

TO: The City Council

FROM: Rahat Bari, City Engineer

DATE: August 6, 2021

RE: Resolution 21-082-R Approving a contract with Quad Plus for Paramount Substation Transformer Busing Replacement for an amount not to exceed \$38,000 which includes 10 percent contingency amount

Background:

Through Resolution 21-62-R, the City Council authorized to perform maintenance and testing for the existing Paramount substation transformer.

Discussion

Typically every 5 years we perform maintenance and testing for every transformer that is in service. Maintenance and testing of transformer includes checking all parts, rinse, and clean switch compartment, replace door gasket, oil processing and perform insulation testing, winding resistance testing, and other testing to make sure transformer is in good condition. During the testing of Paramount transformer, the consultant found that 3 Bushings are in poor condition and need replacement. Fortunately, the City has spare bushings in its warehouse from the original transformer installation. We tested those spare bushings which tested good for put in service.

The City solicited the bushing replacement cost from Quad Plus which was testing the transformer. According to city staff, the proposed cost is acceptable. We have a working relationship with Quad Plus as they have performed a few projects for the City lately.

This project is budgeted under 2021 Budget-Account number 21-64-6322.

Staff recommendations:

Staff is recommending Resolution 21-82-R Approving a contract with Quad Plus for Paramount Substation Transformer Busing Replacement for an amount not to exceed \$38,000 which includes 10 percent contingency amount

Attachments:

1. Resolution 21-82-R
2. Contract

**CITY OF BATAVIA, ILLINOIS
RESOLUTION 21-82-R**

**APPROVING A CONTRACT WITH QUAD PLUS FOR PARAMOUNT SUBSTATION PARAMOUNT
SUBSTATION TRANSFORMER BUSING REPLACEMENT FOR AN AMOUNT NOT TO EXCEED \$38,000
WHICH INCLUDES 10 PERCENT CONTINGENCY AMOUNT**

WHEREAS, the City of Batavia owns and operates an electric utility whereby it purchases wholesale power and resells same to its citizens; and

WHEREAS, the City of Batavia owns and operates an electric transmission and distribution network; and

WHEREAS, the City of Batavia has identified the need to perform bushing replacement for transformer at the Paramount substation; and

WHEREAS, Quad Plus has the expertise to perform the work specified; and

WHEREAS, Quad Plus has submitted a cost proposal of \$38,000 to perform the work;
and

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Batavia, Kane and DuPage Counties, Illinois, as follows:

SECTION 1: That the Mayor and City Clerk are hereby authorized to execute a contract, attached hereto, with Quad Plus for an amount not to exceed \$38,000 which includes 10 percent contingency amount.

CITY OF BATAVIA, ILLINOIS RESOLUTION 21-82-R

PRESENTED to the City Council of the City of Batavia, Illinois, this 16th day of August 2021.

PASSED by the City Council of the City of Batavia, Illinois, this 16th day of **August** 2021.

APPROVED by me as Mayor of said City of Batavia, Illinois, this 16th day of **August** 2021.

Jeffery D. Schielke, Mayor

Ward	Aldersperson	Ayes	Nays	Absent	Abstain	Aldersperson	Ayes	Nays	Absent	Abstain
1	Baerren					Solfa				
2	Leman					Wolff				
3	Ajazi					Chanzit				
4	Malay					Knopp				
5	Uher					Beck				
6	Cerone					Russotto				
7	Vogelsinger					Miller				
Mayor Schielke										
VOTE:		Ayes	Nays	Absent	Abstentions					
Total holding office: Mayor and 14 aldermen										

ATTEST:

Kate Garrett, City Clerk

AGREEMENT

THIS AGREEMENT, made this 16th day of June, 2021 by and between the CITY OF BATAVIA, (hereinafter referred to as the “City”), and QUAD PLUS, (hereinafter referred to as the “Company”), with regard to certain services in connection with the Paramount Substation Transformer Maintenance & Testing Project (hereinafter referred to as the “Project”).

