

**CONSTRUCTION CONTRACT**

**THIS AGREEMENT** (the "Agreement") is made and entered into this 2<sup>nd</sup> day of مايو, 2015, by and between Kuechle Underground Inc., a Minnesota Corporation (the "Contractor") and the City of Ramsey, a Minnesota Municipal Corporation, 7550 Sunwood Drive NW, Ramsey, Minnesota 55303 (the "Owner").

**WITNESSETH**

**WHEREAS**, the City of Ramsey proposes to reconstruct 0.39 miles of municipal streets including 0.26 miles of Garnet Street north of 167<sup>th</sup> Avenue, and 0.13 miles of 168<sup>th</sup> Avenue west of Garnet Street, with City Improvement Project No. 13-10 (the "Project"); and

**WHEREAS**, the plans and specifications necessary for construction of the Project are defined in the Contract Documents and Technical Specifications dated May 5, 2015 (the "Contract Documents"); and

**WHEREAS**, the work required to complete the Project is defined in the Contract Documents (the "Work"); and

**WHEREAS**, the Contractor has made a written proposal and bid to the Owner to furnish the material, equipment, labor and everything necessary for the completion of the Work for the price and within the time schedule required by the Contract Documents; and

**WHEREAS**, the Contractor, as the lowest responsible bidder, has been awarded the contract for the Work by the City; and

**WHEREAS**, Contractor, in consideration of the payments hereinafter provided, for itself and its successors, as the case may be, hereby covenants and agrees to and with the Owner to perform the Work and furnish the material, under the supervision of the City Engineer; and

**WHEREAS**, Contractor acknowledges:

1. That it understands the Contract Documents;
2. That it has the equipment, technical ability, personnel and facilities to construct the Project in accordance with the Contract Documents and that it is licensed by all applicable agencies and governmental entities;
3. That the Contract Documents are, in its opinion, appropriate and adequate for the complete construction of the Project in a sound and suitable manner.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, it is agreed and understood as follows:

1. Work Performance. Contractor shall perform the Work as described in the Contract Documents which are incorporated herein by reference. Contractor agrees to comply

with all federal, state, and local laws and ordinances applicable to the services to be performed under this Agreement, including all safety standards. The Contractor shall be solely and completely responsible for conditions of the job site, including the safety of all persons and property during the performance of the services.

2. Commencement of Work. The Contractor shall commence work on the Project within ten (10) days of the date of the Notice to Proceed given by the City Engineer and shall have the Work substantially complete within the period specified in the Contract Documents. Failure to complete the work within this period will be cause for the Contractor to forfeit the amount as required by the Special Provisions terms of the Contract Documents.
3. Contractor Compensation. The Owner shall compensate Contractor for the Work in the amount of \$823,126.51 based upon the Contractor's accepted bid subject to any additions or deductions provided therein, payment shall be made pursuant to the payment provisions outlined in the Contract Documents.
4. Independent Contractor Relationship. It is expressly understood that the Contractor is an "independent contractor" and not an employee of the City. The Contractor shall have control over the manner in which the services are performed under this Agreement. The Contractor shall supply, at its own expense, all materials, supplies, equipment and tools required to accomplish the work contemplated by this Agreement. The Contractor shall not be entitled to any benefits from the City, including, without limitation, insurance benefits, sick and vacation leave, workers' compensation benefits, unemployment compensation, disability, severance pay, or retirement benefits.
5. Insurance Requirements.
  - A. Liability. The Contractor agrees to maintain commercial general liability insurance in a minimum amount of \$1,500,000 per occurrence; \$2,000,000 annual aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal injury, advertising injury, and contractually assumed liability. The City shall be named as an additional insured.
  - B. Automobile Liability. If the Contractor operates a motor vehicle in performing the services under this Agreement, the Contractor shall maintain commercial automobile liability insurance, including owned, hired, and non-owned automobiles, with a minimum liability limit of \$1,000,000, combined single limit.
  - C. Workers' Compensation. The Contractor agrees to comply with all applicable workers' compensation laws in Minnesota.
  - D. Certificate of Insurance. The Contractor shall, prior to commencing services, deliver to the City a Certificate of Insurance as evidence that the above coverage's are in full force and effect.
6. Indemnification. To the fullest extent permitted by law, the Contractor agrees to defend, indemnify and hold harmless the City, and its employees, officials, volunteers and agents from and against all claims, actions, damages, losses and expenses, including attorney fees, arising out of the Contractor's negligence or the Contractor's performance or failure to perform its obligations under this Agreement. The Contractor's indemnification obligation shall apply to the Contractor's subcontractor(s), or anyone directly or indirectly employed or hired by the Contractor, or anyone for whose acts the Contractor

