

**RESOLUTION NO. 17-79**

**A RESOLUTION AUTHORIZING AN ENGINEERING SERVICES AGREEMENT  
BETWEEN THE VILLAGE OF VILLA PARK AND  
CHRISTOPHER B. BURKE ENGINEERING, LTD. FOR PHASE II DESIGN  
ENGINEERING FOR THE WASHINGTON STREET SEWER SEPARATION  
PROJECT - PHASE I**

WHEREAS, the Village of Villa Park is a municipal corporation duly organized and existing under the laws of the State of Illinois; and,

WHEREAS, the Village of Villa Park has a satisfactory relationship with and has received a proposal from Christopher B. Burke Engineering Ltd., to perform Phase II design engineering services for the **Washington Street Sewer Separation Project - Phase I**, at a cost not to exceed \$191,530; and,

WHEREAS, the corporate authorities of the Village of Villa Park have determined that it is in the best interests of the citizens of the Village of Villa Park to enter into an agreement with Christopher B. Burke Engineering Ltd., as is more particularly set forth in a document styled "**Professional Engineering Services Proposal for Final Engineering Washington Street Sewer Separation – Phase I Monterey and Highland Avenue**" a copy of which is attached hereto as Exhibit A.

NOW THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Villa Park, DuPage County, State of Illinois, as follows:

1. That the agreement styled "**Professional Engineering Services Proposal for Final Engineering Washington Street Sewer Separation – Phase I Monterey and Highland Avenue**" attached hereto as Exhibit A is hereby approved and the Village Manager is hereby authorized and directed to execute said Proposal on behalf of the Village of Villa Park.

2. That this resolution shall be in full force and effect from and after its passage and approval according to law.

**RESOLUTION NO. 17-79**

PASSED AND APPROVED THIS 23rd DAY OF October, 2017.

VILLAGE OF VILLA PARK

*Albert Butkus*

\_\_\_\_\_  
President, Village of Villa Park

ATTEST:

*Isabella Kopycky*  
\_\_\_\_\_  
Clerk, Village of Villa Park



ADOPTED this 23rd day of October, 2017, pursuant to a roll call vote as follows:

AYES: 7

NAYS: 0

ABSENT: 0

ABSTAINING: 0



**CHRISTOPHER B. BURKE ENGINEERING, LTD.**

9575 West Higgins Road Suite 600 Rosemont, Illinois 60018 TEL (847) 823-0500 FAX (847) 823-0520

October 16, 2017

Village of Villa Park  
20 S. Ardmore Avenue  
Villa Park, Illinois 60181

Attention: Mr. Vydas Juskelis – Director of Public Works

Subject: Professional Engineering Services Proposal for Final Engineering  
Washington Street Sewer Separation – Phase 1  
Monterey and Highland Avenue  
Villa Park, Illinois

Dear Mr. Juskelis:

Christopher B. Burke Engineering, Ltd. (CBBEL) is pleased to provide this proposal for professional engineering services related to the final engineering design of the first phase of the Washington Street Sewer Separation project in the Village of Villa Park (Village). Included in this proposal is our Understanding of Assignment, Scope of Services, and Estimated Fee.

**UNDERSTANDING OF THE ASSIGNMENT**

It is our understanding that the Village desires for CBBEL to prepare final engineering plans for the first of three phases of the Washington Street Sewer Separation project. The Phase 1 project includes construction of a new separate storm sewer on Monterey Avenue between Washington Street and Park Boulevard, and on Highland Avenue between Monterey Avenue and Riverside Drive. This project is solely a sewer separation project and not a flood protection project. We also understand that this project is desired to be constructed in 2018 and will be funded through the IEPA low-interest loan program.

The area drained by the new storm sewers historically drains into Salt Creek. The existing combined sewers will become sanitary sewers after the new storm sewers are constructed. All known clear water connections to the combined sewer system within the project area will be removed and connected to the new separate storm sewer system which will drain via an existing 48-inch diameter combined sewer overflow pipe that runs from the intersection of Highland Avenue and Riverside Drive eastward to Salt Creek. The existing combined sewer overflow pipe will act as a stormwater-only outfall for smaller rainfall events and on an interim basis, will act as a combined sewer overflow during larger

storm events. Once all three phases of the Washington Street Sewer Separation project are complete, the combined sewer overflow pipe will be converted to a storm-only sewer outfall to Salt Creek.

### **SCOPE OF SERVICES**

Based on our experience with similar projects, our anticipated Scope of Services is detailed below:

#### **IEPA LOAN APPLICATION ASSISTANCE**

Task 1: IEPA Loan Application: We understand that the Facilities Plan required to secure an IEPA Loan will be prepared by others for this project. However, CBBEL will assist the Village in preparing loan application documents required for this project under the IEPA Loan Program. This includes the Loan Application and documents required as part of the "Financial Information Checklist and Project Financial Requirements", including documentation on the user charge system (O,M&R, water ordinance and rates), dedicated source of revenue for debt obligations, and debt ordinance. The loan application is anticipated to include the Washington Street Sewer Separation (Phase 1) project, as well as a smaller sewer located elsewhere in the Village that is being designed by another consultant.