NOW THEREFORE, the City and the Company, in consideration of the mutual covenants hereinafter set forth, agree to as follows:

1. The Company agrees to perform services in connection with the Project as hereinafter stated. The Company shall at all times observe and comply with all laws, ordinances, and regulations of the federal, state, and local governments, which may in any manner affect the preparation of proposals or the performance of the Agreement.
2. The Company has made a proposal to the City, dated July 26, 2021, attached hereto Exhibit 1 and expressly made a part hereof.
3. This contract will constitute the entire agreement and understanding by and between the parties hereto, and it shall not be considered modified, altered, changed, or amended in any respect unless done so in writing with signatures by both the City and the Company.
4. The terms and conditions of this agreement will be the sole terms and conditions followed for this Agreement, unless otherwise approved in writing by the City Attorney and attached as an exhibit to this agreement. Any and all terms and conditions contained in Company’s Proposal will be superseded by the terms and conditions of this agreement.
5. The Company shall obtain, at its own expense, all permits and licenses which may be required to complete the Agreement, and/or required by federal, state, and local regulations and laws.
6. The City does not discriminate on the basis of handicapped status in the admission of, access to, or treatment of employment in its programs and activities.
7. Illinois Prevailing Wages: To the extent the proposed contract calls for the construction of a “public work,” within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/01 *et seq.* (“the Act”), Contractor shall not pay less than the prevailing rates of wages to all laborers, workmen, and mechanics performing work under this contract, and shall comply with the requirements of the Illinois Wages of Employees on Public Works Act 820 ILCS 130/1-12, to the extent they are applicable, including, without limitation, the submission of certified monthly payroll reports as required by 820 ILCS 130/5. The contractor is advised that failure to timely submit such reports shall be cause for the withholding of payments otherwise due the contractor until compliance with the reporting requirements is achieved. The current Illinois Department of Labor Prevailing Wage Rates for the County of Kane are available at their website <http://www.state.il.us/agency/idol/>. Prevailing wage rates are subject to revision monthly. Copies of the current prevailing wage rates are also available at the Kane County Purchasing Department, 719 Batavia Avenue, Geneva, Illinois.

Any bond furnished under this contract shall include such provisions as will guarantee the faithful performance of such prevailing wage clause as provided by the contract.

The Contractor and each of his Sub-Contractors shall pay each of his employees engaged in work on the project under this Contract in full (less deductions made mandatory by law) not less often than once each week.

Re: Paramount Substation Transformer Bushing Replacement Project

If a contractor or subcontractor deems the work is not subject to the Act, the contractor or subcontractor shall then submit to the City, a letter indicating receipt of this notice and their determination that the Act does not apply. If the contractor or subcontractor believes the work is not subject to the Prevailing Wage Act, and it is later determined by the Illinois Department of Labor or a court of competent jurisdiction that prevailing wages should have been paid, the contractor shall indemnify and hold the City harmless therein for all costs and penalties incurred by the City related to the violation, including reasonable attorneys fees incurred by the City to defend such an action.

8. Any payment made to the Company shall be strictly on the basis of quantum meruit. The Company shall submit to the City a detailed breakdown of hourly rates billed to date with each pay request. The detailed breakdown shall be based on the hourly rate breakdown contained in the approved proposal. The City will pay the Company for the performance of the Agreement as follows:
 - a. Monthly payments based on actual work satisfactorily completed, less 10% retainage until final completion of the work
 - b. The total Agreement payment will not exceed \$38,000.
 - c. Additions or deductions to the approved total amount for services must be authorized in writing by the City. Any out of scope work must be authorized in writing by the City. Any work performed without written approval from the City shall be solely at the expense of the Company.
 - d. Final payment to the Company will be made once the project has been completed, all paperwork completed and turned into the City of Batavia and/or State of Illinois and approved with the State of Illinois and/or the City of Batavia.
9. The Company shall perform those phases of the Project to which this Agreement applies and shall give consultation and advice to the City during the performance of the services.
10. The Company shall secure and maintain in force throughout the duration of this Agreement, Comprehensive General Liability including Products Liability/Completed Operations insurance naming the City as an additional insured written on an occurrence basis with a minimum coverage of \$1,000,000 per occurrence and \$2,000,000 policy limit, including Broad Form Contractual Liability insurance, in an amount not less than \$1,000,000 per occurrence and \$2,000,000 policy limit subject to the terms and conditions of the policy.

The Company shall secure and maintain in force throughout the duration of this Agreement, Automobile Liability insurance in an amount not less than \$1,000,000 combined single limit. Said insurance is to be extended to cover hired and non-owned vehicles.

The Company shall secure and maintain in force throughout the duration of this Agreement, Umbrella or Excess Liability coverage of \$2,000,000.

The Company shall secure and maintain in force throughout the duration of this Agreement, Workers' Compensation insurance, as required by statute, by an insurance company licensed to write worker's compensation in the State of Illinois. Employer's Liability, in an amount not less than \$500,000 each accident, \$500,000 disease-policy limit and \$500,000 disease-each employee.

