

## RESOLUTION NO. R2021-60

**A RESOLUTION APPROVING A CONTRACT WITH MAGUIRE IRON, INC. FOR  
MAINTENANCE WORK ON THE WEST WATER TOWER**

WHEREAS, the City is a home rule municipal corporation pursuant to Article VII, Section 6(a) of the Constitution of the State of Illinois of 1970; and

WHEREAS, the City has determined that the City's west water tower ("**Water Tower**") is in need of routine maintenance work and inspections, including wet interior painting, dry interior painting, exterior painting, routine visual inspections, and cleanings (collectively, "**Work**"); and

WHEREAS, City staff interviewed and evaluated several qualified companies for its current contract for the south water tower, and ultimately selected Maguire Iron, Inc. ("**Contractor**") as the company that best met the City's requirements; and

WHEREAS, Contractor has performed the work on the south water tower to the City's satisfaction, and City staff has determined that Contractor is the company that best meets the City's requirements for the Work; and

WHEREAS, Contractor submitted a proposal to perform the Work over a 10-year term in the total not-to-exceed amount of \$718,975, with wet interior painting renovations scheduled to occur in 2022 in the amount of \$180,500; and

WHEREAS, the City proposes to enter into a contract with Contractor for the Maintenance Work at the price proposed ("**Contract**"), subject to the appropriation of sufficient funds by the City Council for the Work in future fiscal years; and

WHEREAS, the City will budget sufficient funds in the 2022-2023 fiscal year budget for the Work scheduled to be completed in 2022; and

WHEREAS, in accordance with Section 1-8-4.B.6.a.1 of the Warrenville City Code ("**City Code**"), the City has determined that the Work is not adaptable to award by competitive bidding because the Water Tower is a critical and integral part of the City's infrastructure; and

WHEREAS, the Mayor and the City Council have determined that it is in the best interests of the City and the public to waive the competitive bidding requirements in the City Code and approve the Contract with Contractor for the performance of the Work;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF WARRENVILLE, DUPAGE COUNTY, ILLINOIS, AS FOLLOWS:

**SECTION 1: Recitals.** The recitals listed above are incorporated in this Resolution as if fully set forth in this Resolution.

**SECTION 2: Waiver of Competitive Bidding.** Pursuant to Section 1-8-4.B.6.a.3 of the City Code and the City's home rule authority, the City Council waives the requirement of competitive bidding for the performance of the Work.

SECTION 3: Approval of Contract. The Contract with Contractor in the total not-to-exceed amount of \$718,975 is hereby approved substantially in the form attached to this Resolution as **Exhibit A**, and in a final form approved by the City Administrator.

SECTION 4: Execution. The City Council hereby authorizes and directs the City Administrator to execute, on behalf of the City, the final Contract, only after receipt by the City Administrator of at least two executed copies of each of the Contract from Contractor; provided, however, that if the City Administrator does not receive such executed copies of the Contract from Contractor within 60 days after the date of adoption of this Resolution, then this authority to execute and seal the Contract shall, at the option of the City Council, be null and void.

SECTION 5: Effective Date. This Resolution shall be in full force and effect following its passage and approval in the manner provided by law.

PASSED THIS \_\_\_\_ day of \_\_\_\_\_, 2021.

AYES:

NAYS:

ABSENT:

APPROVED THIS \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

**EXHIBIT A**  
**CONTRACT**

**CONTRACT BETWEEN**  
**THE CITY OF WARRENVILLE**  
**AND**  
**MAGUIRE IRON, INC.**  
**FOR WEST WATER TOWER PAINTING AND INSPECTION**

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**CONTRACTOR'S CERTIFICATION**

**ATTACHMENT A** Supplemental Schedule of Contract Terms

**ATTACHMENT B** Proposal

**CHANGE ORDER FORM**

**PERFORMANCE BOND**

**LABOR AND MATERIAL PAYMENT BOND**

**WAIVER OF LIEN TO DATE FORM**

**FINAL WAIVER OF LIEN FORM**

In consideration of the mutual promises set forth below, the **City of Warrenville**, c/o City Hall, 28W701 Stafford Place, Warrenville Illinois 60555, a home rule municipal corporation ("Owner"), and **Maguire Iron, Inc.**, a South Dakota corporation ("Contractor"), make this Contract as of \_\_\_\_\_, 2021, and hereby agree as follows:

## **ARTICLE I**

### **THE WORK**

#### **1.1 Performance of the Work**

Contractor shall, at its sole cost and expense, provide, perform, and complete all of the following, all of which is herein referred to as the "Work":

- A. Labor, Equipment, Materials, and Supplies. Provide, perform, and complete, in the manner described and specified in this Contract, all necessary work, labor, services, transportation, overnight accommodation or other travel expenses, equipment, materials, apparatus, machinery, tools, fuels, gas, electric, water, waste disposal, information, data, and other means and items necessary to accomplish the Work at the Work Site as defined in Attachment A attached to this Agreement and in accordance with the Proposal attached to this Agreement as Attachment B.
- B. Permits. Except as otherwise provided in Attachment A, procure and furnish all permits, licenses, and other governmental approvals and authorizations necessary in connection therewith.
- C. Bonds and Insurance. Procure and furnish all Bonds and all certificates and policies of insurance specified in this Contract.
- D. Taxes. Pay all applicable federal, state, and local taxes.
- E. Miscellaneous. Do all other things required of Contractor by this Contract, including, without limitation, arranging for utility and other services needed for the Work and for testing, including the installation of temporary utility lines, wiring, switches, fixtures, hoses, connections, and meters, and providing sufficient sanitary conveniences and shelters to accommodate all workers and all personnel of Owner engaged in the Work.
- F. Quality/Standard of Care. Provide, perform and complete all of the foregoing in a proper and workmanlike manner, consistent with the highest standards of professional and construction practices and in full compliance with, and as required by or pursuant to, this Contract, and with the greatest economy, efficiency, and expedition consistent therewith, with only new, undamaged and first quality equipment, materials and supplies. The representations and certifications expressed shall be in addition to any other representations and certifications expressed in this Agreement, or expressed or implied by law, which are hereby reserved unto the City.

#### **1.2 Term; Commencement and Completion Dates**

This Contract is for a 10-year term beginning upon the commencement of the Work scheduled to be completed in 2022 and terminated upon the completion of all of Work, including the Work scheduled to be completed in 2031, as set forth in Attachment B.

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Contractor shall commence the Work scheduled during the applicable year of this Contract not later than the "Commencement Date" set forth on Attachment B and shall diligently and continuously prosecute the Work at such a rate as will allow the Work to be fully provided, performed, and completed in full compliance with this Contract not later than the "Completion Date" set forth in Attachment B. The time of commencement, rate of progress, and time of completion are referred to in this Contract as the "Contract Time."

**1.3 Required Submittals.**

Contractor shall submit to Owner all documents, data, and information specifically required to be submitted by Contractor under this Contract and shall, in addition, submit to Owner all such drawings, specifications, descriptive information, and engineering documents, data, and information as may be required, or as may be requested by Owner, to show the details of the Work, including a complete description of all equipment, materials, and supplies to be provided under this Contract ("Required Submittals"). Such details shall include, but shall not be limited to, type and brand of finish, and all similar matters, for all components of the Work.

**1.4 Review and Interpretation of Contract Provisions**

Contractor represents and warrants that it has carefully reviewed this Contract, including all of its Attachments, all of which are by this reference incorporated into and made a part of this Contract. Contractor shall, at no increase in the Contract Price, provide workmanship, equipment, materials, and supplies that fully conform to this Contract. Whenever any equipment, materials or supplies are specified or described in this Contract by using the name or other identifying feature of a proprietary product or the name or other identifying feature of a particular manufacturer or vendor, the specific item mentioned shall be understood as establishing the type, function and quality desired. Other manufacturers' or vendors' products may be accepted, provided that the products proposed are equivalent in substance and function to those named as determined by Owner in its sole and absolute discretion.

Contractor shall promptly notify Owner of any discrepancy, error, omission, ambiguity, or conflict among any of the provisions of this Contract before proceeding with any Work affected thereby. If Contractor fails to give such notice to Owner, then the subsequent decision of Owner as to which provision of this Contract shall govern shall be final, and any corrective work required shall not entitle Contractor to any damages, to any compensation in excess of the Contract Price, or to any delay or extension of the Contract Time.

When the equipment, materials, or supplies furnished by Contractor cannot be installed as specified in this Contract, Contractor shall, without any increase in the Contract Price, make all modifications required to properly install the equipment, materials, or supplies. Any such modification shall be subject to the prior review and consent of Owner.