Task 2: IEPA Loan Application Coordination: A substantial amount of coordination with the IEPA is anticipated to be required as the project is developed in accordance with IEPA loan requirements. CBBEL will work diligently with the IEPA on behalf of the Village to exchange project information, complete and submit requested forms and other data and support adherence to the proposed project schedule. CBBEL will work with IEPA to provide the necessary information and facilitate approvals of the following, all of which must be completed before the loan is issued and construction can begin:

- Planning Report
- Categorical Exclusion (CE) or Preliminary Environmental Impacts Determination (PEID)
- Financial Information
- Loan Application
- Engineering Plans
- Advertisement for Bid
- Construction Contract Award and Loan Issuance

#### **FINAL ENGINEERING**

Task 3 – Data Collection and Review: CBBEL will meet with the Village to review the scope and collect, examine, review and evaluate data to be utilized for the development of the proposed improvements. This data will include the following:

- Existing studies and reports
- Existing design plans and as-built plans
- Utility Atlases
- Permitting Agency Correspondence
- Existing right-of-way information and subdivision plats
- Village Standards and Specifications
- Village Standard Construction Contract and Special Provisions
- Determination of Pipe/Structure Condition During Survey and Associated Documentation. Remediation measures will be included in Task 5.

Task 4 – Geotechnical Investigation: Our subconsultant, Testing Service Corporation (TSC), will complete a limited geotechnical investigation of the project limits. TSC will drill six (6) borings to a 15' depth at selected locations within the project limits. TSC will prepare a report describing existing soil conditions and make recommendations for remediation.

This task will include work by TSC to perform analytical testing of soil borings to confirm the absence of contaminants that will streamline the disposal of soils removed from the site during construction. TSC will perform investigation and testing work necessary to substantiate completion of IEPA Form LPC-663. This work will include collection/preservation of soil samples and conducting a search to identify any Potentially Impacted Properties (PIPs). If PIPs are identified, TSC will perform the additional required testing and provide signed LPC-663 forms to the Village for use during construction. TSC will provide a list of dump sites that will accept the material identified in the PIP. The list shall be included in the Geotech report.

Task 5 – Topographic Survey: Based upon the refined project limits, CBBEL will perform topographic survey for the proposed project limits. The survey will extend past the existing right-of-way lines as required at locations where additional right-of-way and/or temporary easements are anticipated. The survey will be prepared for use during the preliminary engineering effort, and will include the following specific tasks:

Horizontal Control: Utilizing state plane coordinates, CBBEL will set recoverable primary control utilizing state of the art GPS equipment based on NGS Control Monumentation.

Vertical Control: CBBEL will perform a level circuit throughout the entire length of the project establishing benchmarks and assigning elevations to the horizontal control points. This will be based on NGS Control Monumentation (NAVD'88 vertical control datum).

Existing Right-of-Way: CBBEL will establish the approximate existing right-of-way of the roadways within the project limits based on monumentation found in the field, plats of highways, subdivision plats and any other available information.

Topographic Survey: CBBEL will field locate all pavements, driveways, curb and gutters, pavement markings, signs, manholes, utility vaults, drainage structures, driveway culverts, cross road culverts (with structure details), streams, ditches etc.

Cross Sections: CBBEL will survey cross sections along the project limits at 50' intervals, at driveways, and at all other grade controlling features. Survey will be obtained for 20 feet beyond the existing right-of-way line.

Utility Survey and Coordination: All existing storm and sanitary sewers that were not surveyed during the conceptual engineering effort will be surveyed to determine rim and invert elevations and pipe sizes. Above ground facilities of any additional underground utilities including water main, gas, electric, cable, etc. will also be located. In addition, CBBEL will coordinate with utility owners to retrieve atlas information.

Tree Survey: CBBEL will locate all trees over 6 inches in diameter within the existing right-of-way to assess potential tree impacts, if any, associated with the project.

Prepare Base Mapping: Office calculations and plotting of field and record data Drafting of an Existing Conditions Plan at a scale of 1"=20'.

For the purposes of this proposal, it is assumed that the approximately 4,000 feet of roadway will be surveyed, including:

- Monterey Avenue (Washington to Park) – 2,500 feet
- Highland Avenue (Monterey to Riverside) – 700 feet
- 100 feet of survey on all legs of Washington/Monterey, Monterey/Highland, Park/Monterey and Highland/Riverside – 800 feet

Task 6 – Utility Coordination: Based on utility information (atlases, etc.) obtained as part of the topographic survey work, CBBEL will draft existing utilities on the plans and send them back to the utility companies for verification of their locations. CBBEL will identify potential conflicts and coordinate relocations if necessary. Although not included in this proposal, the Village may choose to hire a subsurface utility engineering company to get exact locations of existing utilities in critical areas. This will depend on the accuracy of the information provided by the utility companies.