The insurance provided by Company shall be primary, and not contributory to any insurance purchased by the City. All insurance policies required by this contract shall be underwritten by insurance companies with a minimum A.M. Best rating of A. The certificate of insurance shall

Re: Paramount Substation Transformer Bushing Replacement Project

provide that it will not be canceled, reduced, or materially changed without providing the City thirty (30) days advance notice, via certified mail.

The Company shall not commence work under this contract until they have obtained all insurance required and such insurance has been approved by the City, nor shall the Company allow any subcontractors (hereafter Subs) to commence work on their subcontract until the same insurance has been obtained by the Sub. The Company and their Subs shall maintain all insurance for not less than one (1) year after completion of this contract.

If the Company is providing architectural, engineering, or surveying services, Company shall also file a certificate of insurance for professional liability, errors and omissions coverage subject to final acceptance by the City of said coverage.

In the event the City requires contractors or subcontractors working on City projects to acquire and provide proof of insurance covering public liability, death, and property damage naming the City as an insured, the City shall require said contractors or subcontractors to name the Company as an additional insured.

11. The Company shall provide the services as required herein in accordance with the Project Schedule.
12. The Company shall attend conferences and visit the site of the work as may be outlined in the Request for Proposal at any reasonable time when requested to do so by the City.
13. The Company represents and warrants that they are technically qualified and entirely conversant with the requirements of this Project; and that they have sufficient properly trained, organized, and experienced personnel and/or subcontractors to perform the services enumerated herein.
14. The City and the Company each binds themselves and their partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, and as noted in the attachments, neither the City nor the Company shall assign, subcontract, or transfer their interest in this Agreement without the written consent of the other. Nothing herein will be construed as creating any personal liability on the part of any officer or agent of any public body, which may be a party hereto, nor will it be construed as giving any rights or benefits hereunder to anyone other than the City and Company.

The Company may subcontract portions of the work upon written approval from the City. These Subs shall conform, in all respects, to the applicable provisions specified and shall further be subject to approval by the City. The Company shall identify all proposed Subs who will furnish services under the terms of this proposal. The work to be done by the Subs must be outlined in detail in the proposal submitted by the Company. None of the services to be furnished by the Company may be subcontracted, assigned, or transferred to any other party or parties without the written consent of the City. The consent to subcontract, assign, or otherwise transfer any portion of the services to be furnished by the Company will not be construed to relieve the Company of any responsibility for the fulfillment of this Agreement. Any request for payment to the company, for work that was subcontracted, must be supported with a waiver of lien and contractor's affidavit indicating the subcontractor has been paid and waives any lien on the project or funds for the project.

15. The Company shall indemnify, defend, and hold harmless the City, its officers, agents and employees, from and against any and all claims, losses or liability, or any portion thereof, arising from injury or death to persons or damage to property occasioned by the negligent act, omission,

Re: Paramount Substation Transformer Bushing Replacement Project

or failure of the Company, its officers, agents and employees, in performing the work required by this Agreement

16. The City agrees to review each and every phase of the Project as in the aforementioned proposal in a timely manner. Upon approval of each phase, the Company shall then proceed to the next phase.
17. All drawings, specifications, reports, and any other project documents prepared by the Company in connection with any or all of the services to be furnished hereunder shall be delivered to the City for the expressed use of the City. The Company does have the right to retain original documents, but shall cause to be delivered to the City such quality of documents so as to assure total reproducibility of the documents delivered. All information, worksheets, reports, design calculations, plans, and specifications shall be the sole property of the City unless otherwise specified in the negotiated agreement. The Company agrees that the basic survey notes and sketches, charts, computations, and other data prepared or obtained by the Company pursuant to the Agreement will be made available, upon request, to the City without cost and without restriction or limitations as to their use. All field notes, test records, and reports shall be available to the City upon request.
18. The City reserves the right by written amendment to make changes in requirements, amount of work, or engineering time schedule adjustments. The Company and the City shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes.
19. The City may, at any time by written order, require the Company to stop all or part of the services required by this Agreement. Upon receipt of such an order the Company shall immediately comply with its terms and take all steps to minimize the occurrence of costs allocable to the services covered by the order. The City will pay for costs associated with suspension provided, they are deemed reasonable by the City.
20. The City reserves the right to terminate the whole or any part of this Agreement, upon ten (10) calendar day's written notice to the Company. The City further reserves the right to cancel the whole or part of the Agreement, if the Company fails to perform any of the provisions in the Agreement or fails to make delivery within the time stated. The Company will not be liable to perform if situations arise by reason of acts of God or public enemy, acts of City, fires, or floods.
 - a. Should any of the key personnel identified in the Proposal become unavailable to work on the project, and no permanent substitute personnel reasonably satisfactory to the City is provided by the Company within thirty (30) days, and/or no temporary replacement personnel is provided by the Company immediately following the commencement of the subject Key Personnel's unavailability, the City may, at its election, declare such contract terminated and at an end, reserve the right to maintain and action to recover damages arising due to breach of contract
 - b. The City reserves the right to terminate in whole or any part of this contract, upon written notice to the Company, in the event of default by the Company. Default is defined as failure of the Company to perform any of the provisions of this contract of failure to make sufficient progress so as to endanger performance of this contract in accordance with its terms. In the event of default and termination, the City ay procure, upon such terms and in such manner as the City may deem appropriate, supplies or services similar to those so terminated.

