

RESOLUTION NO. R-23-36

**A RESOLUTION APPROVING AN ENGINEERING SERVICES AGREEMENT
BETWEEN THE VILLAGE OF CLARENDON HILLS AND CHRISTOPHER B. BURKE
ENGINEERING, LTD. FOR DESIGN AND CONSTRUCTION OBSERVATION OF THE
2024 ROAD PROGRAM IN THE ESTIMATED AMOUNT OF \$109,600**

WHEREAS, the Village of Clarendon Hills, Illinois (the "Village"), acting by and through its Village President and Board of Trustees (the "Village Board"), is a municipal corporation operating pursuant to the Illinois Municipal Code; and

WHEREAS, the Village has employed for twenty-six (26) years Christopher B. Burke Engineering, Ltd. to provide Engineering Services for Village residents, businesses, and other members of the general public; and

WHEREAS, upon the recommendation of its Director of Public Works and Village Manager, the Village Board has determined that it is in the best interests of the Village to enter into an Engineering Services Agreement for design and construction observation of the 2024 Road program with Christopher B. Burke Engineering, Ltd. pursuant to an agreement attached hereto Exhibit A and made a part hereof.

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

SECTION 1 - Recitals: The foregoing recitals shall be and are hereby incorporated into, and made a part of, this Resolution as the findings of the Village Board.

SECTION 2 - Approval of the Professional Engineering Services Agreement: The Village hereby approves the Agreement substantially in the form attached hereto and made a part hereof as Exhibit A and directs the Village President or an authorized designee to negotiate final terms, if any, with the advice of the Village Attorney.

SECTION 3 - Authorization and Direction: The Village President is hereby authorized and directed to sign, and the Village Clerk to attest thereto, the agreement presented herein and any finally negotiated terms as set forth therein.

SECTION 4 - Other Actions Authorized: The officers, employees and/or agents of the Village shall take all actions necessary or reasonably required to carry out and give effect to the intent of this Resolution and otherwise to consummate the transactions contemplated herein, and shall take all actions necessary in conformity therewith including, without limitation, the execution and delivery of all documents required to be delivered in connection with the transaction contemplated herein.

SECTION 5 - Acts of Village Officials: That all past, present and future acts and doings of the officials of the Village that are in conformity with the purpose and intent of this Resolution are hereby, in all respects, ratified, approved, authorized and confirmed.

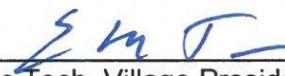
SECTION 6: - This Resolution shall be in full force and effect after its passage and approval as required by law.

PASSED and APPROVED this 13th day of November 2023.

AYES: Trustees Chaudhry, DeAngelis, Lannert, Peterson, Tuttle, and Weicher

NAYS: None

ABSENT: None


Eric Tech, Village President

ATTEST:



Lynn B. Dragisic, Village Clerk





EXHIBIT A

CHRISTOPHER B. BURKE ENGINEERING, LTD.

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

October 31, 2023

Village of Clarendon Hills – Public Works
1 North Prospect Avenue
Clarendon Hills, IL 60514

Attention: Mr. Brendan McLaughlin, Public Works Director

Subject: 2024 Clarendon Hills Road Program
Project Proposal for Professional Engineering Services

Dear Mr. McLaughlin:

At your request, Christopher B. Burke Engineering, Ltd. (CBBEL) is pleased to provide this proposal for professional engineering services related to design and construction engineering for the 2024 Clarendon Hills Road Program. Included below you will find our Understanding of the Assignment, Scope of Services and Estimate of Fee.

UNDERSTANDING OF THE ASSIGNMENT

CBBEL understands that the Village of Clarendon Hills would like to propose one bid package with possible alternatives as determined by the Village based on available funding utilizing MFT/RBI/Local Funds. The following will be included in the project.

- Proposed mid-block pedestrian crossing on Prospect Avenue as described in our technical memo dated September 1, 2023.
- Removal of the mid-block crossing on Park Avenue as described in our technical memo dated September 1, 2023.
- Proposed crosswalk on the east side of the intersection of Walker Avenue and Park Avenue including a stop sign and bump out.
- Resurfacing of the following streets and parking lots:
 - Holmes Avenue from 55th Street to 58th Street (approximately 2,600 linear feet)
 - 58th Street from Holmes Avenue to Route 53 (approximately 900 linear feet)
 - 56th Street from Barclay Court to Forest Hills Drive (approximately 950 linear feet)
 - 226 Middaugh (Maple Metering Station Parking Lot)
 - 1 N. Prospect Avenue (Village Hall Parking Lot)
 - 231 Burlington Avenue (Water Tower Parking Lot)