Task 7 – Updated Existing Conditions XP-SWMM Analysis: Using the information collected in Tasks 3 and 5, CBBEL will enhance the existing conditions XP-SWMM analysis previously completed in the Comprehensive Flood Plan. Incorporating the surveyed sizes and elevations will increase the accuracy of the model and may cause the originally proposed improvement sizes to be modified.

Task 8 – Phase 1 Conditions XP-SWMM Analysis: The updated existing conditions XP-SWMM analysis from Task 7 will be used as the basis for the proposed conditions improvements that have been outlined in the Understanding of Assignment. The conceptual sewer modeling from the Comprehensive Flood Plan may have to be altered to avoid utility conflicts. We will review the proposed sewer sizes and alignments for the study area to verify its feasibility and that the Phase 1 improvements are consistent with the overall sewer separation plan based on the Village’s design standards.

Task 9 – 60% Plans and Estimate: Based on the conceptual engineering previously completed by CBBEL under a separate contract, CBBEL will prepare 60% engineering plans and cost estimate for the project. These plans will include preparation of the preliminary utility improvement plans for the project area, including proposed sewer design information. Plans will generally follow IDOT and Village standards. A preliminary estimate of construction cost will be provided to the Village with the design drawings.

As part of this effort, CBBEL will make a recommendation to the Village with respect to the most appropriate roadway rehabilitation method for Monterey Avenue between Washington Street and Park Boulevard. Since it is anticipated that Monterey Avenue will require reconstruction, preparation of roadway plan and profile and roadway cross section drawings have been included in this task.

Project special provisions will not be prepared as part of the preliminary engineering effort.

We estimate the following plan sheets will be required:

Sheet	# of Sheets
Title Sheet	1
General Notes/Summary of Quantities	1
Alignment, Ties and Benchmarks (1" = 50')	3
Typical Sections	1
Existing Conditions and Removal Plan (1" = 20')	4
Roadway Plan and Profile (1" = 20') – Monterey Ave.	4
Utility Plan and Profiles (1" = 20')	7
Erosion and Sediment Control Plans and Details	6
Construction Details	3
Roadway Cross Sections – Monterey Ave.	15
Specifications	-
Cost Estimate/Quantities	-
<b>Total</b>	<b>45</b>

Structural design of any large junction chambers or chamber modifications for storm sewer junctions, outfall structures, diversion structures or other specialty items that may

be required throughout the project is excluded from this task and shall be completed by the contractor as part of the shop drawing preparation and review process.

Task 10 – IEPA Outfall Modification Permitting: We will provide appropriate hydrologic and hydraulic analysis, developed in Tasks 7 and 8, and engineering plans to IEPA for the outfall permit modification. Two responses to requests for follow-up information, additional design information/details, documentation and permit application resubmittals are included in this task. This task does not warrant that permit approval shall be obtained. Permit application fees are not included in this task.

Task 11 – IEPA Water Main/Sanitary Sewer Construction Permitting: CBBEL will prepare and submit an IEPA construction permit application for all water main and sanitary sewer improvements associated with the project.

This task does not warrant that permit approval shall be obtained. Permit application fees are not included in this task.

Task 12 – DuPage County Countywide Stormwater and Floodplain Ordinance Permit Compliance: The Village is a full waiver community and it is assumed that any reviews will be performed by the Village's consultant. Based on our previous experience, it is assumed that a full tabular DuPage County submittal will not be required for this project and therefore has not been included in the scope or fee.

CBBEL will provide to the Village and the Village's consultant all required documentation, including but not limited to a summary memorandum and associated calculations related to the Ordinance requirements. Because the project will not increase the imperviousness and the runoff to Salt Creek will be unchanged from existing conditions, hydraulic modeling of Salt Creek is not required and will not be performed.

Additionally, to demonstrate compliance with Section 404 of the Clean Water Act and the DuPage County Ordinance, a field investigation of the project limits will be completed to verify that no wetlands or waters of the United States are present that would trigger a US Army Corps of Engineers or wetland/buffer permitting. The results of the field reconnaissance will be summarized in a memorandum that will be provided to the Village and the Village's consultant. It is assumed that no regulated wetlands, waters or buffer are within the project limits. If wetlands, waters or buffer is identified, a supplemental contract will be provided for additional delineation and permitting services.