**1.5 Conditions at the Work Site; Record Drawings**

Contractor represents and warrants that it has had a sufficient opportunity to conduct a thorough investigation of the Work Site and the surrounding area and has completed such investigation to its satisfaction. Contractor shall have no claim for damages, for compensation in excess of the Contract Price, or for a delay or extension of the Contract



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Time based upon conditions found at, or in the vicinity of, the Work Site; provided, however, in the event that Hazardous Substance are on the Work Site and the existence of Hazardous Substance was not disclosed to Contractor in writing prior to the submission of the Proposal attached as Exhibit B, Owner shall be responsible for the cost of any additional work required to abate and/or dispose of the hazardous materials as further set forth in Section 1.9 of this Contract.

When information pertaining to subsurface, underground or other concealed conditions, soils analysis, borings, test pits, utility locations or conditions, buried structures, condition of existing structures and other investigations is or has been provided by Owner, or is or has been otherwise made available to Contractor by Owner, such information is or has been provided or made available solely for the convenience of Contractor and is not part of this Contract. Owner assumes no responsibility whatever in respect to the sufficiency or accuracy of such information, and there is no guaranty or warranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the Work or the Work Site, or that the conditions indicated are representative of those existing at any particular location, or that the conditions indicated may not change, or that unanticipated conditions may not be present.

Contractor shall be solely responsible for locating all existing underground installations by prospecting no later than two workdays prior to any scheduled excavation or trenching, whichever is earlier. Contractor shall check all dimensions, elevations, and quantities indicated in this Contract within the same time period as set forth above for prospecting underground installations. Contractor shall lay out the Work in accordance with this Contract and shall establish and maintain such locations, lines and levels. Wherever pre-existing work is encountered, Contractor shall verify and be responsible for dimensions and location of such pre-existing work. Contractor shall notify Owner of any discrepancy between the dimensions, elevations and quantities indicated in this Contract and the conditions of the Work Site or any other errors, omissions or discrepancies which Contractor may discover during such inspections. Full instructions will be furnished by Owner should such error, omission, or discrepancy be discovered, and Contractor shall carry out such instructions as if originally specified and without any increase in Contract Price.

**1.6 Technical Ability to Perform**

Contractor represents and warrants that it is sufficiently experienced and competent, and has the necessary capital, facilities, plant, organization, and staff, to provide, perform and complete the Work in full compliance with, and as required by or pursuant to, this Contract.

**1.7 Financial Ability to Perform**

Contractor represents and warrants that it is financially solvent, and Contractor has the financial resources necessary to provide, perform and complete the Work in full compliance with, and as required by or pursuant to, this Contract.

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**1.8 Time**

Contractor represents and warrants that it is ready, willing, able and prepared to begin the Work on the Commencement Date and that the Contract Time is sufficient time to permit completion of the Work in full compliance with, and as required by or pursuant to, this Contract for the Contract Price, all with due regard to all natural and man-made conditions that may affect the Work or the Work Site and all difficulties, hindrances, and delays that may be incident to the Work.

**1.9 Safety at the Work Site**

Contractor shall be solely and completely responsible for providing and maintaining safe conditions at the Work Site, including the safety of all persons and property during performance of the Work. This requirement shall apply continuously and shall not be limited to normal working hours. Contractor shall take all safety precautions as shall be necessary to comply with all applicable laws and to prevent injury to persons and damage to property.

Contractor shall conduct all of its operations without interruption or interference with vehicular and pedestrian traffic on public and private rights-of-way, unless it has obtained permits therefor from the proper authorities. If any public or private right-of-way shall be rendered unsafe by Contractor's operations, Contractor shall make such repairs or provide such temporary ways or guards as shall be acceptable to the proper authorities.

In the event that Hazardous Substance are on the Work Site and the existence of Hazardous Substance was not disclosed to Contractor in writing prior to the submission of the Proposal attached as Exhibit B, Owner shall be responsible for the cost of any additional work required to abate and/or dispose of the hazardous materials. For the purpose of this Section 1.9, "Hazardous Substance" shall mean any substance, whether liquid, solid or gas, that is listed, defined, designated or classified as toxic, hazardous, radioactive or dangerous under any Environmental Law, whether by type or by quantity. Hazardous Substance includes, without limitation, any explosive or radioactive material, asbestos, asbestos containing material, urea formaldehyde foam insulation, polychlorinated biphenyls, special waste or petroleum products or any derivative or by-product thereof, methane, toxic waste, pollutant, contaminant, hazardous waste, toxic or hazardous substances or related materials, as defined in any applicable Environmental Law. For the purposes of this Section 1.9, "Environmental Law" means any applicable federal, state or local statute, law, ordinance, rule, regulation, code, license, permit, authorization, approval, consent, order, judgment, decree, injunction, directive, requirement by, of, or agreement with any governmental agency with jurisdiction, existing as of the Commencement Date and as amended thereafter, relating to:

- i. the protection, preservation or restoration of the environment (including, without limitation, air, water, vapor, surface water, ground water, drinking water supply, surface land, subsurface land, plant and animal life, or any other natural resource), or to human health and safety; or

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- ii. the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of, Hazardous Substances.

**1.10 Cleanliness of the Work Site and Environs**

Contractor shall keep the Work Site and adjacent areas clean at all times during performance of the Work and shall, upon completion of the Work, leave the Work Site and adjacent areas in a clean and orderly condition; provided, however, if there is any sandblasting involved in the Work, Owner will be responsible for collection and disposal of any and all blast media.

**1.11 Damage to the Work, the Work Site, and Other Property**

The Work and everything pertaining thereto shall be provided, performed, completed, and maintained at the sole risk and cost of Contractor from the Commencement Date until Final Payment. Contractor shall be fully responsible for the protection of all public and private property and all persons. Without limiting the foregoing, Contractor shall, at its own cost and expense, provide all permanent and temporary shoring, anchoring and bracing required by the nature of the Work in order to make all parts absolutely stable and rigid, even when such shoring, anchoring and bracing is not explicitly specified, and support and protect all buildings, bridges, roadways, conduits, wires, water pipes, gas pipes, sewers, pavements, curbs, sidewalks, fixtures and landscaping of all kinds and all other public or private property that may be encountered or endangered in providing, performing and completing the Work. Contractor shall have no claim against Owner because of any damage or loss to the Work or to Contractor's equipment, materials, or supplies from any cause whatsoever, including damage or loss due to simultaneous work by others. Contractor shall, promptly and without charge to Owner, repair or replace, to the satisfaction of Owner, any damage done to, and any loss suffered by, the Work and any damage done to, and any loss suffered by, the Work Site or other property as a result of the Work. Notwithstanding any other provision of this Contract, Contractor's obligations under this Section shall exist without regard to, and shall not be construed to be waived by, the availability or unavailability of any insurance, either of Owner or Contractor, to indemnify, hold harmless, or reimburse Contractor for the cost of any repair or replacement work required by this Section. Notwithstanding the above, and only while completing exterior painting of the water tower, Contractor will exercise reasonable care and caution to avoid, but will not be responsible for damage to antenna, communication, telemetry and/or electrical system(s) which may be attached to the water tower. Removal, repair and/or replacement of the antenna, communication, telemetry and/or electrical system(s) prior to the commencement of exterior painting of the water tower shall be the responsibility of the Owner.

**1.12 Subcontractors and Suppliers**

- A. Approval and Use of Subcontractors and Suppliers. Contractor shall perform the Work with its own personnel and under the management, supervision, and control of its own organization unless otherwise approved by Owner in writing. All subcontractors, suppliers, and subcontracts used by Contractor shall be acceptable to, and approved in advance by, Owner. Owner's approval of any subcontractor, supplier, and subcontract shall not relieve Contractor of full responsibility and

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liability for the provision, performance, and completion of the Work in full compliance with, and as required by or pursuant to, this Contract. All Work performed under any subcontract shall be subject to all of the provisions of this Contract in the same manner as if performed by employees of Contractor. Every reference in this Contract to "Contractor" shall be deemed also to refer to all subcontractors and suppliers of Contractor. Every subcontract shall include a provision binding the subcontractor or supplier to all provisions of this Contract.

- B. Removal of Subcontractors and Suppliers. If any subcontractor or supplier fails to perform the part of the Work undertaken by it in a manner satisfactory to Owner, Contractor shall immediately upon notice from Owner terminate such subcontractor or supplier. Contractor shall have no claim for damages, for compensation in excess of the Contract Price, or for a delay or extension of the Contract Time as a result of any such termination.

**1.13 Simultaneous Work By Others**

Owner shall have the right to perform or have performed such other work as Owner may desire in, about, or near the Work Site during the performance of the Work by Contractor. Contractor shall make every reasonable effort to perform the Work in such manner as to enable both the Work and such other work to be completed without hindrance or interference from each other. Contractor shall afford Owner and other contractors reasonable opportunity for the execution of such other work and shall properly coordinate the Work with such other work.