- 4 McIntosh (McIntosh Alley)
- 259 Ann Street (Ann Street Metering Station Parking Lot)
- 261 Ann Street (Reservoir Parking Lot)
- 50 Sheridan (Historical Society Parking Lot)
- 278 Holmes Avenue (Well #6 Parking Lot)

For the resurfacing of the streets depending on the geotechnical investigation, either a grind and overlay (grinding two inches, patching, and resurfacing the roadway with $\frac{3}{4}$ inches of leveling binder and 1 $\frac{1}{2}$ inches of surface course) or full depth resurfacing (grinding all of the existing asphalt [approximately 4 $\frac{1}{4}$ inches], undercutting, and resurfacing the roadway with 2 $\frac{1}{2}$ inches of binder and 2 inches of surface course) will be completed. Also included would be any necessary structure adjustments, replacement of frames and lids, and replacement of defective drainage structures.

SCOPE OF SERVICES

I. DESIGN PHASE

Task 1 – Geotechnical Investigation: A Geotechnical Investigation will be performed by CBBEL's subconsultant, Testing Service Corporation (TSC). The Geotechnical Investigation will include pavement cores (approximately 17 cores of which 7 will include LPC663) at a frequency to determine the existing structure of the pavement and condition of subgrade materials. Due to concern of the depth of existing pavement thickness we would recommend TSC completing the geotechnical report to verify the existing thickness of the bituminous pavement. This will allow us to verify that the correct improvement is proposed for the roadways. This assumes no flagmen are required to take the cores. TSC will prepare a report describing the following:

- Summary of client-provided project information and report basis.
- Core Location Plan
- Photo documentation of field conditions and core specimens
- Subbase stone thickness
- Overview of encountered subsurface conditions
- Geotechnical recommendations pertaining to:
 - Subgrade stability and preparation
 - Estimated IBV value at each boring location
- Construction considerations

Task 2 – Evaluation of Geotechnical Report: CBBEL and Village Staff will evaluate the geotechnical report to determine the resurfacing treatment for the street to be included in the 2024 Road Program.

Task 3 – Rebuild Illinois Funds: CBBEL will complete calculations required for the pavement design study in accordance with the IDOT Bureau of Local Roads Manual Section 46-4 and IDOT Circular Letter 2020-11, which requires all design overlay extension projects to have a design life greater than 13 years.

Task 4 –Topographic Survey: As part of this task, CBBEL will perform an updated topographic survey for the locations below located in Clarendon Hills. The survey will include available utilities. The scope of CBBEL's survey effort will include:

- Midblock Crossing on Prospect Avenue.

- Crosswalk on the west side of the intersection at Prospect Avenue and Park Avenue.
- Crosswalk and bumpout on the east side of the intersection of Walker Avenue and Park Avenue.

1. Horizontal Control: Utilizing state plane coordinates, CBBEL will set recoverable primary control utilizing state of the art GPS equipment based on NGS Control Monumentation (NAD '83, Illinois East Zone 1201).
2. Vertical Control: CBBEL will establish benchmarks and assign elevations to the horizontal control points. This will be based on GPS observed & NGS Control Monumentation (NAVD'88 vertical control datum).
3. 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.
4. Topographic Survey: CBBEL will field locate all pavements, driveways, curb and gutters, pavement markings, signs, manholes, utility vaults, drainage structures, utilities, driveway culverts, crossroad culverts, etc. within the project limits.
5. Cross Sections: CBBEL will survey cross sections along the project limits at 50' intervals, at driveways, and at all other grade controlling features. Pond cross sections are not included in topographic task.
6. Utility Survey and Coordination: All existing storm and sanitary sewers 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.
7. Tree Survey: CBBEL will locate all isolated trees over 6" inches in diameter within the project area (Tree Line only for forested areas) in order to assess potential tree impacts, if any, associated with the project. The located trees will be identified by type (deciduous or coniferous) and the size and condition determined as appropriate.
8. Base Mapping: CBBEL will compile all of the above information onto base maps at 1"=20' scale that is representative of existing conditions for use as the base sheet for the construction of any public or private improvements.
- **Boundary/Land Acquisition Survey, and Right-of-Way/Plat of Highway Scope of Services are not included in this proposal.**

Task 5 – JULIE Utility Survey: CBBEL will coordinate with utility owners and with JULIE Utility Coordination to retrieve atlas information for all applicable underground utilities including water main, gas, electric, cable, etc. CBBEL will compile all Utility Atlas information into the base map. Locations of existing utilities /obstructions / systems shown on the base map are the compilation of available utility plans provided by utility owners and JULIE Utility Coordination. All utilities /obstructions / systems may not be shown. Contractor shall be responsible for locating and protecting all underground utilities /obstructions / systems whether or not shown on base map.