Task 13 – Pre-Final Plans, Specifications and Estimate (90%): Based on the Village and permit agencies preliminary review comments, CBBEL will revise the plans, specifications and estimate. CBBEL will prepare pre-final contract documents consisting of plans, specifications, estimate of time, status of utilities to be adjusted and an estimate of construction cost. The plans will be prepared in accordance with Village and IDOT design criteria.

All special front-end contract documents required for IEPA loan projects will be prepared as part of the Pre-Final engineering effort.

Task 14 – Final Plans, Specs and Estimates (100%): Based on the Village and permit agencies pre-final review comments, CBBEL will revise the plans, specifications and estimate. During this task, the exact letting date will be determined and an estimated construction schedule will be provided.

The requested number of copies of plans and specifications will be submitted the Village and any review agencies for their files. CBBEL will provide final reproducible drawings and specifications to be issued to prospective bidders by the Village.

This task assumes that all newspaper and other media advertisements will be paid by the Village outside of this agreement.

Task 15 – Bidding Assistance: CBBEL will attend the pre-bid meeting, attend the bid opening, tabulate the bids and make recommendations to the Village, prepare contracts for the successful bidder, and attend the preconstruction meeting.

Task 16 – Project Meetings and Coordination: CBBEL will coordinate with the Village and project stakeholders throughout the design and permitting of the project. In addition to phone conversations and written and electronic coordination, it is anticipated that three (3) project coordination meetings will be held with Village Staff. If more than three meetings are necessary, they will be billed separately on a Time and Materials basis.

This proposal assumes that little or no public involvement will be required during the final design of this project, so this scope of work shall not include preparation for or participation in public involvement efforts undertaken by the Village.

### ESTIMATE OF FEE

We have determined the following not-to-exceed costs for each of the tasks described in this proposal.

Task 1	- IEPA Loan Application	\$ 4,816
Task 2	- IEPA Loan Coordination	\$ 8,752
Task 3	- Data Collection and Review	\$ 5,718
Task 4	- Geotechnical Investigation	\$ 14,000
Task 5	- Topographic Survey	\$ 19,242
Task 6	- Utility Coordination	\$ 7,456
Task 7	- Updated Existing Conditions XP-SWMMM Analysis	\$ 3,440
Task 8	- Phase 1 Conditions XP-SWMM Analysis	\$ 7,954
Task 9	- 60% Plans and Estimate	\$ 48,668
Task 10	- IEPA Outfall Modification	\$ 5,120
Task 11	- IEPA Water Main/Sanitary Sewer Construction Permitting	\$ 3,288
Task 12	- DuPage County Countywide Stormwater and Flood Plain Ordinance Permit Compliance	\$ 5,400
Task 13	- Prefinal Plans, Specifications and Estimate (90%)	\$ 27,204
Task 14	- Final Plans, Specifications and Estimate (100%)	\$ 10,664
Task 15	- Bidding Assistance	\$ 4,932
Task 16	- Project Meetings and Coordination	\$ 9,876
	Direct Costs	\$ 5,000
<hr/>		
Total		\$ 191,530

We will bill you at the hourly rates specified on the attached Schedule of Charges and establish our contract in accordance with the attached General Terms and Conditions. Direct costs for blueprints, photocopying, mailing, mileage, overnight delivery, permit fees, data collection fees, messenger services and report compilation are included in the fee estimate. These General Terms and Conditions are expressly incorporated in and are an integral part of this contract for professional services. It should be emphasized that any additional requested meetings or additional services are not included in the preceding fee estimate and will be billed at the attached hourly rates.

## SPECIAL AGREEMENT TERMS PER IEPA LOAN REQUIREMENTS

The following terms and conditions are required to be included in all engineering contracts to be eligible for IEPA Public Water Supply Loan Program (PWSLP) funds and are hereby part of this agreement:

### Audit and Access to Records Clause

a) Books, records, documents and other evidence directly pertinent to performance of PWSLP/WPCLP loan work under this agreement shall be maintained in accordance with generally accepted Accounting Principles. The Agency or any of its authorized representatives shall have access to the books, records, documents and other evidence for the purpose of inspection, audit and copying. Facilities shall be provided for access and inspection.

b) Audits conducted pursuant to this provision shall be in accordance with auditing standards generally accepted in the United States of America.

c) All information and reports resulting from access to records pursuant to the above shall be disclosed to the Agency. The auditing agency shall afford the engineer an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include the written comments, if any, of the audited parties.

d) Records shall be maintained and made available during performance of project services under this agreement and for three years after the final loan closing. In addition, those records that relate to any dispute pursuant to the Loan Rules Section 662.650/365.650 (Disputes) or litigation or the settlement of claims arising out of project performance or costs or items to which an audit exception has been taken, shall be maintained and made available for three years after the resolution of the appeal, litigation, claim or exception.