**1.14 RESERVED**

**1.15 Owner's Right to Terminate or Suspend Work for Convenience**

- A. Termination or Suspension for Convenience. Owner shall have the right, for its convenience, to terminate or suspend the Work in whole or in part at any time by written notice to Contractor. Every such notice shall state the extent and effective date of such termination or suspension. On such effective date, Contractor shall, as and to the extent directed, stop Work under this Contract, cease all placement of further orders or subcontracts, terminate or suspend Work under existing orders and subcontracts, cancel any outstanding orders or subcontracts that may be cancelled, and take any action necessary to protect any property in its possession in which Owner has or may acquire any interest and to dispose of such property in such manner as may be directed by Owner.
- B. Payment for Completed Work. In the event of any termination pursuant to Subsection 1.15A above, Owner shall pay Contractor (1) such direct costs, excluding overhead, as Contractor shall have paid or incurred for all Work done in compliance with, and as required by or pursuant to, this Contract up to the effective date of termination together with ten percent of such costs for overhead and profit; and (2) such other costs pertaining to the Work, exclusive of overhead and profit, as Contractor may have reasonably and necessarily incurred as the result of such termination. Any such payment shall be offset by any prior payment or payments and shall be subject to Owner's rights to withhold and deduct as provided in this Contract.

**ARTICLE II**

**CONTRACT BETWEEN THE CITY OF WARRENVILLE AND MAGUIRE IRON, INC.  
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**CHANGES AND DELAYS**

**2.1 Changes**

Owner shall have the right, by written order executed by Owner, to make changes in the Contract, the Work, the Work Site, and the Contract Time ("Change Order"). If any Change Order causes an increase or decrease in the amount of the Work, an equitable adjustment in the Contract Price or Contract Time may be made. All claims by Contractor for an equitable adjustment in either the Contract Price or the Contract Time shall be made within two business days following receipt of such Change Order, and shall, if not made prior to such time, be conclusively deemed to have been waived. No decrease in the amount of the Work caused by any Change Order shall entitle Contractor to make any claim for damages, anticipated profits, or other compensation. Any Change Order that authorizes or necessitates an increase of fifty per cent or more in (a) the original Contract Price or (b) the original prices of any subcontractor under this Contract, shall be subject to bidding in the same manner as the original Contract or subcontract was bid.

**2.2 Delays**

- A. Extensions for Unavoidable Delays. For any delay that may result from causes that could not be avoided or controlled by Contractor, Contractor shall, upon timely written application, be entitled to issuance of a Change Order providing for an extension of the Contract Time for a period of time equal to the delay resulting from such unavoidable cause. No extension of the Contract Time shall be allowed for any other delay in completion of the Work.
- B. No Compensation for Delays. No payment, compensation, damages, or adjustment of any kind, other than the extension of the Contract Time provided in Subsection 2.2A above, shall be made to, or claimed by, Contractor because of hindrances or delays from any cause in the commencement, prosecution, or completion of the Work, whether caused by Owner or any other party and whether avoidable or unavoidable.

**ARTICLE III**

**CONTRACTOR'S RESPONSIBILITY FOR DEFECTIVE WORK**

**3.1 Inspection; Testing; Correction of Defects**

- A. Inspection. Until Payment for the Work, all parts of the Work shall be subject to inspection and testing by Owner or its designated representatives. Contractor shall furnish, at its own expense, all reasonable access, assistance, and facilities required by Owner for such inspection and testing.
- B. Re-inspection. Re-inspection and re-testing of any Work may be ordered by Owner at any time, and, if so ordered, any covered or closed Work shall be uncovered or opened by Contractor. If the Work is found to be in full compliance with this Contract, then Owner shall pay the cost of uncovering, opening, re-inspecting, or re-testing, as the case may be. If such Work is not in full compliance with this Contract, then Contractor shall pay such cost.
- C. Correction. Until Final Payment, Contractor shall, promptly and without charge, repair, correct, or replace all or any part of the Work that is defective, damaged,

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flawed, or unsuitable or that in any way fails to conform strictly to the requirements of this Contract.

**3.2 Warranty of Work**

- A. Scope of Warranty. Contractor warrants that the Work and all of its components shall be free from defects and flaws in design, workmanship, and materials; shall strictly conform to the requirements of this Contract; and shall be fit, sufficient and suitable for the purposes expressed in, or reasonably inferred from, this Contract. The warranty herein expressed shall be in addition to any other warranties expressed in this Contract, or expressed or implied by law, which are hereby reserved unto Owner.
- B. Length of Warranty; Repairs; Extension of Warranty. Contractor shall, promptly and without charge, correct any failure to fulfill the above warranty that may be discovered or develop at any time within two years after full Payment for the applicable Work as set forth in Attachment B or as required by law. The above warranty shall be extended automatically to cover all repaired and replacement parts and labor provided or performed under such warranty and Contractor's obligation to correct Work shall be extended for a period of one year from the date of such repair or replacement. The time period established in this Subsection 3.2B relates only to the specific obligation of Contractor to correct Work and shall not be construed to establish a period of limitation with respect to other obligations that Contractor has under this Contract.

**3.3 Owner's Right to Correct**

If, within two business days after Owner gives Contractor notice of any defect, damage, flaw, unsuitability, nonconformity, or failure to meet warranty subject to correction by Contractor pursuant to Section 3.1 or Section 3.2 of this Contract, Contractor neglects to make, or undertake with due diligence to make, the necessary corrections, then Owner shall be entitled to make, either with its own forces or with contract forces, the corrections and to recover from Contractor all resulting costs, expenses, losses, or damages, including attorneys' fees and administrative expenses.

**ARTICLE IV**

**FINANCIAL ASSURANCES**

**4.1 Bonds**

Prior to commencing any Wet Interior Blast Renovation, Exterior Renovation, Chemical Cleaning, or Washout Inspection (collectively, "Bonded Work") as set forth in Attachment B, Contractor shall provide a Performance Bond and a Labor and Material Payment Bond, on forms provided by Owner, from a surety company licensed to do business in the State of Illinois with a general rating of A minus and a financial size category of Class X or better in Best's Insurance Guide, each in the penal sum of the Contract Price ("Bonds"). Contractor shall, at all times while providing, performing, or completing the Bonded Work, including, without limitation, at all times while correcting any failure to meet warranty pursuant to Section 3.2 of this Contract, maintain and keep in force, at Contractor's expense, the Bonds required hereunder.

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**4.2      Insurance**

Contemporaneous with Contractor's execution of this Contract, Contractor shall provide certificates and policies of insurance evidencing the minimum insurance coverages and limits set forth in Attachment A. For good cause shown, Owner may extend the time for submission of the required policies of insurance upon such terms, and with such assurances of complete and prompt performance, as Owner may impose in the exercise of its sole discretion, however the Work may not begin until such policies are submitted. Such policies shall be in a form, and from companies, acceptable to Owner and from companies with a general rating of A minus, and a financial size category of Class X or better, in Best's Insurance Guide. Such insurance shall provide that no change, modification in, or cancellation of any insurance shall become effective until the expiration of 30 days after written notice thereof shall have been given by the insurance company to Owner. Contractor shall, at all times while providing, performing, or completing the Work, including, without limitation, at all times while correcting any failure to meet warranty pursuant to Section 3.2 of this Contract, maintain and keep in force, at Contractor's expense, the minimum insurance coverages and limits set forth in Attachment A.

**4.3      Indemnification**

Contractor shall indemnify, save harmless, and defend Owner against any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses, including attorneys' fees and administrative expenses, that may arise, or be alleged to have arisen, out of or in connection with Contractor's performance of, or failure to perform, the Work or any part thereof, whether or not due or claimed to be due in whole or in part to the active, passive, or concurrent negligence or fault of Contractor, except to the extent caused by the sole negligence of Owner. The provision of insurance as provided in this Contract shall not be limit on the Contractor's obligation under this Section 4.3.

**ARTICLE V**

**PAYMENT**

**5.1      Contract Price**

Owner shall pay to Contractor, in accordance with and subject to the terms and conditions set forth in this Article V and Attachment A, and Contractor shall accept in full satisfaction for providing, performing, and completing the Work, the not-to-exceed amount of \$718,975.00 (the "Contract Price"), subject to any additions, deductions, or withholdings provided for in this Contract.

**5.2      Taxes and Benefits**

Owner is exempt from and shall not be responsible to pay, or reimburse Contractor for, any state or local sales, use, or excise taxes. The Contract Price includes all other applicable federal, state, and local taxes of every kind and nature applicable to the Work as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or other similar benefits. All claim or right to claim additional compensation by reason of the payment of any such tax, contribution, or premium is hereby waived and released by Contractor.