Task 6 – Field Reconnaissance Road Program: CBBEL Construction Staff will perform a Field Reconnaissance of the street to be resurfaced. The purpose of the Field

Reconnaissance will be to determine the limits and drainage issues. The results of the Field Reconnaissance will be used to prepare the bid booklet. The results of the Field Reconnaissance will be reviewed with the Village Staff and compared to previous estimates to determine the impact on the estimated construction cost.

Task 7 – Preparation of Plans, Specifications, and Estimate: CBBEL will prepare plans and specifications for the 2024 Road Program.

The following sheets and associated hours will be required:

Sheet	# of Sheets	Hours per Sheet	Hours
Title Sheet	1	8	8
General Notes	1	10	10
Summary of Quantities	1	16	16
Alignment, Ties and Benchmarks	2	10	20
Existing Conditions and Removal Plan	3	10	30
Proposed Geometric Plan	6	10	60
Proposed Grading Plan	5	10	50
Soil Erosion/Sediment Control Plans	3	8	24
Soil Erosion/Sediment Control Notes and Details	2	8	16
Construction Details	1	8	8
Specifications	--	--	12
Cost Estimate/Quantities	--	--	30
TOTAL	25	--	284

Task 8 – Bidding Assistance : CBBEL will advertise for bidding, distribute the engineering plans to all bidders, and hold a bid opening. CBBEL will review and tabulate all of the bids and make a recommendation of award.

Task 9 – Meetings: CBBEL has assumed 1 meeting at 3 hours with Village Staff or Village Board. This task includes preparing exhibits and drawings as needed for the meetings.

II. CONSTRUCTION PHASE SERVICES

Task 10 – Pre-Construction Services:

1. Attend a pre-construction conference with the contractor, Village, and other parties to discuss goals, objectives, and issues of the project. CBBEL shall prepare a project contact list, including 24-hour emergency numbers, for distribution with the meeting minutes.
2. Conduct utility coordination meetings, as required, to monitor and verify the progress of utility relocations being completed by others.
3. Obtain and distribute all permits issued for the construction of the project.
4. Obtain from the contractor a list of proposed suppliers and subcontractors. Make recommendations to the Village regarding the suitability of the subcontractors for the proposed work. Review the construction schedule submitted by the contractor for compliance with the contract. CBBEL will review it in relation to the notes found on the Construction Staging and Sequencing Plan sheets in the plan set. If the Contractor chooses an alternate staging and sequencing (as allowed), CBBEL will review the constructability of their plan to ensure that the work is being completed in a logical sequence.
5. CBBEL shall document all existing conditions with digital photographs and videotapes to ensure that all disrupted areas have been restored per the plan or existing conditions.

6. Review the plans and specifications for potential conflicts or problems, so that solutions can be developed prior to construction.
7. Review the Inspector's Checklists provided through IDOT for contract line items.
8. Prepare project files, Quantity, and IDR books.

Task 11 – Construction Observation: This assumes 10 hours/day for 1 full time resident engineer (Engineer I/II) for a duration of 5 weeks.

Layout Verification and/or Construction Layout

1. Verify initial geometric controls.
2. If the contractor is responsible for construction staking, perform periodic measurements to assure the contractor's construction staking and construction layout is accurate per plans.