The Company shall be liable to the City for all excess costs for such similar supplies or service unless evidence is submitted to the City that in the sole opinion of the City clearly proves that failure to perform the contract was due to causes beyond the control and without the fault or negligence of the Company.

August 16, 2021

EXHIBIT 1

Re: Paramount Substation Transformer Bushing Replacement Project

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF BATAVIA, an Illinois
Municipality,

Company,

By: _____ By: _____
Mayor President

Attest: Attest:

By: _____ By: _____
City Clerk Secretary



QP Testing

SERVICE REQUEST FORM / QUICK QUOTE

Requested By:	Bob Rogde	NEG #:	21-07-024-JL
Company Name:	City of Batavia	Onsite Contact:	Bob Rogde
Billing Address:	200 North Raddant Road Batavia, IL 60510	Onsite Name:	PARAMOUNT Sub.
		Onsite Phone:	
CC:	Rahat Beri	Onsite Address:	
		Purchase Order #:	
		Date:	7/26/2021
Phone:	630.454.2357	Date Requested:	7/13/2021
Cell:	630.669.5077	Customer E-Mail:	rrogde@cityofbatavia.net
Type of Service:			
	<input type="checkbox"/> Supply	<input checked="" type="checkbox"/> Repair	<input checked="" type="checkbox"/> Test & Inspect

Description of Service Requested: Installation of New Bushings – Delta-Star Transformer S/N F6572

Work Scope

Provide service personnel to perform the following work:

- Drain oil below LV bushing bottom connections. Ensure top of core & coil is not exposed. Note our price is based on partial drain not to go below the core & coils.
- Enter main tank and disconnect the LV bushings and remove
- Supply (3) new gaskets for the LV bushings
- Install (3) spare LV bushings provide by City of Batavia
- Enter main tank and connect bushings
- Refill transformer to its proper level
- Power Factor new bushings
- Clean-up site and de-mobilize
- Upon completion a report will submitted with our findings
- Work is quoted Monday thru Friday – quote is based on two days on-site.

Price: \$34,545.00
Terms: Net 30 Days
Validity: 30 Days

Regards,

Julio Lemus
Quad Plus
815.210.0638 Cell

QP Testing Standard Terms & Conditions Apply



QP Testing

Freight: PPD-Add
FOB: Customer Site
Lead Time:
Quotation is valid through:

CUSTOMER SIGNATURE: X _____ **DATE: X** _____



QP Testing

TERMS & CONDITIONS

1. ACCEPTANCE

Unless otherwise stated, all quotations are made for immediate acceptance. All quotations and proposals covering Seller's products are made and all contracts or purchase orders for said products are accepted under the strict limitation that the terms and conditions set forth herein shall be applicable thereto. Any provisions on BUYER's purchase order or other documents issued by BUYER which are at variance with or in addition to these terms and conditions are rejected hereby.

2. PRICES

Prices are net and not subject to trade or other discounts except those which may be authorized on the face of Seller's invoice, and do not include any federal, state, county, local or other taxes, however designated, or costs of special packaging and insurance. Said charges, when applicable, shall be paid by BUYER. However, BUYER may provide Seller with an appropriate tax exemption certificate acceptable to the taxing authorities.

Prices are subject to equitable adjustment at any time before delivery if necessitated by economic factors beyond Seller's reasonable control, including but not limited to factors such as supplier price increases and government actions.