may be liable. The Contractor agrees this indemnity obligation shall survive the completion or termination of this Agreement.

7. Dispute Resolution. The Parties shall cooperate and use their best efforts to ensure that the various provisions of the Agreement are fulfilled. The Parties agree to act in good faith to undertake resolution of disputes, in an equitable and timely manner and in accordance with the provisions of this Agreement. If disputes cannot be resolved informally by the Parties, the following procedures shall be used:
- A. Whenever there is a failure between the Parties to resolve a dispute on their own, the Parties shall first attempt to mediate the dispute. The parties shall agree upon a mediator, or if they cannot agree, shall obtain a list of court-approved mediators from the Anoka County District Court Administrator and select a mediator by alternately striking names until one remains. The City shall strike the first name followed by the Contractor, and shall continue in that order until one name remains.
  - B. Litigation. If the dispute is not resolved within thirty (30) days after the end of mediation proceedings, the Parties may litigate the matter.
8. General Provisions.
- A. Entire Agreement. This Agreement supersedes any prior or contemporaneous representations or agreements, whether written or oral, between the Parties and contains the entire agreement.
  - B. Assignment. The Contractor may not assign this Agreement to any other person unless written consent is obtained from the City.
  - C. Amendments. Any modification or amendment to this Agreement shall require a written agreement signed by both Parties.
  - D. Nondiscrimination. In the hiring of employees to perform work under this Agreement, the Contractor shall not discriminate against any person by reason of any characteristic protected by state or federal law.
  - E. Force Majeure. Except for payment of sums due, neither party shall be liable to the other or deemed in default under this Agreement, if and to the extent that such party's performance is prevented by reason of Force Majeure, as determined by the City.
  - F. Notices. All notices and other communications under this Agreement must be in writing and must be given by registered or certified mail, postage prepaid, or delivered by hand at the addresses set forth below:

Notice to City: City of Ramsey  
Attention: City Engineer  
7550 Sunwood Drive NW  
Ramsey, MN 55303

Notice to Contractor: KUEHNLE UNDERGROUND, INC.  
10998 STATE HWY 55, PO BOX 509  
KIMBALL, MN 55353

- G. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota. All proceedings related to this Agreement shall be venued in the State of Minnesota.
- H. Waivers. The waiver by either party of any breach or failure to comply with any provision of this Agreement by the other party shall not be construed as, or constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this Agreement.
- I. Ownership of Documents. All reports, plans, specifications, data, maps, and other documents produced by the Contractor in the performance of services under this Agreement shall be the property of the City.
- J. Government Data. The Contractor agrees to maintain all data received from the City in the same manner as the City as required under the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.
- K. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, and which taken together shall be deemed to be one and the same document.
- L. Savings Clause. If any court finds any portion of this Agreement to be contrary to law, invalid, or unenforceable, the remainder of the Agreement will remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have caused this instrument to be executed in triplicate counterparts the day and year first above written.

**CONTRACTOR:**

**OWNER:**

**CITY OF RAMSEY**

Kuechle Underground, Inc.

By: [Signature]  
 Its: President

By: [Signature]  
 Sarah Strommen, Its Mayor

**ATTEST:**

By: [Signature]  
 Kurt Ulrich, Its City Administrator