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**5.3 Progress Payments**

- A. Payment in Installments. The Contract Price shall be paid in installment payments for the Work performed during each year of this Contract as scheduled and set forth in Attachment B ("Progress Payments").
- B. Pay Requests. Contractor shall, as a condition precedent to its right to receive each Progress Payment, submit to Owner a pay request in the form provided by Owner ("Pay Request"). The first Pay Request shall be submitted upon the completion and Acceptance by the City of the Work scheduled to be completed in the applicable year as set forth in Attachment B and in accordance with Section 5.4 of this Agreement. Each Pay Request shall include (a) Contractor's certification of the value of, and partial or final waivers of lien covering, all Work for which payment is then requested and (b) Contractor's certification that all prior Progress Payments have been properly applied to the payment or reimbursement of the costs with respect to which they were paid.
- C. Certified Payroll Records. Contractor shall submit to Owner, on a monthly basis, the certified payroll records required by Section 5 of the Prevailing Wage Act, as amended, 820 ILCS 130/5.
- D. Work Entire. This Contract and the Work are entire and the Work as a whole is of the essence of this Contract. Notwithstanding any other provision of this Contract, each and every part of this Contract and of the Work are interdependent and common to one another and to Owner's obligation to pay all or any part of the Contract Price or any other consideration for the Work. Any and all Progress Payments made pursuant to this Article are provided merely for the convenience of Contractor and for no other purpose.

**5.4 Acceptance and Payment**

- A. Notice of Completion. When the Work scheduled in each applicable year as set forth in Attachment B has been completed and is ready in all respects for acceptance by Owner, Contractor shall notify Owner and request a final inspection of the applicable Work ("Notice of Completion"). Contractor's Notice of Completion shall be given sufficiently in advance of the Completion Date to allow for scheduling of the final inspection and for completion or correction before the Completion Date of any items identified by such inspection as being defective, damaged, flawed, unsuitable, nonconforming, incomplete, or otherwise not in full compliance with, or as required by or pursuant to, this Contract ("Punch List Work").
- B. Punch List and Acceptance. The Work completed during each Contract year as set forth in Attachment B shall be accepted when, and only when, the whole and all parts thereof shall have been completed to the satisfaction of Owner in full compliance with, and as required by or pursuant to, this Contract. Upon receipt of Contractor's Notice of Completion, Owner shall make a review of the Work and notify Contractor in writing of all Punch List Work, if any, to be completed or corrected. Following Contractor's completion or correction of all Punch List Work, Owner shall make another review of the Work and prepare and deliver to



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Contractor either a written notice of additional Punch List Work to be completed or corrected or a written notice of acceptance of that year's Work ("Acceptance").

- C. Payment. As soon as practicable after Acceptance, Contractor shall submit to Owner a properly completed Pay Request for the applicable Work in the form provided by Owner ("Pay Request"). Payment shall be made not later than 60 days after Owner approves the Pay Request. The acceptance by Contractor of each Progress Payment shall operate as a full and complete release of Owner of and from any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses of, by, or to Contractor for anything done, furnished for, arising out of, relating to, or in connection with the applicable Work completed during that year or for or on account of any act or neglect of Owner arising out of, relating to, or in connection with the applicable Work completed during the Contract year.

**5.5 Liens**

- A. Title. Nothing in this Contract shall be construed as vesting in Contractor any right of property in any equipment, materials, supplies, and other items provided under this Contract after they have been installed in, incorporated into, attached to, or affixed to, the Work or the Work Site. All such equipment, materials, supplies, and other items shall, upon being so installed, incorporated, attached or affixed, become the property of Owner, but such title shall not release Contractor from its duty to insure and protect the Work in accordance with the requirements of this Contract.
- B. Waivers of Lien. Contractor shall, from time to time at Owner's request and in any event prior to Final Payment, furnish to Owner such receipts, releases, affidavits, certificates, and other evidence as may be necessary to establish, to the reasonable satisfaction of Owner, that no lien against the Work or the public funds held by Owner exists in favor of any person whatsoever for or by reason of any equipment, material, supplies, or other item furnished, labor performed, or other thing done in connection with the Work or this Contract ("Lien") and that no right to file any Lien exists in favor of any person whatsoever.
- C. Removal of Liens. If at any time any notice of any Lien is filed, then Contractor shall, promptly and without charge, discharge, remove, or otherwise dispose of such Lien. Until such discharge, removal, or disposition, Owner shall have the right to retain from any money payable hereunder an amount that Owner, in its sole judgment, deems necessary to satisfy such Lien and to pay the costs and expenses, including attorneys' fees and administrative expenses, of any actions brought in connection therewith or by reason thereof.
- D. Protection of Owner Only. This Section shall not operate to relieve Contractor's surety or sureties from any of their obligations under the Bonds, nor shall it be deemed to vest any right, interest, or entitlement in any subcontractor or supplier. Owner's retention of funds pursuant to this Section shall be deemed solely for the protection of its own interests pending removal of such Liens by Contractor, and Owner shall have no obligation to apply such funds to such removal but may, nevertheless, do so where Owner's interests would thereby be served.

**5.6 Deductions**

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- A. Owner's Right to Withhold. Notwithstanding any other provision of this Contract and without prejudice to any of Owner's other rights or remedies, Owner shall have the right at any time or times, whether before or after approval of any Pay Request, to deduct and withhold from any Progress or Final Payment that may be or become due under this Contract such amount as may reasonably appear necessary to compensate Owner for any actual or prospective loss due to: (1) work that is defective, damaged, flawed, unsuitable, nonconforming, or incomplete; (2) damage for which Contractor is liable under this Contract; (3) state or local sales, use, or excise taxes from which Owner is exempt; (4) Liens or claims of Lien regardless of merit; (5) claims of subcontractors, suppliers, or other persons regardless of merit; (6) delay in the progress or completion of the Work; (7) inability of Contractor to complete the Work; (8) failure of Contractor to properly complete or document any Pay Request; (9) any other failure of Contractor to perform any of its obligations under this Contract; or (10) the cost to Owner, including attorneys' fees and administrative costs, of correcting any of the aforesaid matters or exercising any one or more of Owner's remedies set forth in Section 6.3 of this Contract.
- B. Use of Withheld Funds. Owner shall be entitled to retain any and all amounts withheld pursuant to Subsection 5-106 A above until Contractor shall have either performed the obligations in question or furnished security for such performance satisfactory to Owner. Owner shall be entitled to apply any money withheld or any other money due Contractor under this Contract to reimburse itself for any and all costs, expenses, losses, damages, liabilities, suits, judgments, awards, attorneys' fees and administrative expenses incurred, suffered, or sustained by Owner and chargeable to Contractor under this Contract.

**ARTICLE VI**

**DISPUTES AND REMEDIES**

**6.1 Dispute Resolution Procedure**

- A. Notice of Disputes and Objections. If Contractor disputes or objects to any requirement, direction, instruction, interpretation, determination, or decision of Owner, Contractor may notify Owner in writing of its dispute or objection and of the amount of any equitable adjustment to the Contract Price or Contract Time to which Contractor claims it will be entitled as a result thereof; provided, however, that Contractor shall, nevertheless, proceed without delay to perform the Work as required, directed, instructed, interpreted, determined, or decided by Owner, without regard to such dispute or objection. Unless Contractor so notifies Owner within two business days after receipt of such requirement, direction, instruction, interpretation, determination, or decision, Contractor shall be conclusively deemed to have waived all such disputes or objections and all claims based thereon.
- B. Negotiation of Disputes and Objections. To avoid and settle without litigation any such dispute or objection, Owner and Contractor agree to engage in good faith negotiations. Within three business days after Owner's receipt of Contractor's written notice of dispute or objection, a conference between Owner and Contractor shall be held to resolve the dispute. Within three business days after

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the end of the conference, Owner shall render its final decision, in writing, to Contractor. If Contractor objects to the final decision of Owner, then it shall, within three business days, give Owner notice thereof and, in such notice, shall state its final demand for settlement of the dispute. Unless Contractor so notifies Owner, Contractor shall be conclusively deemed (1) to have agreed to and accepted Owner's final decision and (2) to have waived all claims based on such final decision.

**6.2 Contractor's Remedies**

If Owner fails or refuses to satisfy a final demand made by Contractor pursuant to Section 6.1 of this Contract, or to otherwise resolve the dispute which is the subject of such demand to the satisfaction of Contractor, within ten days following receipt of such demand, then Contractor shall be entitled to pursue such remedies, not inconsistent with the provisions of this Contract, as it may have in law or equity.

