

Resolution No. 20-24

RESOLUTION OF THE VILLAGE OF VILLA PARK, DUPAGE COUNTY, ILLINOIS, APPROVING AN ENGINEERING SERVICES AGREEMENT WITH CHRISTOPHER B. BURKE ENGINEERING, LTD., OF ROSEMONT, ILLINOIS, FOR PHASE II DESIGN ENGINEERING OF THE THIRD AVENUE IMPROVEMENT PROJECT (HOLLY TO DIVISION) IN AN AMOUNT NOT TO EXCEED \$66,700.00

WHEREAS, the Village of Villa Park, DuPage County, Illinois (the "*Village*") is a duly organized and validly existing non home-rule municipality created in accordance with the Constitution of the State of Illinois of 1970 and the laws of the State; and,

WHEREAS, the Village received a Community Development Block Grant ("*CDBG*") for the purpose of installing new storm sewer on Third Avenue from approximately 250 feet north of Holly Court to Division Street; and,

WHEREAS, before proceeding with construction of the Third Avenue Improvement Project, the Village requires engineering services, which shall include design plans, specifications and estimates; and,

WHEREAS, Christopher B. Burke Engineering, Ltd. ("*CBBEL*") has submitted a proposal to conduct professional design engineering services pursuant to the terms and conditions of the written proposal (the "*Services Agreement*"); and,

WHEREAS, the President and Board of Trustees of the Village (the "*Corporate Authorities*") have reviewed CBBEL's proposal to enter into an engineering agreement (the "*Services Agreement*"), and believe it is in the best interests of the Village and its residents to enter into the Services Agreement as herein set forth, in order to facilitate the construction of the Third Avenue Improvement Project.

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

Section 1. That the recitals in the preambles to this Resolution are incorporated into this Section 1 as if fully set forth herein.

Section 2. That the Services Agreement between the Village of Villa Park and Christopher B. Burke Engineering, Ltd., an Illinois corporation, attached hereto and made a part hereof, is hereby approved and the Village President, Village Clerk, and Village Manager are hereby authorized to execute and deliver said Agreement and undertake any and all actions as may be required to implement its terms on behalf of the Village.

Section 3. This Resolution shall be in full force and effect immediately from and after its passage and approval according to law.

Resolution No.: 20-24

Passed this 13th day of April, 2020, pursuant to a roll call vote as follow:

AYES: 7

NAYS: 0

ABSENT: 0

Approved this 13th day of April, 2020.


Village President

Attest:


Village Clerk





CHRISTOPHER B. BURKE ENGINEERING, LTD.

9575 W Higgins Road, Suite 600 Rosemont, Illinois 60018-4920 Tel (847) 823-0500 Fax (847) 823-0520

March 26, 2020

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

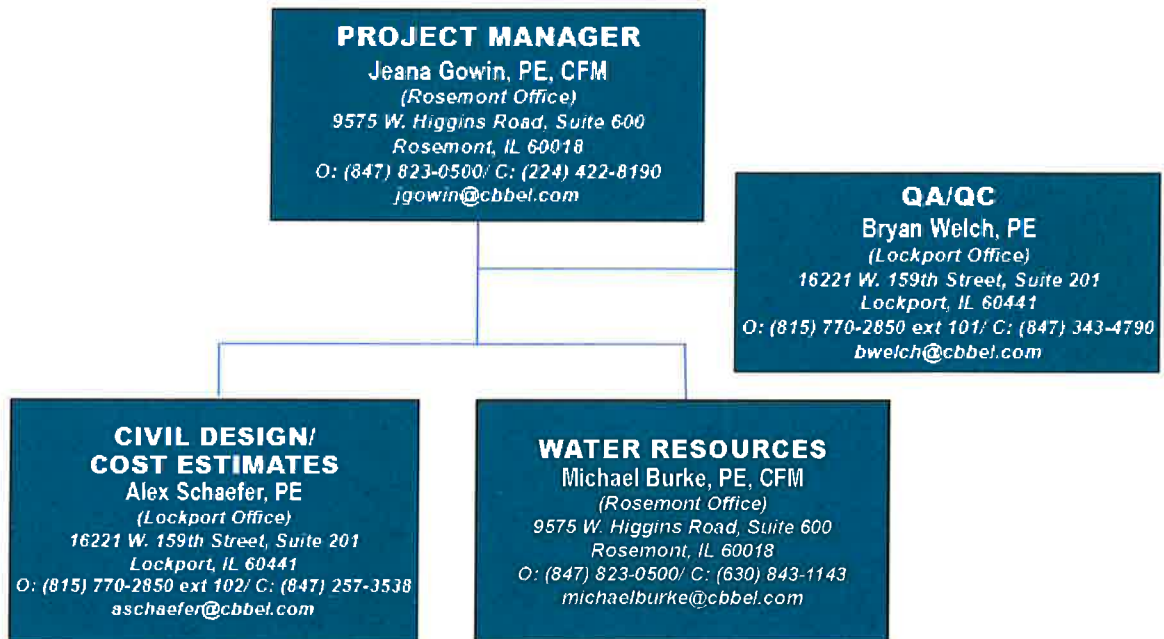
Attention: Mr. Kevin Mantels – Assistant Village Engineer

