

SECTION 00500
CONTRACT

THIS CONTRACT is dated as of the 12TH day of October in the year 2009 by and between the **VILLAGE OF VILLA PARK, ILLINOIS** (hereinafter called OWNER) and **EARTHWERKS LAND IMPROVEMENT AND DEVELOPMENT CORPORATION** (hereinafter called CONTRACTOR). OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows: **TERRACE STREET / DOUGLAS AVENUE STORMWATER DETENTION POND**

ARTICLE 2. ENGINEER

The Project has been designed by the Village of Villa Park Public Works Department. The Village of Villa Park Village Engineer or his designee is hereinafter called ENGINEER and who is to act as OWNER'S representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME

3.01. The Work will meet the requirements for Substantial Completion as defined in Article 1 of the Supplementary Conditions within thirty (30) calendar days, including Saturdays, Sundays and holidays, from the date when the Contract Time commences to run as provided in Paragraph 2.03 of the General Conditions, and will meet the Requirements for Final Completion and be ready for final payment in accordance with Paragraph 14.07 of the General Conditions within two hundred sixty (260) calendar days, including Saturdays, Sundays and holidays, from the date when the Contract Time commences to run.

3.02. Failure to Complete the Work on Time. OWNER and CONTRACTOR recognize that time is of the essence to the contract and that OWNER will suffer financial loss if the Work is not completed within the calendar days stipulated in the Contract as specified in Paragraph 3.1 above or within such extended time as may have been allowed in accordance with Article 12 of the General Conditions. Should CONTRACTOR fail to complete the Work within the calendar days stipulated in the contract or within such extended time as may have been allowed, CONTRACTOR shall be liable and shall pay OWNER the amount shown in the following schedule of

deductions, not as a penalty but as liquidated damages, for each day of overrun in the contract time or such extended time as may have been allowed. This liquidated damages provision, as an obligation to the Owner, shall further apply to the Contractor's Surety. Permitting Contractor or Surety to continue and finish the Work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, shall in no way operate as a waiver on the part of Owner of its rights under the Contract. The liquidated damages for failure to complete the contract on time are approximate, due to the impracticality of calculating and proving actual delay costs. This schedule of deductions establishes the cost of delay to account for administration, engineering, inspection, and supervision during periods of extended and delayed performance. The costs of delay represented by this schedule are understood to be a fair and reasonable estimate of the costs that will be borne by OWNER during extended and delayed performance by CONTRACTOR of the Work, remaining incidental work, correction of work improperly completed, or repair of work damaged as a result of CONTRACTOR.

Schedule of Deductions for Each
Day of Overrun in Contract Time

<u>Original Contract Amount</u>		<u>Daily Charges</u>
<u>From More Than</u>	<u>To and Including</u>	<u>Per Calendar Day</u>
\$ 0	\$ 100,000	\$ 375.00
100,000	500,000	550.00
500,000	1,000,000	800.00
1,000,000	3,000,000	1,130.00
3,000,000	5,000,000	1,420.00
5,000,000	10,000,000	1,710.00
10,000,000	And over	2,550.00

The liquidated damage amount specified will accrue and be assessed for each and every calendar day of overrun, including Saturdays, Sundays and holidays, beyond the number of calendar days stipulated for Substantial Completion in the Contract as specified in Paragraph 3.1 above, until the Work meets the requirements for Substantial Completion. The liquidated damage amount specified will accrue and be assessed for each and every calendar day of overrun, including Saturdays, Sundays and holidays, beyond the number of calendar days stipulated for Final Completion in the Contract as specified in Paragraph 3.1 above, until the Work meets the requirements for Final Completion. OWNER will deduct these liquidated damages from any monies due or to become due to CONTRACTOR from OWNER.

ARTICLE 4. CONTRACT PRICE

4.01. OWNER shall pay CONTRACTOR for completion of the work in accordance with the Contract Documents in current funds as shown in the Bid Form as accepted by OWNER.

ARTICLE 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.01. Progress Payments. OWNER will make monthly progress payments on account of the Contract Price on the basis of CONTRACTOR'S Application for Payment as recommended by ENGINEER. All progress payments will be on the basis of the progress of Work measure by the schedule of values provided for in the General Conditions and the Supplementary Conditions.

5.02. Final Payment. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07B of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said Paragraph 14.07C.

ARTICLE 6. CONTRACTOR'S REPRESENTATIONS

CONTRACTOR makes the following representations:

6.01. CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work site locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

6.02. CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in Paragraphs 4.02 and 4.03 of the General Conditions, and accepts the determination set forth in Paragraph SC- 4.02.A.1 of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to reply.

6.03. CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Paragraph 6.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraphs 4.02 and 4.03 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

6.04. CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, with the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Paragraph 4.04 of the General Conditions.