Construction Observation

1. Observe the progress and quality of the executed work. Determine if the work is proceeding in accordance with the Contract Documents. CBBEL shall keep the Village informed of the progress of the work, guard the Village against defects and deficiencies in the work, advise the Village of all observed deficiencies of the work and reject all work failing to conform to the Contract Documents.
2. Provide on-site observations of the work in progress and field checks of materials and equipment through a Resident Engineer and Inspector (if necessary), who shall:
 - o Serve as the Village's liaison with the contractor working principally through the contractor's field superintendent.
 - o Be present whenever the contractor is performing work on-site.
 - o Cooperate with the contractor in dealing with the various local agencies and utility companies having jurisdiction over the project to facilitate completion of service connections to public utilities and facilities.
 - o Record names, addresses and telephone numbers of all contractors, subcontractors, and major material suppliers. Attend all construction conferences. Arrange a schedule of weekly progress meetings and other job conferences as required. Maintain and circulate copies of records of the meetings.
 - o Review contractor's progress on a weekly basis and update the progress schedule. Compare actual progress to the contractor's approved schedule. If the project falls 14 calendar days behind schedule, work with the contractor to determine the appropriate course of action to get back on schedule. The contractor is required to submit a revised schedule for approval prior to further payments being made.
 - o Maintain orderly files of correspondence, reports of job meetings, shop drawings and other submissions, RFI responses, original contract documents including all addenda, change orders and additional drawings issued subsequent to the award of the contract.
 - o Prepare any RFC's needed as construction proceeds. Once the contractor submits a proposal, assist the Village in their review and provide a recommendation.
3. Determine if the project has been completed in accordance with the contract documents and if the contractor has fulfilled all obligations.

4. Except upon written instruction of the Village, the Resident Engineer or Inspector shall not authorize any deviation from the Contract Documents.
5. Alert the Contractor's field superintendent when materials or equipment are being installed before approval of shop drawings or samples, where such are required, and advise the Village when it is necessary to disapprove work as failing to conform to the Contract Documents.
6. Discuss the truck routes with the Contractor and monitor that the identified routes are being used.
7. All CBBEL personnel and their sub-consultants will comply with the Village's current safety guidelines.

CBBEL shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work since these are solely the Contractor's responsibility under the contract for construction.

Construction Documentation

1. Keep an inspector's daily report book and project diary in the Village's format, recording hours on the job site, weather conditions, general and specific observations, daily activities, quantities placed, inspections, decisions, and list of visiting officials, as outlined in IDOT's Construction Manual. Additionally, prepare photo documentation of construction to be submitted in both hard and digital formatting.
2. Prepare payment requisitions and change orders. Review applications for payment with the Contractor for compliance with established submission procedure and forward them with recommendations to the Village. Maintain a Change Management Plan logging all decisions and approved changes of scope and budget.
3. Schedule any material testing through the Village's Consultant at the frequency required by IDOT's QC/QA provisions. Also, obtain and document all material Inspection received from the Contractor as outlined in the Project Procedures Guide of IDOT's Construction Manual.
4. Prepare a monthly written update to the Village summarizing the Project status, costs and schedule.
5. Review and coordinate response to any RFI from the Contractor in a timely manner and maintain a separate file for each request.

Resident Concerns Coordination

The Resident Engineer will be responsible for verifying that the Contractor makes the public aware of the construction activities, as required. This will include, but not be limited to, advance notification of construction start, access limitations, and disruption of driveway access. The RE will also be available throughout the construction project to address any questions or concerns area residents and/or businesses may have. Our policy is to respond to all questions or concerns within one business day.

Task 12 – Quality Assurance Testing: Testing Service Corporation (TSC) will provide QA testing in accordance with IDOT's QC/QA Procedures outlined in the IDOT Construction Manual. They will be scheduled directly through the Resident Engineer.

Task 13 – Post-Construction:

1. Prior to final inspection, submit to the Contractor a list of observed items requiring correction and verify that each correction has been made.
2. Conduct final inspection with the Village and prepare a final list of items to be corrected.
3. Verify that all items on the final list have been corrected and make recommendations to the Village concerning acceptance.
4. Prepare final pay estimate and change order for the Village's approval.
5. Verify all necessary material inspection information has been received and documented.
6. Submit the job box to the Village with all pertinent project information.

ESTIMATE OF FEE

CBBEL estimates the following fees for each of the tasks described above:

I. DESIGN PHASE	
Task 1 – Geotechnical Investigation Road Program	\$ 13,025
Task 2 – Evaluation of Geotechnical Report Road Program	\$ 500
Task 3 – Rebuild Illinois Funds	\$ 750
Task 4 – Topographic Survey	\$ 5,620
Task 5 – JULIE Utility Survey	\$ 1,550
Task 6 – Field Reconnaissance Road Program	\$ 2,000
Task 6 – Preparation of Plans, Specifications, and Estimate:	\$ 40,000
Task 8 – Bidding Assistance	\$ 500
Task 9 – Meetings	\$ 1,500
II. CONSTRUCTION PHASE SERVICES	
Task 10 – Pre-Construction Services	\$ 2,920
Task 11 – Construction Observation	\$ 34,190
Task 12 – Quality Assurance Testing	\$ 2,500
Task 13 – Post Construction	\$ 2,920
Direct Costs (Vehicle Usage)	\$ 1,625
Total	\$ 109,600

We will bill you at the hourly rates specified on the attached Schedule of Charges and previously agreed to General Terms and Conditions. Direct costs for blueprints, photocopying, mailing, overnight delivery, messenger services and report compilation are not included in the Fee Estimate. These General Terms and Conditions are expressly incorporated into and are an integral part of this contract for professional services. It should be emphasized that any requested additional services that are not included in the preceding Fee Estimate 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 anytime.

