printed Name)

MANAGING PARTNER  
(Title)

Date: 3/10/26

Baxter & Woodman / Boller Construction, LLC.  
(Name of Design-Builder)

  
(Signature)

JOSH BOLLER  
(Printed Name)

PRINCIPLE  
(Title)

Date: 3/10/26