### Covenant Against Contingent Fees

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

### Certification Regarding Debarment, Suspension and Other Responsibility Matters

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

(b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

(c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Contract Completion Date

Design Engineering: 12/31/2018

USEPA Nondiscrimination Clause

The contractor (engineer) shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

USEPA Fair Share Percentage Clause

The engineer agrees to take affirmative steps to assure that disadvantaged business enterprises are utilized when possible as sources of supplies, equipment, construction and services in accordance with the [WPC or PWS] Loan Program rules. As required by the award conditions of USEPA's Assistance Agreement with Illinois EPA, the engineer acknowledges that the fair share percentages are 5% for MBEs & 12% for WBEs.

Please sign and return one copy of this agreement as an indication of acceptance and notice to proceed. Please feel free to contact us at any time.

Sincerely,



Christopher B. Burke, PhD, PE, D.WRE, Dist.M.ASCE  
President

Encl. 2017 Schedule of Charges  
Villa Park General Terms and Conditions

THIS PROPOSAL, SCHEDULE OF CHARGES AND GENERAL TERMS AND  
CONDITIONS ACCEPTED FOR THE VILLAGE OF VILLA PARK:

BY: Albert Beulthuis  
TITLE: PRESIDENT  
DATE: 10-23-2017

Washington Street Sewer Separation - Phase 1  
 Village of Villa Park, DuPage County, IL

Task	November 2017	December 2017	January 2018	February 2018	March 2018	April 2018	May 2018	June 2018
1. IEPA Loan Application								
2. IEPA Loan Application Coordination								
3. Data Collection and Review								
4. Geotechnical Investigation								
5. Topographic Survey								
6. Utility Coordination								
7. Updated Existing Conditions XP-SWMM Analysis								
8. Phase 1 Conditions XP-SWMM Analysis								
9. 60% Plans and Estimate								
10. IEPA Outfall Modification Permitting								
11. IEPA Water Main/Sanitary Construction Permitting								
12. DuPage County Countywide Stormwater and Floodplain Ordinance Permit Compliance								
13. Pre-Final Plans, Specifications and Estimate (90%)								
14. Final Plans, Specs and Estimates (100%)								
15. Bidding Assistance								
16. Project Management and Coordination								

This schedule is based on a November 1 Notice to Proceed

**CHRISTOPHER B. BURKE ENGINEERING, LTD.**  
**STANDARD CHARGES FOR PROFESSIONAL SERVICES**  
**JANUARY, 2017**

<u>Personnel</u>	<u>Charges*</u> <u>(\$/Hr)</u>
Principal	257
Engineer VI	232
Engineer V	191
Engineer IV	155
Engineer III	140
Engineer I/II	110
Survey V	213
Survey IV	180
Survey III	157
Survey II	115
Survey I	90
Engineering Technician V	182
Engineering Technician IV	148
Engineering Technician III	133
Engineering Technician I/II	115
CAD Manager	161
Assistant CAD Manager	140
CAD II	140
CAD I	108
GIS Specialist III	135
GIS Specialist I/II	78
Landscape Architect	155
Environmental Resource Specialist V	200
Environmental Resource Specialist IV	155
Environmental Resource Specialist III	128
Environmental Resource Specialist II	105
Environmental Resource Technician	105
Administrative	98
Engineering Intern	59
Information Technician III	118
Information Technician I/II	107
 <u>Direct Costs</u>	
Outside Copies, Blueprints, Messenger, Delivery Services, Mileage	Cost + 12%

\*Charges include overhead and profit

Christopher B. Burke Engineering, Ltd. reserves the right to increase these rates and costs by 5% after December 31, 2017.

CHRISTOPHER B. BURKE ENGINEERING, LTD.  
GENERAL TERMS AND CONDITIONS  
Village of Villa Park

1. Relationship Between Engineer and Client: Christopher B. Burke Engineering, Ltd. (Engineer) shall serve as Client's professional engineer consultant in those phases of the Project to which this Agreement applies. This relationship is that of a buyer and seller of professional services and as such the Engineer is an independent contractor in the performance of this Agreement and it is understood that the parties have not entered into any joint venture or partnership with the other. The Engineer shall not be considered to be the agent of the Client. Nothing contained in this Agreement shall create a contractual relationship with a cause of action in favor of a third party against either the Client or Engineer.
  
2. Responsibility of the Engineer: Engineer will strive to perform services under this Agreement in accordance with generally accepted and currently recognized engineering practices and principles, and in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, or otherwise.  
  
Engineer is responsible for the acts of its employees as it relates to the professional services provided. Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any Agreement between the Client and any other party concerning the Project, the Engineer shall not have control or be in charge of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction, or the safety, safety precautions or programs of the Client, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall the Engineer be responsible for the acts or omissions of the Client, or for the failure of the Client, any architect, engineer, consultant, contractor or subcontractor to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project. Any provision which purports to amend this provision shall be without effect unless it contains a reference that the content of this condition is expressly amended for the purposes described in such amendment and is signed by the Engineer.
  