**6.3 Owner's Remedies**

If it should appear at any time prior to Final Payment that Contractor has failed or refused to prosecute, or has delayed in the prosecution of, the Work with diligence at a rate that assures completion of the Work in full compliance with the requirements of this Contract on or before the Completion Date, or has attempted to assign this Contract or Contractor's rights under this Contract, either in whole or in part, or has falsely made any representation or warranty in this Contract, or has otherwise failed, refused, or delayed to perform or satisfy any other requirement of this Contract or has failed to pay its debts as they come due ("Event of Default"), and has failed to cure any such Event of Default within five business days after Contractor's receipt of written notice of such Event of Default, then Owner shall have the right, at its election and without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

- A. Owner may require Contractor, within such reasonable time as may be fixed by Owner, to complete or correct all or any part of the Work that is defective, damaged, flawed, unsuitable, nonconforming, or incomplete; to remove from the Work Site any such work; to accelerate all or any part of the Work; and to take any or all other action necessary to bring Contractor and the Work into strict compliance with this Contract.
- B. Owner may perform or have performed all Work necessary for the accomplishment of the results stated in Paragraph 1 above and withhold or recover from Contractor all the cost and expense, including attorneys' fees and administrative costs, incurred by Owner in connection therewith.
- C. Owner may accept the defective, damaged, flawed, unsuitable, nonconforming, incomplete, or dilatory Work or part thereof and make an equitable reduction in the Contract Price.
- D. Owner may terminate this Contract without liability for further payment of amounts due or to become due under this Contract.
- E. Owner may, without terminating this Contract, terminate Contractor's rights under this Contract and, for the purpose of completing or correcting the Work, evict Contractor and take possession of all equipment, materials, supplies, tools,

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appliances, plans, specifications, schedules, manuals, drawings, and other papers relating to the Work, whether at the Work Site or elsewhere, and either complete or correct the Work with its own forces or contracted forces, all at Contractor's expense.

- F. Upon termination of this Contract or of Contractor's rights under this Contract, and at Owner's option exercised in writing, any or all subcontracts and supplier contracts of Contractor shall be deemed to be assigned to Owner without any further action being required, but Owner shall not thereby assume any obligation for payments due under such subcontracts and supplier contracts for any Work or Materials provided or performed prior to such assignment.
- G. Owner may withhold from any Progress Payment or Final Payment, whether or not previously approved, or may recover from Contractor, any and all costs, including attorneys' fees and administrative expenses, incurred by Owner as the result of any Event of Default or as a result of actions taken by Owner in response to any Event of Default.
- H. Owner may recover any damages suffered by Owner.

**6.4 Owner's Special Remedy for Delay**

If the Work is not completed by Contractor, in full compliance with, and as required by or pursuant to, this Contract, within the Contract Time as such time may be extended by Change Order, then Owner may invoke its remedies under Section 6.3 of this Contract or may, in the exercise of its sole and absolute discretion, permit Contractor to complete the Work but charge to Contractor, and deduct from any Progress or Final Payments, whether or not previously approved, administrative expenses and costs for each day completion of the Work is delayed beyond the Completion Date, computed on the basis of the "Per Diem Administrative Charge" set forth in Attachment A, as well as any additional damages caused by such delay.

**6.5 Terminations and Suspensions Deemed for Convenience**

Any termination or suspension of Contractor's rights under this Contract for an alleged default that is ultimately held unjustified shall automatically be deemed to be a termination or suspension for the convenience of Owner under Section 1.15 of this Contract. Owner shall be obligated and pay all non-disputed invoices for Work and Materials through date of termination or suspension.

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**ARTICLE VII**

**LEGAL RELATIONSHIPS AND REQUIREMENTS**

**7.1 Binding Effect**

This Contract shall be binding upon Owner and Contractor and upon their respective heirs, executors, administrators, personal representatives, and permitted successors and assigns. Every reference in this Contract to a party shall also be deemed to be a reference to the authorized officers, employees, agents, and representatives of such party.

**7.2 Relationship of the Parties**

Contractor shall act as an independent contractor in providing and performing the Work. Nothing in, nor done pursuant to, this Contract shall be construed (1) to create the relationship of principal and agent, partners, or joint venturers between Owner and Contractor or (2) except as provided in Paragraph 6.3(6) above, to create any relationship between Owner and any subcontractor or supplier of Contractor.

**7.3 No Collusion**

Contractor hereby represents that the only persons, firms, or corporations interested in this Contract as principals are those disclosed to Owner prior to the execution of this Contract, and that this Contract is made without collusion with any other person, firm, or corporation. If at any time it shall be found that Contractor has, in procuring this Contract, colluded with any other person, firm, or corporation, then Contractor shall be liable to Owner for all loss or damage that Owner may suffer thereby, and this Contract shall, at Owner's option, be null and void.

**7.4 Assignment**

Contractor shall not (1) assign this Contract in whole or in part, (2) assign any of Contractor's rights or obligations under this Contract, or (3) assign any payment due or to become due under this Contract without the prior express written approval of Owner, which approval may be withheld in the sole and unfettered discretion of Owner; provided, however, that Owner's prior written approval shall not be required for assignments of accounts as defined in the Illinois Commercial Code, if to do so would violate Section 9-318 of the Illinois Commercial Code, 810 ILCS 5/9-318. Owner may assign this Contract, in whole or in part, or any or all of its rights or obligations under this Contract, without the consent of Contractor.

**7.5 Confidential Information**

All information supplied by Owner to Contractor for or in connection with this Contract or the Work shall be held confidential by Contractor and shall not, without the prior express written consent of Owner, be used for any purpose other than performance of the Work.

**7.6 No Waiver**

No examination, inspection, investigation, test, measurement, review, determination, decision, certificate, or approval by Owner, nor any order by Owner for the payment of money, nor any payment for, or use, occupancy, possession, or acceptance of, the whole or any part of the Work by Owner, nor any extension of time granted by Owner, nor any delay by Owner in exercising any right under this Contract, nor any other act or omission

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of Owner shall constitute or be deemed to be an acceptance of any defective, damaged, flawed, unsuitable, nonconforming, or incomplete Work, equipment, materials, or supplies, nor operate to waive or otherwise diminish the effect of any warranty or representation made by Contractor; or of any requirement or provision of this Contract; or of any remedy, power, or right of Owner.

**7.7 No Third Party Beneficiaries**

No claim as a third party beneficiary under this Contract by any person, firm, or corporation other than Contractor shall be made or be valid against Owner.

**7.8 Notices**

All notices required or permitted to be given under this Contract shall be in writing and shall be deemed received by the addressee thereof when delivered in person on a business day at the address set forth below or on the third business day after being deposited in any main or branch United States post office, for delivery at the address set forth below by properly addressed, postage prepaid, certified or registered mail, return receipt requested.

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

City of Warrenville  
c/o Department of Public Works  
3S258 Manning Avenue  
Warrenville, Illinois 60555  
Attention: Philip Kuchler

with a copy to:

Elrod Friedman LLP  
325 N. LaSalle Street, Suite 450  
Chicago, Illinois 60654  
Attention: Brooke Lenneman

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

Maguire Iron, Inc.  
4408 Lynhurst Road  
Springfield, Illinois 62711  
Attention: Darin Clarke

The foregoing shall not be deemed to preclude the use of other non-oral means of notification or to invalidate any notice properly given by any such other non-oral means.

By notice complying with the requirements of this Section, Owner and Contractor each shall have the right to change the address or addressee or both for all future notices to it, but no notice of a change of address shall be effective until actually received.

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**7.9 Governing Laws**

This Contract and the rights of Owner and Contractor under this Contract shall be interpreted according to the internal laws, but not the conflict of laws rules, of the State of Illinois.

**7.10 Changes in Laws**

Unless otherwise explicitly provided in this Contract, any reference to laws shall include such laws as they may be amended or modified from time to time.

**7.11 Compliance with Laws and Grants**

Contractor shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the Work is provided, performed, and completed in accordance with all required governmental permits, licenses or other approvals and authorizations that may be required in connection with providing, performing, and completing the Work, and with all applicable statutes, ordinances, rules, and regulations, including without limitation the Prevailing Wage Act, 820 ILCS 130/0.01 et seq.; any other prevailing wage laws; the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes requiring preference to laborers of specified classes; the Illinois Steel Products Procurement Act, 30 ILCS 565/1 et seq.; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex, or other prohibited classification, including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. sec. 12101 et seq., the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. and the Discrimination in Public Contracts Act, 775 ILCS 10/1 et seq.; and any statutes regarding safety or the performance of the Work, including the Illinois Structural Work Act, the Illinois Underground Utility Facilities Damage Prevention Act, and the Occupational Safety and Health Act. Contractor shall also comply with all conditions of any federal, state, or local grant received by Owner or Contractor with respect to this Contract or the Work.