6.05. CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

6.06. CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

ARTICLE 7. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire Contract between OWNER and CONTRACTOR concerning the Work consist of the following:

- 7.01.** This Contract
- 7.02.** Performance and Payment Bonds
- 7.03.** Standard General Conditions
- 7.04.** Supplementary Conditions
- 7.05.** Project Specifications prepared by V3 Companies of Illinois Ltd., Woodridge, Illinois, and dated August 2009
- 7.06.** Drawings prepared by V3 Companies of Illinois Ltd., Woodridge, Illinois, and dated August 11, 2009
- 7.07.** Addenda
- 7.08.** Instructions to Bidders
- 7.09.** Advertisement for Bids
- 7.10.** CONTRACTOR'S Bid and Bid Bond
- 7.11.** Notice of Intent to Award

- 7.12. Notice of Award
- 7.13. Notice to Proceed
- 7.14. Change Order
- 7.15. CONTRACTOR's Substance Abuse Prevention Certification
- 7.16. Documentation submitted by CONTRACTOR prior to Notice of Award
- 7.17. The following which may be delivered or issued after the Effective Date of the Contract and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to Paragraphs 3.04 of the General Conditions.
- 7.18. Wage Rates

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided in Paragraphs 3.04 of the General Conditions.

ARTICLE 8. MISCELLANEOUS

- 8.01. Terms used in this Contract which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 8.02. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 8.03. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.
- 8.04. **AUDIT; ACCESS TO RECORDS:**
 - A) The contractor shall maintain books, records, documents and other evidence directly pertinent to performance on loan work consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of any cost submissions required under subsection (c)

above, (Negotiation of Contract Amendments, Change Orders) and a copy of the cost summary submitted to the owner. The Illinois Auditor General, the owner, the Agency, or any of their authorized representatives shall have access to the books, records, documents, and other evidence for purposes of inspection, audit, and copying. The contractor shall provide facilities for access and inspection.

- B) For a formally advertised, competitively awarded, fixed price contract, the contractor shall include access to records as specified in subsection (A) above 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, the contractor shall agree to include access to records as specified above in all his contracts and all tier subcontracts or change orders in excess of \$25,000 that are directly related to project performance.
- C) Audits shall be consistent with generally accepted auditing standards in accordance with the American Institute of Public Accountants Professional Standards.
- D) The contractor shall agree to the disclosure of all information and reports resulting from access to records pursuant to subsection (A) above. Where the audit concerns the contractor, the auditing agency shall afford the 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) The records required by subsection (A) above shall be maintained and made available during performance of the work under this loan agreement and for three (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 three (3) years after resolution of such dispute, appeal, litigation, claim or exception.
- F) The right of access will generally be exercised with respect to financial records under:
 - i) Negotiated prime contractors;
 - ii) Negotiated change orders or contract amendments in excess of \$25,000 affecting the price of any formally advertised, competitively awarded, fixed price contract; and
 - iii) Subcontracts or purchase orders under any contract other than a formally advertised, competitively awarded, fixed price contract.

- G) The 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:
- i) With respect to records pertaining directly to contract performance, excluding any financial records of the contractor; and
 - ii) 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.

8.05. COVENANT AGAINST CONTINGENT FEES

The contractor shall warrant that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the owner shall have the right to annul the contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

8.06. WAGE PROVISIONS

Contractor shall pay prevailing wages at rates not less than those prevailing under the Davis-Bacon Act (40 USC 276a through 276a-5) as defined by the United States Department of Labor.

8.07. NON-DISCRIMINATION

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


8.08. EarthWerks Land Improvement and Development Corporation, having executed a contract for
(Name of contractor)

the **TERRACE STREET / DOUGLAS AVENUE STORMWATER DETENTION POND**, as generally described in the Advertisement for Bids, with the Village of Villa Park, hereby certifies that said contractor is not barred from executing said contract as a result of a violation of either Section 33E-3 or 33E-4 of Article 33E of Chapter 720 of the ILLINOIS Compiled Statutes (720 ILCS 5/33E-3 and 5/33E-4).

By: 
Authorized Agent or Contractor

Subscribed and sworn to before me

This 19th day of October, 2009.


Notary Public



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

This Contract will be effective on the 28TH day of OCTOBER, 2009.

OWNER: VILLAGE OF VILLA PARK

CONTRACTOR: EARTHWERKS LAND IMPROVEMENT AND DEVELOPMENT CORPORATION

SIGNED: *Thomas Cullerton*

SIGNED: *[Signature]*

BY: THOMAS CULLERTON

BY: DAN DAVIES

TITLE: VILLAGE PRESIDENT

TITLE: PRESIDENT

Attest: *[Signature]*

Attest: *[Signature]*

Address for giving notices:

Address for giving notices:

PUBLIC WORKS DEPARTMENT

EARTHWERKS LAND IMPROVEMENT

VILLAGE OF VILLA PARK

AND DEVELOPMENT CORPORATION

20 SOUTH ARDMORE AVENUE

1240 LYON ROAD

VILLA PARK, IL 60181-2696

BATAVIA, IL 60510



(CORPORATE SEAL)

License No. _____
(If required by State or Municipal Law)



END OF SECTION

00500-9

CONTRACTUAL DOCUMENTS
TERRACE STREET / DOUGLAS AVENUE
STORMWATER DETENTION POND