3. Changes: Client reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments, and Engineer and Client shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes, if commercially possible.
  
4. Suspension of Services: Client may, at any time, by written order to Engineer (Suspension of Services Order) require Engineer to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, Engineer shall immediately comply with its terms and take all reasonable steps to minimize the costs associated with the services affected by such order. Client, however, shall pay all costs incurred by the suspension, including all costs necessary to maintain continuity and for the resumption of the services upon expiration of the Suspension of Services Order. Engineer will not

be obligated to provide the same personnel employed prior to suspension, when the services are resumed, in the event that the period of suspension is greater than thirty (30) days.

5. Termination: This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by Engineer either before or after the termination date shall be reimbursed by Client.
  
6. Documents Delivered to Client: Drawings, specifications, reports, and any other Project Documents prepared by Engineer in connection with any or all of the services furnished hereunder shall be delivered to the Client for the use of the Client. Engineer shall have the right to retain originals of all Project Documents and drawings for its files. Furthermore, it is understood and agreed that the Project Documents such as, but not limited to reports, calculations, drawings, and specifications prepared for the Project, whether in hard copy or machine readable form, are instruments of professional service intended for one-time use in the construction of this Project. These Project Documents are and shall remain the property of the Engineer. The Client may retain copies, including copies stored on magnetic tape or disk, for information and reference in connection with the occupancy and use of the Project.

When and if record drawings are to be provided by the Engineer, Client understands that information used in the preparation of record drawings is provided by others and Engineer is not responsible for accuracy, completeness, nor sufficiency of such information. Client also understands that the level of detail illustrated by record drawings will generally be the same as the level of detail illustrated by the design drawing used for project construction. If additional detail is requested by the Client to be included on the record drawings, then the Client understands and agrees that the Engineer will be due additional compensation for additional services.

It is also understood and agreed that because of the possibility that information and data delivered in machine readable form may be altered, whether inadvertently or otherwise, the Engineer reserves the right to retain the original tapes/disks and to remove from copies provided to the Client all identification reflecting the involvement of the Engineer in their preparation. The Engineer also reserves the right to retain hard copy originals of all Project Documentation delivered to the Client in machine readable form, which originals shall be referred to and shall govern in the event of any inconsistency between the two.

The Client understands that the automated conversion of information and data from the system and format used by the Engineer to an alternate system or format cannot be accomplished without the introduction of inexactitudes, anomalies, and errors. In the event Project Documentation provided to the Client in machine readable form is so converted, the Client agrees to assume all risks associated therewith and, to the fullest extent permitted by law, to hold harmless and indemnify the Engineer from and against

all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising therefrom or in connection therewith.

The Client recognizes that changes or modifications to the Engineer's instruments of professional service introduced by anyone other than the Engineer may result in adverse consequences which the Engineer can neither predict nor control. Therefore, and in consideration of the Engineer's agreement to deliver its instruments of professional service in machine readable form, the Client agrees, to the fullest extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising out of or in any way connected with the modification, misinterpretation, misuse, or reuse by others of the machine readable information and data provided by the Engineer under this Agreement. The foregoing indemnification applies, without limitation, to any use of the Project Documentation on other projects, for additions to this Project, or for completion of this Project by others, excepting only such use as may be authorized, in writing, by the Engineer.

7. Reuse of Documents: All Project Documents including but not limited to reports, opinions of probable costs, drawings and specifications furnished by Engineer pursuant to this Agreement are intended for use on the Project only. They cannot be used by Client or others on extensions of the Project or any other project. Any reuse, without specific written verification or adaptation by Engineer, shall be at Client's sole risk, and Client shall indemnify and hold harmless Engineer from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom.

The Engineer shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Engineer's promotional and professional materials. The Engineer's materials shall not include the Client's confidential and proprietary information if the Client has previously advised the Engineer in writing of the specific information considered by the Client to be confidential and proprietary.

8. Standard of Practice: The Engineer will conduct services under this agreement in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions as of the date of this Agreement.
9. Compliance With Laws: The Engineer will exercise usual and customary professional care in his/her efforts to comply with those laws, codes, ordinance and regulations which are in effect as of the date of this Agreement.

With specific respect to prescribed requirements of the Americans with Disabilities Act of 1990 or certified state or local accessibility regulations (ADA), Client understands ADA is a civil rights legislation and that interpretation of ADA is a legal issue and not a design issue and, accordingly, retention of legal counsel (by Client) for purposes of interpretation is advisable.