Contractor shall be solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise, or be alleged to have arisen, out of or in connection with Contractor's, or its subcontractors' or suppliers', performance of, or failure to perform, the Work or any part thereof.

Every provision of law required by law to be inserted into this Contract shall be deemed to be inserted herein.

**7.12 Compliance with Patents**

- A. Assumption of Costs, Royalties, and Fees. Contractor shall pay or cause to be paid all costs, royalties, and fees arising from the use on, or the incorporation into, the Work, of patented equipment, materials, supplies, tools, appliances, devices, processes, or inventions.
- B. Effect of Contractor Being Enjoined. Should Contractor be enjoined from furnishing or using any equipment, materials, supplies, tools, appliances, devices, processes, or inventions supplied or required to be supplied or used under this Contract, Contractor shall promptly offer substitute equipment, materials, supplies, tools, appliances, devices, processes, or inventions in lieu thereof, of equal efficiency, quality, suitability, and market value, for review by Owner. If Owner should disapprove the offered substitutes and should elect, in lieu of a

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substitution, to have supplied, and to retain and use, any such equipment, materials, supplies, tools, appliances, devices, processes, or inventions as may by this Contract be required to be supplied, Contractor shall pay such royalties and secure such valid licenses as may be requisite and necessary for Owner to use such equipment, materials, supplies, tools, appliances, devices, processes, or inventions without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof. Should Contractor neglect or refuse to make any approved substitution promptly, or to pay such royalties and secure such licenses as may be necessary, then Owner shall have the right to make such substitution, or Owner may pay such royalties and secure such licenses and charge the cost thereof against any money due Contractor from Owner or recover the amount thereof from Contractor and its surety or sureties notwithstanding that Final Payment may have been made.

**7.13 Time**

The Contract Time is of the essence of this Contract. Except where otherwise stated, references in this Contract to days shall be construed to refer to calendar days.

**7.14 Severability**

The provisions of this Contract shall be interpreted when possible to sustain their legality and enforceability as a whole. In the event any provision of this Contract shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, in whole or in part, neither the validity of the remaining part of such provision, nor the validity of any other provisions of this Contract shall be in any way affected thereby.

**7.15 Entire Agreement**

This Contract sets forth the entire agreement of Owner and Contractor with respect to the accomplishment of the Work and the payment of the Contract Price therefor, and there are no other understandings or agreements, oral or written, between Owner and Contractor with respect to the Work and the compensation therefor.

Nothing in this Contract shall be construed to waive or limit any aspect of Owner's lawful authority to regulate the activities of Contractor, its subcontractors' or any other person or to regulate the Work, the Work Site or any other matter falling within its lawful regulatory jurisdiction and powers. No review, inspection, test, audit, measurement, order, determination, decision, disapproval, approval, payment for or use or acceptance of the Work, or any other act or omission of Owner shall imply, create any interest in, be deemed to be the issuance of or require Owner to issue any license or permit to Contractor or any subcontractor.

**7.16 Amendments**

No modification, addition, deletion, revision, alteration or other change to this Contract shall be effective unless and until such change is reduced to writing and executed and delivered by Owner and Contractor.

[Signature Page Follows]



**CONTRACT BETWEEN THE CITY OF WARRENVILLE AND MAGUIRE IRON, INC.  
FOR WEST WATER TOWER PAINTING AND INSPECTION**

IN WITNESS WHEREOF, Owner and Contractor have caused this Contract to be executed in five original counterparts as of the day and year first written above.

(SEAL)

Attest/Witness:

**CITY OF WARRENVILLE**

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

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

Julie Clark

John Coakley

Title:

City Clerk

Title:

City Administrator

Attest/Witness:

**MAGUIRE IRON, INC.**

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF ILLINOIS \_\_\_\_\_)

) SS

COUNTY OF \_\_\_\_\_)

**CONTRACTOR'S CERTIFICATION**

\_\_\_\_\_ (Contractor's Executing Officer), being first duly sworn on oath, deposes and states that all statements herein made are made on behalf of Contractor, that this deponent is authorized to make them, and that the statements contained herein are true and correct.

Contractor deposes, states, and certifies that Contractor is not barred from contracting with a unit of state or local government as a result of (i) a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless Contractor is contesting, in accordance with the procedures established by the appropriate Revenue Act, its liability for the tax or the amount of tax, as set forth in 65 ILCS 5/11-42.1-1 et seq.; or (ii) 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.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Attest/Witness:

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

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

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

Title: \_\_\_\_\_

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

Subscribed and Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021

My Commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

SEAL

**CONTRACT BETWEEN THE CITY OF WARRENVILLE AND MAGUIRE IRON, INC.  
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**ATTACHMENT A – SUPPLEMENTAL SCHEDULE OF CONTRACT TERMS**

- I. Work: Contractor shall complete the following for the Owner’s West Water Tower all as more specifically described in Attachment B to the Contract: wet interior painting, exterior painting, dry interior painting, chemical cleaning, washout inspection, and visual inspection.
- II. Work Site: The Owner’s West Water Tower located at 2S649 Country Ridge Drive, Warrenville, Illinois.
- III. Permits, Licenses, Approvals, and Authorizations: Contractor shall obtain all required governmental permits, licenses, approvals, and authorizations. The Owner will submit initial application materials for said permits. However, the Contractor will be responsible for meeting all requirements of any such permits, including the posting any required bonds and/or sureties.
- IV. Insurance Coverages:
- A. Worker's Compensation and Employer's Liability  
with limits not less than:
- (1) Worker's Compensation: Statutory;
- (2) Employer's Liability:  
\$1,000,000 injury - per occurrence  
\$500,000 disease - per employee  
\$500,000 disease - policy limit  
Such insurance shall evidence that coverage applies in the State of Illinois.
- B. Comprehensive Motor Vehicle Liability, with a combined single limit of liability for bodily injury and property damage of not less \$1,000,000 for vehicles owned, non-owned, or rented. All employees shall be included as insureds.
- C. Commercial General Liability with coverage written on an “occurrence” basis and with limits no less than \$2,000,000 Bodily Injury and Property Damage Combined Single Limit.
- Coverage is to be written on an “occurrence basis.:
- Coverages shall include:
- Broad Form Property Damage Endorsement
  - Products/Completed Operations (to be maintained for two years following final payment).
  - Independent Contractors
  - Personal Injury (with Employment Exclusion deleted)
  - "X," "C," and "U" exclusions shall be limited
  - Contractual Liability
  - Railroad exclusions shall be deleted if Work Site is within 50 feet of any railroad track.

All employees shall be included as insureds.

**CONTRACT BETWEEN THE CITY OF WARRENVILLE AND MAGUIRE IRON, INC.  
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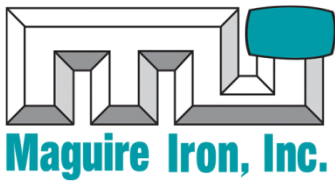
Contractual Liability shall specifically include the indemnification set forth in the Contract

- D. Umbrella Policy. The required coverages may be in any combination of primary, excess and umbrella policies. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss.
- E.. Owner as Additional Insured. Owner shall be names as an Additional Insured on all policies except for Worker's Compensation, and Comprehensive Motor Vehicle Liability.

Each such additional Insured endorsement shall identify Owner as follows: City of Warrenville, including its elected and appointed officials, its officers, employees, agents, attorneys, consultants, and representatives. Additional insured coverage shall be provided on endorsements at least as broad as ISO form CG2010 or CG2026 (pre 2004 editions).

**CONTRACT BETWEEN THE CITY OF WARRENVILLE AND MAGUIRE IRON, INC.  
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**ATTACHMENT B – PROPOSAL**



## PROPOSAL FOR SERVICES

### Sphere - 500MG

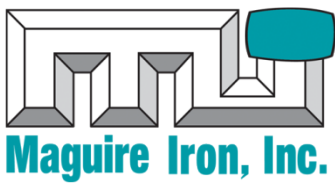
Contractor agrees to make the following repairs and improvements on the Owner's water supply tank, and to furnish the necessary equipment, labor, material, as well as Workmen's Compensation Insurance and Contractor's Liability Insurance, and to do the work hereinafter stated in a good and workmanlike manner.

#### Exterior Renovation

- Contractor will abrasive blast clean the complete exterior (100%) to an SSPC - SP No. 6 "Commercial Blast". After abrasive blast cleaning, all surfaces shall be cleaned of any dust residue or foreign debris.
- Contractor will apply one (1) prime coat of zinc to the complete exterior (100%) shall be applied to manufacturer's recommended film thickness (2.5 - 3.5 mils DFT).
- Contractor will apply one (1) intermediate coat of epoxy to the complete exterior (100%) shall be applied to the manufacturer's recommendations (3.0 - 5.0 mils DFT).
- Contractor will apply one (1) finish coat of urethane to the complete exterior (100%) shall be applied to the manufacturer's recommendations (2.0 - 5.0 mils DFT).