Subject: Proposal for Professional Design Engineering Services
Third Avenue Improvement Project
CDBG Funded Project
Villa Park, DuPage County, Illinois

Dear Mr. Mantels:

Christopher B. Burke Engineering, Ltd. (CBBEL) is pleased to provide this proposal for professional design engineering services related to the Third Avenue Improvement Project for the Village of Villa Park (Village). Included in this proposal is our Proposed Project Staff, Understanding of Assignment, Scope of Services, and Estimated Fee.

PROPOSED PROJECT STAFF



UNDERSTANDING OF THE ASSIGNMENT

It is our understanding that the Village would like CBBEL to design a combined sewer separation and road rehabilitation project on Third Avenue between Holly Court and Division Street. In October 2019, CBBEL assisted the Village in preparing a Community Development Block Grant (CDBG) application for separating the combined sewer along Third Avenue from Holly Court to Division Street, and it is our understanding that the Village received a grant from DuPage County for this portion of the project.

The project design will include the installation of a new separate storm sewer from approximately 250 north of Holly Court to Division Street (approximately 900 feet) and tie into an existing storm sewer along Division Street. It is assumed that the sewer installation along Third Avenue will require roadway patching above the sewer trench with the remainder of the road being resurfaced, and that any necessary Village utility relocations (water and sanitary sewer) will be isolated and minor. The scope of construction will also include partial driveway rehabilitation, spot curb repair, sidewalk improvements for ADA accessibility, fire hydrant replacement and parkway restoration.

SCOPE OF SERVICES

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

Task 1 – Topographic Survey: 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 engineering design, 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 will be surveyed to determine rim and invert elevations, pipe sizes, and condition of each structure/pipe. Above ground facilities of any additional underground utilities including water main, gas, electric, cable, etc. will also be located. CBBEL will coordinate with utility owners to retrieve atlas information as defined in Task 2.

Tree Survey: CBBEL will locate all trees within the existing right-of-way and ultimately the proposed right-of-way for the project in order 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 1,500 feet of roadway will be surveyed along Third Avenue, from Holly Court to the north right-of-way line of Division Street. The survey will include the intersections of Third Avenue and Holly Court, Third Avenue and Elm Street, and Third Avenue and Division Street.

Task 2 – Utility Coordination: CBBEL will send a Preliminary JULIE Utility Request to all known utility companies to obtain pertinent information. Based on the information received from the utility companies, and the existing survey, CBBEL will include locations of all facilities on the existing conditions plan, identify potential conflicts with the proposed project and design the proposed improvements to minimize utility conflicts to the extent possible.

CBBEL will provide pre-final plans of the project to the utility companies to verify their facility locations and confirm any potential conflicts. CBBEL will identify potential conflicts and coordinate any relocations, if necessary.

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:

- Topographic Survey
- Utility Atlases
- Record Drawings
- Existing Right-of-way Information and Subdivision Plats
- Village Standards and Specifications
- Village Standard Construction Contract and Special Provisions
- Televising Videos Provided by Village

This task will also include data collection and similar work required to respond to DuPage County requests for information regarding the County's environmental assessment of the project.

Task 4 – Geotechnical Investigation: Our subconsultant, Testing Service Corporation (TSC), will complete approximately four (4) pavement cores/soil borings located throughout the entire project limits. The borings will be taken to a depth of fifteen (15) feet. TSC will prepare a report describing existing pavement composition, soil conditions and make recommendations for remediation.

Task 5 – Environmental Testing: CBBEL’s subconsultant, Testing Service Corporation (TSC), will complete an evaluation of Potentially Impacted Property (PIP) for the entire limits of the project. The PIP evaluation includes sampling and laboratory analysis for completion of LPC-663 Form. It is our understanding that a LPC-662 form will not be sufficient for this project. These forms are required for excavated material being removed from the project sites and taken to disposal facilities. TSC will provide a list of dump sites that will accept the material identified in the PIP.

Task 6 – XP-SWMM Hydraulic Modeling: Based on survey data obtained, the hydraulic analysis will be updated. The proposed storm sewer size will be verified or modified as needed based on this information. This task also includes modifications to the design hydraulic model based on any determined utility conflicts. This proposed sewer will be incorporated into the overall Comprehensive Flood Study analysis previously prepared by CBBEL.

Task 7 – Pre-Final Engineering Plan Preparation (90%): Based on survey data obtained and conceptual drawings, CBBEL will prepare pre-final engineering plans, estimates and specifications for the project. It is assumed that any necessary Village utility relocations (water, storm and sanitary sewer) will be isolated and minor. As part of this task, CBBEL will also identify any trees or stumps within the corridor, surveyed in Task 1, that are in poor condition and should be removed. Quantities for tree removal and replacement and locations of replacement trees will be included in the plans based on coordination with the Village.