Further to the law and code compliance, the Client understands that the Engineer will strive to provide designs in accordance with the prevailing Standards of Practice as

previously set forth, but that the Engineer does not warrant that any reviewing agency having jurisdiction will not for its own purposes comment, request changes and/or additions to such designs. In the event such design requests are made by a reviewing agency, but which do not exist in the form of a written regulation, ordinance or other similar document as published by the reviewing agency, then such design changes (at substantial variance from the intended design developed by the Engineer), if effected and incorporated into the project documents by the Engineer, shall be considered as Supplementary Task(s) to the Engineer's Scope of Service and compensated for accordingly.

10. Indemnification: Engineer shall indemnify and hold harmless Client from loss or expense, including reasonable attorney's fees for claims for personal injury (including death) or property damage to the extent caused by the sole negligent act, error or omission of Engineer.

Client shall indemnify and hold harmless Engineer under this Agreement, from loss or expense, including reasonable attorney's fees, for claims for personal injuries (including death) or property damage arising out of the sole negligent act, error omission of Client.

In the event of joint or concurrent negligence of Engineer and Client, each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligence (including that of third parties), which caused the personal injury or property damage.

11. Opinions of Probable Cost: Since Engineer has no control over the cost of labor, materials or equipment, or over the Contractor(s) method of determining process, or over competitive bidding or market conditions, his/her opinions of probable Project Construction Cost provided for herein are to be made on the basis of his/her experience and qualifications and represent his/her judgement as a design professional familiar with the construction industry, but Engineer cannot and does not guarantee that proposal, bids or the Construction Cost will not vary from opinions of probable construction cost prepared by him/her. If prior to the Bidding or Negotiating Phase, Client wishes greater accuracy as to the Construction Cost, the Client shall employ an independent cost estimator Consultant for the purpose of obtaining a second construction cost opinion independent from Engineer.
12. Governing Law & Dispute Resolutions: This Agreement shall be governed by and construed in accordance with Articles previously set forth by (Item 9 of) this Agreement, together with the laws of the **State of Illinois**.
13. Successors and Assigns: The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns: provided, however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.

14. Waiver of Contract Breach: The waiver of one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof, shall be limited to the particular instance, shall not operate or be deemed to waive any future breaches of this Agreement and shall not be construed to be a waiver of any provision, except for the particular instance.
15. Entire Understanding of Agreement: This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and the Engineer hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of the Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.
16. Amendment: This Agreement shall not be subject to amendment unless another instrument is duly executed by duly authorized representatives of each of the parties and entitled "Amendment of Agreement".
17. Severability of Invalid Provisions: If any provision of the Agreement shall be held to contravene or to be invalid under the laws of any particular state, county or jurisdiction where used, such contravention shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provisions held to be invalid in the particular state, country or jurisdiction and the rights or obligations of the parties hereto shall be construed and enforced accordingly.
18. Force Majeure: Neither Client nor Engineer shall be liable for any fault or delay caused by any contingency beyond their control including but not limited to acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
19. Subcontracts: Engineer may subcontract portions of the work, but each subcontractor must be approved by Client in writing.
20. Access and Permits: Client shall arrange for Engineer to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project. Client shall pay costs (including Engineer's employee salaries, overhead and fee) incident to any effort by Engineer toward assisting Client in such access, permits or approvals, if Engineer perform such services.
21. Designation of Authorized Representative: Each party (to this Agreement) shall designate one or more persons to act with authority in its behalf in respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the other party.
22. Notices: Any notice or designation required to be given to either party hereto shall be in writing, and unless receipt of such notice is expressly required by the terms hereof shall

be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereafter furnish to the other party by written notice as herein provided.

23.

24. Client's Responsibilities: The Client agrees to provide full information regarding requirements for and about the Project, including a program which shall set forth the Client's objectives, schedule, constraints, criteria, special equipment, systems and site requirements.

The Client agrees to furnish and pay for all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services which the Client may require to verify the Contractor's Application for Payment or to ascertain how or for what purpose the Contractor has used the money paid by or on behalf of the Client.

When Contract Documents prepared under the Scope of Services of this contract require insurance(s) to be provided, obtained and/or otherwise maintained by the Contractor, the Client agrees to be wholly responsible for setting forth any and all such insurance requirements. Furthermore, any document provided for Client review by the Engineer under this Contract related to such insurance(s) shall be considered as sample insurance requirements and not the recommendation of the Engineer. Client agrees to have their own risk management department review any and all insurance requirements for adequacy and to determine specific types of insurance(s) required for the project. Client further agrees that decisions concerning types and amounts of insurance are specific to the project and shall be the product of the Client. As such, any and all insurance requirements made part of Contract Documents prepared by the Engineer are not to be considered the Engineer's recommendation, and the Client shall make the final decision regarding insurance requirements.