#### Interior Wet Renovation

- Contractor will abrasive blast clean the complete interior (100%) to an SSPC - SP No. 10 "Near White Metal". After abrasive blast cleaning, all surfaces shall be cleaned of any dust residue or foreign debris.
- Contractor will apply one (1) prime coat of NSF-61 approved zinc rich primer to the complete interior (100%) shall be applied to manufacturer's recommended film thickness (2.5 - 3.5 mils DFT).
- Contractor will apply one (1) additional coat of NSF-61 approved epoxy to be applied by brush and roller to all edges, weld seams and sharp angles.
- Contractor will apply one (1) finish coat of NSF-61 approved epoxy to the complete interior (100%) shall be applied to the manufacturer's recommendations (8.0 - 14.0 mils DFT).



# WATER TOWER EXPERTS

✉ info@maguireiron.com

📍 1610 N. Minnesota Ave  
Sioux Falls, SD 57104

☎ (605) 334-9749

## Interior Dry Renovation

- Contractor will abrasive blast clean the complete interior (100%) to an SSPC - SP No. 6 "Commercial Blast". After abrasive blast cleaning, all surfaces shall be cleaned of any dust residue or foreign debris.
- Contractor will apply one (1) prime coat of zinc to the complete interior (100%) shall be applied to manufacturer's recommended film thickness (2.5 - 3.5 mils DFT).
- Contractor will apply one (1) finish coat of epoxy to the complete interior (100%) shall be applied to the manufacturer's recommendations (4.0 - 6.0 mils DFT).

## Safety Climb

- Contractor will provide and install complete galvanized safety climb system on all ladders meeting current ANSI and OSHA standards.

## Ladders

- Contractor agrees to install new OSHA compliant ladder on the interior wet area of the water tank from the roof to the bottom of the bowl.

## Overflow Pipe

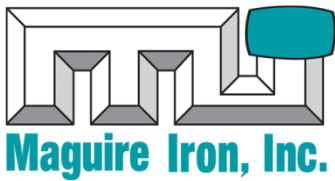
- Contractor agrees to install 8 inch schedule 40 steel overflow pipe.
- New Overflow pipe shall be extended from the existing overflow pipe to a level of 12 to 24 inches above grade.
- The new overflow pipe will be angled away from the foundation and equipped with an flapper/screen combination.
- All piping will be braced and welded to the exterior of the tank.
- Owner is responsible for splash pad.

## Flapper Gate

- Contractor will install one (1) 10 inch flapper / Screen combination to the overflow.

## Visual Inspection

- Contractor will do a complete inspection along with photos of the complete interior and exterior of the water tower.
- Contractor will work up a report of the findings during the Inspection of the city's water tower and send a detailed report that will include current condition, and future recommendations as applicable. Inspection to cover, Coatings, Sanitary, Security, Safety and Structural conditions.



# WATER TOWER EXPERTS

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## Cleanout

- Contractor will furnish tools, labor, and materials as well as necessary insurance to perform the work in a good and workmanlike manner.
- Contractor will furnish a pressure relief valve/blow-off valve for use by the city if needed at no charge.
- Contractor will wash out heavy sediment once the tank is emptied by the owner.
- Contractor will power wash the bottom 6' of the interior wet area of the tank after heavy sediment has been removed from the tank. Some staining may remain.
- Contract is based on up to one half-day of crew onsite. Projects over one-half day will be charged at \$575/hour. Additional days required will be charged at \$2500/day.
- Should any emergency repair or renovation be necessary, cost and details to be submitted. No extra work will be done without the owner's authorization.
- Contractor will do a complete inspection along with photos of the complete interior and exterior of the water tank.
- Contractor will work up a report of the findings during the inspection of the city's water tank and send a detailed report that will include current condition and future recommendations as applicable. Inspection to cover coatings, sanitary, security, safety and structural conditions.

## Chemical Clean

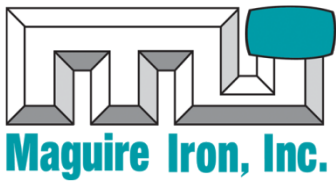
- Contractor will furnish tools, labor, and materials as well as necessary insurance to perform the work in a good and workman like manner.
- Contractor will furnish a pressure relief valve / blow off valve for use by the city if needed at no charge.
- Contractor will clean out all sediment once the tank is emptied by the city.
- Contractor will power wash the Interior wet area of the tank after all heavy sediment has been removed from the tank
- Contractor will then apply NSF approved chemical cleaning solution and will let sit on the surface
- Contractor will power wash the Interior wet area of the tank to remove the chemical solution
- Contractor will do a complete inspection of the wet interior area and take photos for the use during the inspection report. Photos will be supplied
- Should any emergency repair or renovation be necessary, cost and details to be submitted. No extra work will be done without owners authorization

## Interior Wet Disinfection Method

- Contractor will disinfect the interior of the tank as per AWWA Standard C652-02, Chlorine Method #3 prior to the owner filling the tank.
- Water samples and testing is the responsibility of the owner.

Owner will inspect the work as it progresses and upon completion and acceptance by Owner of the above work, the sum of **See Below** plus applicable sales, excise, and/or use tax shall become due and payable in full.





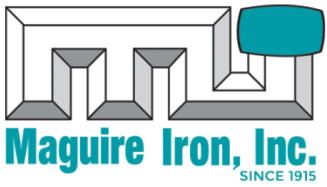
# WATER TOWER EXPERTS

✉ [info@maguireiron.com](mailto:info@maguireiron.com)

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**HAZARDOUS MATERIAL DISCLAIMER:** *In the event that hazardous materials are on the water tank and this information is not addressed in the specification or made known to Maguire Iron, Inc. prior to the price or bid being supplied by Maguire Iron, Inc., any additional means of hazardous material abatement or disposal costs will be born upon the Owner.*



**Schedule A: Cost Schedule**

<b>WARRENVILLE, IL - CITY OF Sphere 500 MG</b>		
<b>Year</b>	<b>Service</b>	<b>Annual Spend</b>
Year: 1	Paint - Interior Wet Steelwork Repairs Visual Inspection	\$180,500.00
Year: 2	Visual Inspection	\$4,325.00
Year: 3	Paint - Exterior and Interior Dry	\$503,875.00
Year: 4	Visual Inspection	\$4,325.00
Year: 5	Clean Out / ROV	\$4,325.00
Year: 6	Visual Inspection	\$4,325.00
Year: 7	Clean Out / ROV	\$4,325.00
Year: 8	Visual Inspection	\$4,325.00
Year: 9	Chemical Clean	\$4,325.00
Year: 10	Visual Inspection	\$4,325.00

**CONTRACT BETWEEN THE CITY OF WARRENVILLE AND MAGUIRE IRON, INC.  
FOR WEST WATER TOWER PAINTING AND INSPECTION**

**CHANGE ORDER**

CITY OF WARRENVILLE

SHEET \_\_\_\_\_ OF \_\_\_\_\_

CHANGE ORDER NO. \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LOCATION: \_\_\_\_\_

CONTRACT NO. \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_  
\_\_\_\_\_

1. A. DESCRIPTION OF CHANGES INVOLVED:

B. REASON FOR CHANGE:

C. REVISION IN PRICE:

**CONTRACT BETWEEN THE CITY OF WARRENVILLE AND MAGUIRE IRON, INC.  
FOR WEST WATER TOWER PAINTING AND INSPECTION**

**II. ADJUSTMENTS IN AMOUNT OF CONTRACT:**

- |    |   |          |
|----|---|----------|
| 1. | Amount of Original Contract Price   | \$ _____ |
| 2. | Net (addition) (reduction) due to all previous<br>Change Orders Nos. _____ to _____ | \$ _____ |
| 3. | Amount of Contract Price, not including this<br>Change Order                        | \$ _____ |
| 4. | (Addition) (Reduction) to Contract Price due<br>to this Change Order                | \$ _____ |
| 5. | Amount of Contract Price including this<br>Change Order                             | \$ _____ |

**III. FINDINGS.**

Pursuant to the requirements of Section 33E-9 of the Illinois Criminal Code of 1961, the undersigned do hereby find that the Change Order: [check all that are appropriate]

\_\_\_ is necessary due to circumstances that were not foreseeable at the time the Owner entered into the Contract;

\_\_\_ is germane to the Contract in its original form as signed; and/or

\_\_\_ is in the best interest of the Owner and authorized by law.

RECOMMENDED FOR ACCEPTANCE:

MAGUIRE IRON, INC.