3. PAYMENTS

Payment for products and all other charges shall be made in full within thirty (30) days of the date of invoice, unless otherwise specified. If, in the judgment of Seller, the financial condition of the BUYER at any time does not justify shipment on the terms of payment originally specified, Seller may require full or partial payment in advance or may ship C.O.D. In the event of the bankruptcy or insolvency of the BUYER, whether or not under the Federal bankruptcy laws, the Seller may, at its option, refuse delivery except for cash (including payment for all goods thereto delivered), stop delivery of goods in transit, reclaim the goods upon demand, or cancel or resell any order then outstanding and be entitled to reimbursement for all cancellation or resale charges.

The invoiced amount shall not be subject to set-offs for any claims by BUYER against Seller, including any claims for products returned by BUYER for repair or correction of defects. Seller reserves the right to make delivery in installments which shall be separately invoiced and paid for when due without regard to subsequent deliveries. If the invoiced amount or any part thereof is not paid by BUYER when due, Seller reserves the right to assess interest charges at eighteen percent (18%) per annum on such amounts from the date due until paid, and BUYER agrees to pay such interest charges. If shipments are delayed by BUYER, payments shall become due on the date Seller is prepared to make shipment. Products held for BUYER shall be at the expense of BUYER.

4. FAIR LABOR STANDARDS ACT

Seller certifies that products furnished hereunder have been or will be produced in compliance with applicable requirements of the Fair Labor Standards Act, as amended, and regulations and orders of the United States Department of Labor issued thereunder.

5. WARRANTY

Seller warrants that on the date of shipment to BUYER the goods will be of the kind and quality described herein, merchantable, and free of defects in workmanship and material. If, within one year from date of: (i) initial energization, (ii) Completion of work, (iii) BUYER acceptance, or (iv) Beneficial use, whichever occurs first, but not more than eighteen months from date of shipment by Seller, of any item of the goods, BUYER discovers that such item was not as warranted above and promptly notifies company in writing thereof, Seller shall remedy such defects by, at Seller's option, adjustment, repair or replacement of the item and any affected part of the goods. BUYER shall assume all responsibility and expense for removal, reinstallation and freight in connection with the foregoing remedy. The same obligations and conditions shall extend to replacement items furnished by Seller hereunder. Seller shall have the right of disposal of items replaced by it. BUYER shall grant Seller access to the goods at all reasonable times in order for Seller to determine any defect in the goods. In the event that adjustment, repair or replacement does not remedy the defect, the Seller and BUYER shall negotiate in good faith an equitable adjustment in the contract price.

The Seller's responsibility does not extend to any item of the goods which has not been manufactured and sold by Seller such items shall be covered only by the express warranty, if any, of the manufacturer thereof. The Seller and its suppliers shall also have no responsibility if the goods have been improperly stored, handled or installed, if the goods have not been operated or maintained according to their ratings or according to instruction in Seller or supplier furnished manuals, or if unauthorized repairs or modifications have been made to the goods.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES (EXCEPT TITLE), INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS AND CONSTITUTES THE ONLY WARRANTY OF SELLER, WITH RESPECT TO THE GOODS.

The foregoing states BUYER's exclusive remedy against Seller and its suppliers for any defect in the goods or for failure of the goods to be as warranted, whether BUYER's remedy is based on contract, warranty, failure of such remedy to achieve its essential purpose, tort (including negligence), strict liability, indemnity or any other legal theory, and whether arising out of warranties, representations, instructions, installations or defects from any cause.

6. DELAYS AND SCHEDULES

If SELLER's performance is delayed or prevented by BUYER or other events outside of SELLER's reasonable control (such as acts of God, casualty, labor disturbance, strikes, riots, civil disturbance, inability to obtain supplies or transportation, explosion, flood, fire, power failure, embargos, boycotts, governmental or military action, war, terrorism, delays in the delivery of essential operating materials or semi-finished products or any order modification by BUYER) then BUYER agrees to reimburse SELLER for the additional costs incurred by SELLER incident to such delay including, without limitation, the cost of labor escalations. (a) Schedule deadlines shall apply only on condition that all details of the order have been finalized and agreed upon by the contract start date. In particular, that all necessary documents and approvals to be

obtained by the BUYER have been procured in time and that, if applicable, any amount agreed as down payment has been received by SELLER per the agreed upon payment schedule. In addition to the above, if applicable, all required auxiliary personnel to be supplied by the BUYER are made available by the order start date. (b) If the non-compliance with the schedule deadlines is due to events as defined in Section 2, or BUYER-caused delays, the schedule deadlines will be postponed for the duration of the delay and extended proportionally plus a reasonable start-up time without liability to SELLER. Should the fulfillment of SELLER's obligations become impossible due to a force majeure event, SELLER may terminate the Agreement giving four (4) weeks' notice to BUYER, without liability to SELLER.