25. Information Provided by Others: The Engineer shall indicate to the Client the information needed for rendering of the services of this Agreement. The Client shall provide to the Engineer such information as is available to the Client and the Client's consultants and contractors, and the Engineer shall be entitled to rely upon the accuracy and completeness thereof. The Client recognizes that it is impossible for the Engineer to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors or omissions which may have occurred in assembling the information the Client is providing. Accordingly, the Client agrees, to the fullest extent permitted by law, to indemnify and hold the Engineer and the Engineer's subconsultants harmless from any claim, liability or cost (including reasonable attorneys' fees and cost of defense) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the Client to the Engineer.

26. Payment: Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within thirty (30) days of its receipt. The client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law, whichever is the lesser) until paid. Client further agrees to pay Engineer's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney's fees, as well as costs attributed to suspension of services accordingly and as follows:

Collection Costs. In the event legal action is necessary to enforce the payment provisions of this Agreement, the Engineer shall be entitled to collect from the Client any judgement or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by the Engineer in connection therewith and, in addition, the reasonable value of the Engineer's time and expenses spent in connection with such collection action, computed at the Engineer's prevailing fee schedule and expense policies.

Suspension of Services. If the Client fails to make payments when due or otherwise is in breach of this Agreement, the Engineer may suspend performance of services upon five (5) calendar days' notice to the Client. The Engineer shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Client will reimburse Engineer for all associated costs as previously set forth in (Item 4 of) this Agreement.

27. When construction observation tasks are part of the service to be performed by the Engineer under this Agreement, the Client will include the following clause in the construction contract documents and Client agrees not to modify or delete it:

Kotecki Waiver. Contractor (and any subcontractor into whose subcontract this clause is incorporated) agrees to assume the entire liability for all personal injury claims suffered by its own employees, including without limitation claims under the Illinois Structural Work Act, asserted by persons allegedly injured on the Project; waives any limitation of liability defense based upon the Worker's Compensation Act, court interpretations of said Act or otherwise; and to the fullest extent permitted by law, agrees to indemnify and hold harmless and defend Owner and Engineer and their agents, employees and consultants (the "Indemnitees") from and against all such loss, expense, damage or injury, including reasonable attorneys' fees, that the Indemnitees may sustain as a result of such claims, except to the extent that Illinois law prohibits indemnity for the Indemnitees' own negligence. The Owner and Engineer are designated and recognized as explicit third party beneficiaries of the Kotecki Waiver within the general contract and all subcontracts entered into in furtherance of the general contract.

28. Job Site Safety/Supervision & Construction Observation: The Engineer shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences of procedures, or for safety precautions and programs in

connection with the Work since they are solely the Contractor's rights and responsibilities. The Client agrees that the Contractor shall supervise and direct the work efficiently with his/her best skill and attention; and that the Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction and safety at the job site. The Client agrees and warrants that this intent shall be carried out in the Client's contract with the Contractor. The Client further agrees that the Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work; and that the Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees on the subject site and all other persons who may be affected thereby. The Engineer shall have no authority to stop the work of the Contractor or the work of any subcontractor on the project.

When construction observation services are included in the Scope of Services, the Engineer shall visit the site at intervals appropriate to the stage of the Contractor's operation, or as otherwise agreed to by the Client and the Engineer to: 1) become generally familiar with and to keep the Client informed about the progress and quality of the Work; 2) to strive to bring to the Client's attention defects and deficiencies in the Work and; 3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. If the Client desires more extensive project observation, the Client shall request that such services be provided by the Engineer as Additional and Supplemental Construction Observation Services in accordance with the terms of this Agreement.

The Engineer shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. The Engineer does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

When municipal review services are included in the Scope of Services, the Engineer (acting on behalf of the municipality), when acting in good faith in the discharge of its duties, shall not thereby render itself liable personally and is, to the maximum extent permitted by law, relieved from all liability for any damage that may accrue to persons or property by reason of any act or omission in the discharge of its duties. Any suit brought against the Engineer which involve the acts or omissions performed by it in the enforcement of any provisions of the Client's rules, regulation and/or ordinance shall be defended by the Client until final termination of the proceedings. The Engineer shall be entitled to all defenses and municipal immunities that are, or would be, available to the Client.

29.

30. Hazardous Materials/Pollutants: Unless otherwise provided by this Agreement, the Engineer and Engineer's consultants shall have no responsibility for the discovery,

presence, handling, removal or disposal of or exposure of persons to hazardous materials/pollutants in any form at the Project site, including but not limited to mold/mildew, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic/hazardous/pollutant type substances.

Furthermore, Client understands that the presence of mold/mildew and the like are results of prolonged or repeated exposure to moisture and the lack of corrective action. Client also understands that corrective action is a operation, maintenance and repair activity for which the Engineer is not responsible.

June 13, 2005

Revised December 12, 2013

Revised December 20, 2013

Revised July 20, 2016

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