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

CITY OF WARRENVILLE

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

**CONTRACT BETWEEN THE CITY OF WARRENVILLE AND MAGUIRE IRON, INC.  
FOR WEST WATER TOWER PAINTING AND INSPECTION**

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS: Maguire Iron, Inc., 1610 N. Minnesota Avenue, Sioux Falls, South Dakota 57104, as Principal, hereinafter called Contractor, and

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\_\_\_\_\_, organized and existing under the laws of the State of \_\_\_\_\_, hereinafter called Surety, are held and firmly bound unto City of Warrenville, 28W701 Stafford Place, Warrenville, Illinois, as Obligee, hereinafter called Owner, for the use and benefit of itself and of claimants as hereinafter defined, in the full and just sum of **\$CONTRACT PRICE**, to be paid to it or the said claimants or its or their assigns, to which payment well and truly to be made Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents, said amount to include attorney's fees, court costs and administrative and other expenses necessarily paid or incurred in successfully enforcing performance of the obligation of Surety under this bond.

WHEREAS, Contractor has entered into a written agreement dated **CONTRACT DATE** with Owner entitled "Contract between the City of Warrenville and Maguire Iron, Inc. for West Water Tower Painting and Inspection" (the "Contract"), the terms and conditions of which are by this reference incorporated herein as though fully set forth herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT if Contractor shall well, truly and promptly perform all the undertakings, covenants, terms, conditions and agreements of said Contractor under the contract, including, but not limited to, contractor's obligations under the Contract: (1) to provide, perform and complete at the Work Site and in the manner specified in the Contract all necessary Work, labor, services, transportation, equipment, materials, apparatus, machinery, tools, fuels, gas, electric, water, waste disposal, information, data and other means and items necessary for **PROJECT DESCRIPTION**; (2) to procure and furnish all permits, licenses and other governmental approvals and authorizations necessary in connection therewith except as otherwise expressly provided in the Attachment A of the Contract; (3) to procure and furnish all bonds, certificates and policies of insurance specified in the Contract; (4) to pay all applicable federal, state and local taxes; (5) to do all other things required of Contractor by the Contract; and (6) to provide, perform and complete all of the foregoing in a proper and workmanlike manner and in full compliance with, and as required by and pursuant to, the Contract; all of which is herein referred to as the "Work," whether or not any of said Work enter into and become component parts of the improvement contemplated, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no changes, modifications, alterations, omissions, deletions, additions, extensions of time or forbearances on the part of Owner or Contractor to the other in or to the terms of said Contract; in or to the schedules, plans, drawings or specifications; in or to the method or manner of performance of the Work; in or to Owner-furnished facilities, equipment, material, service or site; or in or to the mode or manner of payment therefor shall in any way release Contractor and Surety or either or any of them, or any of their heirs, executors, administrators, successors or assigns, or affect the obligations of said Surety on this bond, all notice of any and all of the foregoing changes, modifications, alterations, omissions, deletions, additions, extensions of time or forbearances and notice of any and all defaults by Contractor or of Owner's termination of Contractor being hereby waived by Surety.

**CONTRACT BETWEEN THE CITY OF WARRENVILLE AND MAGUIRE IRON, INC.  
FOR WEST WATER TOWER PAINTING AND INSPECTION**

Notwithstanding anything to the contrary in the foregoing paragraph, in no event shall the obligations of Surety under this bond in the event of Contractor's default be greater than the obligations of Contractor under the Contract in the absence of such Contractor default.

In the event of a default or defaults by Contractor, Owner shall have the right to take over and complete the Contract upon 30 calendar days' written notice to Surety, in which event Surety shall pay Owner all costs incurred by Owner in taking over and completing the Contract

At its option, Owner may instead request that Surety take over and complete the Contract, in which event Surety shall take reasonable steps to proceed promptly with completion no later than 30 calendar days from the date on which Owner notifies Surety that Owner wants Surety to take over and complete the Contract.

Owner shall have no obligation to actually incur any expense or correct any deficient performance of Contractor in order to be entitled to receive the proceeds of this bond.

No right of action shall accrue on this bond to or for the use of any person or corporation other than Owner or the heirs, executors, administrators or successors of Owner.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_\_.

Attest/Witness: PRINCIPAL:      COMPANY NAME

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

Title: \_\_\_\_\_ Title: \_\_\_\_\_

Attest/Witness: SURETY: SURETY NAME

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

Title: \_\_\_\_\_ Title: \_\_\_\_\_

**CONTRACT BETWEEN THE CITY OF WARRENVILLE AND MAGUIRE IRON, INC.  
FOR WEST WATER TOWER PAINTING AND INSPECTION**

**LABOR AND MATERIAL PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS: Maguire Iron, Inc., 1610 N. Minnesota Avenue, Sioux Falls, South Dakota 57104, as Principal, hereinafter called Contractor, and

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\_\_\_\_\_, organized and existing under the laws of the State of \_\_\_\_\_, hereinafter called Surety, are held and firmly bound unto City of Warrenville, 28W701 Stafford Place, Warrenville, Illinois, as Obligee, hereinafter called Owner, for the use and benefit of itself and of claimants as hereinafter defined, in the full and just sum of **\$CONTRACT PRICE**, to be paid to it or the said claimants or its or their assigns, to which payment well and truly to be made Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents, said amount to include attorney's fees, court costs and administrative and other expenses necessarily paid or incurred in successfully enforcing performance of the obligation of Surety under this bond.

WHEREAS, Contractor has entered into a written agreement dated **CONTRACT DATE**, with Owner entitled "Contract Between the City of Warrenville and Maguire Iron, Inc. for West Water Tower Painting and Inspection" (the "Contract"), the terms and conditions of which are by this reference incorporated herein as though fully set forth herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT if Contractor shall promptly pay or cause to be paid all sums of money that may be due to any claimant with respect to Contractor's obligations under the Contract: (1) to provide, perform and complete at the Work Site and in the manner specified in the Contract all necessary Work, labor, services, transportation, equipment, materials, apparatus, machinery, tools, fuels, gas, electric, water, waste disposal, information, data and other means and items necessary for the **PROJECT DESCRIPTION** (2) to procure and furnish all permits, licenses and other governmental approvals and authorizations necessary in connection therewith except as otherwise expressly provided in Attachment A to the Contract; (3) to procure and furnish all Bonds and all certificates and policies of insurance specified in the Contract; (4) to pay all applicable federal, state and local taxes; (5) to do all other things required of the Contractor by the Contract; and (6) to provide, perform and complete all of the foregoing in a proper and workmanlike manner and in full compliance with, and as required by or pursuant to, the Contract.; all of which is herein referred to as the "Work," whether or not any of said Work enter into and become component parts of the improvement contemplated, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

For purpose of this bond, a claimant is defined as one having a direct contract with Contractor or with a subcontractor of Contractor to provide, perform or complete any part of the Work.

Contractor and Surety hereby jointly and severally agree that every claimant who has not had all just claims for the furnishing of any part of the Work paid in full, including, without limitation, all claims for amounts due for materials, lubricants, oil, gasoline, rentals of or service or repairs on machinery, equipment, and tools consumed or used in connection with the furnishing of any part of the Work, may sue on this bond for the use of such claimant, may prosecute the suit to final judgment for such sum or sums as may be justly due such claimant, and may have execution

**CONTRACT BETWEEN THE CITY OF WARRENVILLE AND MAGUIRE IRON, INC.  
FOR WEST WATER TOWER PAINTING AND INSPECTION**

therein; provided, however, that Owner shall not be liable for the payment of any costs or expenses of any such suit. The provisions of 30 ILCS 550/1 and 2 [formerly Ill. Rev. Stat. ch. 29, 15 and 16] shall be deemed inserted herein, including the time limits within which notices of claim must be filed and actions brought under this bond.

Contractor and Surety hereby jointly agree that Owner may sue on this bond if Owner is held liable to, or voluntarily agrees to pay, any claimant directly, but nothing in this bond shall create any duty on the part of Owner to pay any claimant.

Surety, for value received, hereby stipulates and agrees that no changes, modifications, alterations, omissions, deletions, additions, extensions of time or forbearances on the part of Owner or Contractor to the other in or to the terms of said Contract; in or to the schedules, plans, drawings or specifications; in or to the method or manner of performance of the Work; in or to Owner-furnished facilities, equipment, material, service or site; or in or to the mode or manner of payment therefor shall in any way release Contractor and Surety or either or any of them, or any of their heirs, executors, administrators, successors or assigns, or affect the obligations of said Surety on this bond, all notice of any and all of the foregoing changes, modifications, alterations, omissions, deletions, additions, extensions of time or forbearances and notice of any and all defaults by Contractor or of Owner's termination of Contractor being hereby waived by Surety.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_\_.

Attest/Witness:

PRINCIPAL:

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Attest/Witness:

SURETY:

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_