7. DUTIES OF THE BUYER

Where applicable, the BUYER shall make available the relevant systems specified in its service request to SELLER by the agreed dates for the duration of the Work. In the event that the systems are not provided for service work in due time, SELLER may invoice the BUYER for any costs incurred as a result (e.g. for waiting periods and travel expenses of the service personnel).

- The BUYER shall provide SELLER with information on the systems or site, as applicable, and make the associated documents available to SELLER (instructions, manuals, etc.).
- The BUYER shall be obligated to document all malfunctions, error messages, defects, damages and system changes known to it and inform SELLER accordingly.
- Where applicable, the BUYER shall keep a system log. All malfunctions (dates, causes, downtimes), special findings, any technical changes implemented (where applicable) etc. shall be entered into this log. SELLER shall be entitled to inspect this system log as well as other logs of the system printer and console, at any time, in order to facilitate troubleshooting of the system.
- The BUYER shall provide SELLER's service personnel with detailed information as to the BUYER's safety and site regulations applicable at the BUYER's site as well as about any health risks, where applicable. If available, the BUYER shall provide its written site regulations to SELLER's service personnel. If health risks are to be expected, the BUYER shall advise SELLER of these in writing. In the event that this information requires a substantial amount of time to review, SELLER shall have the option of requesting additional remuneration on the basis of time and expenditure, based on SELLER's current rates.
- The BUYER shall be responsible for the disposal of replaced lubricants and parts.
- The BUYER shall appoint a contact in charge, who has the authority to make or procure binding decisions on behalf of the BUYER. The BUYER shall immediately inform SELLER in the case of a corporate name change, conversion, discontinuation of business, change of address, change to contact in charge.

8. LIABILITY

Seller shall not be liable for any incidental, special or consequential damages of any nature whatsoever, or for any delay or loss of use (including, without limitation, lost revenues or lost profits) arising out of, resulting from, or in any way related to the sale of any products by Seller.

9. PROPRIETARY INFORMATION

BUYER agrees that any data, such as Seller's specifications, drawings, software and information (including, without limitation, designs, reports, software documentation, manuals, models, process information and the like), revealed by Seller to BUYER and containing proprietary information marked or identified as proprietary, shall be kept in confidence by BUYER with at least the same care and safeguards as are applied to BUYER's own proprietary information. Such data shall not be duplicated, disclosed to others, or used without the written permission of Seller. These obligations shall not apply to any information which is in or comes into the public domain without violation of this agreement, or is received lawfully by BUYER from a third party subsequent to this agreement; or is developed by BUYER independently and without benefit or information received from Seller.

The restrictions and obligations relating to Seller's proprietary information shall expire seven (7) years after the execution of the contract incorporating these terms and conditions, unless otherwise agreed to in writing.

10. PACKAGING AND SHIPMENT

Shipping charges will be paid by BUYER. In the absence of specific instructions, Seller will select the carrier. When applicable, BUYER shall obtain ocean freight space and marine insurance.

11. DELIVERY AND RISK OF LOSS

Unless otherwise provided for in advance, all shipments will be made F.O.B. Seller's Factory, and upon Seller's delivery of a shipment to the carrier, BUYER shall assume the risk of any loss or damage to the shipment thereafter. However, all C.O.D. shipment will be made F.O.B. destination, and title and risk of loss shall remain in Seller until delivery to BUYER.

12. GOVERNING LAW

The terms and conditions stated herein shall be governed by and construed in accordance with the laws of the State of Illinois.

13. COMPLETE AGREEMENT

The contract incorporating the terms and conditions set forth herein is a complete, final and exclusive statement of the agreement between BUYER and Seller. Any prior or contemporaneous agreements, understandings and representations, whether oral or written, are merged therein. The terms and conditions stated herein shall not be varied, supplemented, qualified, or interpreted by any prior course of dealings between the parties or by custom or usage of trade. No modifications or additions to said contract shall be binding upon Seller unless in writing and signed by an authorized representative of Seller.

14. WAIVER

Seller's election not to enforce any provisions hereof shall not be deemed a waiver of any such provision and Seller reserves the right to enforce said provisions thereafter. Waiver by Seller of a breach of any of these terms and conditions shall not be construed as a waiver of any other breach.