The pre-final design for the project will include the following:

Sheet	No. of Sheets	Avg. Hours Per Sheet	Hours
Title Sheet	1	2	2
General Notes	1	2	2
Summary of Quantities	1	2	2
Typical Sections	1	8	8
Alignment, Ties & Benchmarks (scale 1"=50')	1	8	8
Existing Conditions & Removals (scale 1"=20')	1	12	12
Proposed Utility & Roadway Plan & Profile (scale 1"= 20')	2	28	56
Construction Details	2	4	8
Cost Estimates/Quantity Calculations	-	-	16
Specifications	-	-	16
QA/QC Reviews	-	-	8
Total	10	-	138

The pre-final engineering plans, specifications and estimate will be provided to Villa Park and necessary permitting agencies for review, and a meeting will be held with the Village to discuss review comments.

Contract documents will be prepared in MFT format (plans, specification and estimate); however, it is assumed that no MFT funds will be used for this project. CDBG-required bid forms, requirements and paperwork shall be included in the bid documents.

Task 8 – Final Engineering Plan Preparation (100%): The pre-final engineering plans, specifications and estimate for the project will be finalized based on review comments from the Village and submitted to the Village for final review. Any final comments will be addressed, and the bid documents will be prepared for bidding. Final plans, specifications and estimates will be provided to the Village in PDF, Excel and AutoCAD formats. Coordination with DuPage County as needed to present the project to satisfy CDBG requirements will also be completed.

Task 9 – CDBG Grant Administration and Reporting: CBBEL will work with Village Staff and DuPage County to facilitate the necessary CDBG paperwork, reporting, agreements and submittals. We will coordinate with Village and County staff throughout the project duration. We also anticipate that two (2) coordination meetings with DuPage County will be needed related to the satisfying CDBG funding requirements.

Task 10 – Bidding Assistance: CBBEL will create and manage a bid advertisement on QuestCDN, 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 for the project. This task includes attendance at one mandatory pre-bid meeting for the project, as outlined in the specifications, and distribution minutes and addendums as necessary.

Task 11 – Project Meetings and Coordination: It is anticipated that two (2) meetings with Village staff will be needed during design development at the beginning of the pre-final engineering design phase and during the pre-final review of the project. If additional meetings are necessary, they can be provided as Additional Work on a Time and Materials basis.

ESTIMATED FEE

The costs of the services provided are as follows and will not be exceeded without prior approval:

Task	Description	Cost
1	Topographic Survey	\$ 8,500
2	Utility Coordination	\$ 5,400
3	Data Collection and Review	\$ 3,500
4	Geotechnical Investigation (Subconsultant)	\$ 5,000
5	Environmental Testing (Subconsultant)	\$ 3,000
6	XP-SWMM Hydraulic Modeling	\$ 4,800
7	Pre-Final Engineering Plan Preparation (90%)	\$ 15,700

8	Final Engineering Plan Preparation (100%)	\$ 7,000
9	CDBG Grant Administration and Reporting	\$ 5,000
10	Bidding Assistance	\$ 3,500
11	Project Meetings and Coordination	\$ 4,500
	Direct Costs	\$ 800
	Total	\$ 66,700

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 that were previously agreed upon in February 2020. 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.

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,



Michael E. Kerr, PE
President

Encl. Project Schedule
Schedule of Charges
Previously Agreed to General Terms and Conditions

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

BY: Albert Butthaus
TITLE: PRESIDENT
DATE: 4-15-2020

CHRISTOPHER B. BURKE ENGINEERING, LTD.
STANDARD CHARGES FOR PROFESSIONAL SERVICES
JANUARY, 2020

<u>Personnel</u>	Charges* (\$/Hr)
Principal	275
Engineer VI	251
Engineer V	208
Engineer IV	170
Engineer III	152
Engineer I/II	121
Survey V	229
Survey IV	196
Survey III	172
Survey II	126
Survey I	100
Engineering Technician V	198
Engineering Technician IV	161
Engineering Technician III	146
Engineering Technician I/II	68
CAD Manager	177
Assistant CAD Manager	153
CAD II	135
GIS Specialist III	148
GIS Specialist I/II	94
Landscape Architect	170
Environmental Resource Specialist V	216
Environmental Resource Specialist IV	170
Environmental Resource Specialist III	139
Environmental Resource Specialist I/II	94
Environmental Resource Technician	114
Administrative	104
Engineering Intern	63
Information Technician III	130
Information Technician I/II	116

Direct Costs

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, 2020.

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

resumptions 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 before 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.

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. The Engineer also reserves the right to retain hard copy originals of all Project Documentation delivered to the Client in machine readable form.

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. Any reuse 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. Reserved.

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. Reserved.

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

Revised February 12, 2020

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