Sincerely,



Michael E. Kerr, PE
President

Encl. Schedule of Charges
Clarendon Hills General Terms and Conditions

THIS PROPOSAL, SCHEDULE OF CHARGES AND GENERAL TERMS AND CONDITIONS ACCEPTED FOR THE VILLAGE OF CLARENDON HILLS.

BY: E M T

TITLE: Eric Tech, Village President

DATE: November 13, 2023

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CHRISTOPHER B. BURKE ENGINEERING, LTD.
STANDARD CHARGES FOR PROFESSIONAL SERVICES
JANUARY 2023

	Charges* (\$/Hr)
Personnel	
Engineer VI	265
Engineer V	220
Engineer IV	180
Engineer III	160
Engineer I/II	135
Survey V	240
Survey IV	220
Survey III	190
Survey II	160
Survey I	120
Engineering Technician V	210
Engineering Technician IV	175
Engineering Technician III	125
Engineering Technician I/II	85
CAD Manager	200
CAD II	145
GIS Specialist III	165
Landscape Architect	190
Landscape Designer I/II	110
Environmental Resource Specialist V	225
Environmental Resource Specialist IV	180
Environmental Resource Specialist III	145
Environmental Resource Specialist I/II	100
Environmental Resource Technician	130
Administrative	110
Engineering Intern	70
Information Technician III	150
Information Technician I/II	120
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, 2023.

CHRISTOPHER B. BURKE ENGINEERING, LTD.
GENERAL TERMS AND CONDITIONS
VILLAGE OF CLARENDON HILLS

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.

Furthermore, causes of action between the parties to this Agreement pertaining to acts of failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of substantial completion.

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.

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 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 strive to 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 strive to 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. As such and with respect to ADA, Client agrees to waive any action against Engineer, and to indemnify and defend Engineer against any claim arising from Engineer's alleged failure to meet ADA requirements prescribed.

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:

(A) The Engineer shall indemnify, defend and save harmless the Client, its officers, agents, employees, representatives and assigns, from lawsuits, actions, costs (including attorneys' fees), claims or liabilities of any character brought because of any injuries or damages received or sustained by any person, persons, or property on account of the negligent act or omission or any willful misconduct of said Engineer, its officers, agents and/or employees arising out of, or in performance of any of the provisions of the Agreement, including any claims or amounts recovered for any infringements of patent, trademark or copyright; or from any claims or amounts arising or recovered under the "Worker's Compensation Act" or any other law, ordinance, order or decree. Notwithstanding the foregoing, Engineer will have no liability to the Client to the extent any claims, losses, costs, expenses or damages arise out of or result from any act, omission, negligence or willful misconduct of the Client or its officers, agents, employees, representatives or assigns.

(B) The Client shall indemnify, defend and save harmless the Engineer, its officers, agents, employees, representatives and assigns, from lawsuits, actions, costs (including attorneys' fees), claims or liabilities of any character brought because of any injuries or damages received or sustained by any person, persons, or property on account of the negligent act or omission or any willful misconduct of said Client, its officers, agents and/or employees arising out of, or in performance of any of the provisions of the Agreement, including any claims or amounts recovered for any infringements of patent, trademark or copyright; or from any claims or amounts arising or recovered under the "Worker's Compensation Act" or any other law, ordinance, order or decree. Notwithstanding the foregoing, Client will have no liability to the Engineer to the extent any claims, losses, costs, expenses or damages arise out of or result from any act, omission, negligence or willful misconduct of the Engineer or its officers, agents, employees, representatives or assigns.

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**.

Any claim, dispute or other matter in question arising out of or related to this Agreement, which can not be mutually resolved by the parties of this Agreement, shall be subject to mediation as a condition precedent to arbitration (if arbitration is agreed upon by the parties of this Agreement) or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Engineer's services, the Engineer may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

The Client and Engineer shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Requests for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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. **Liability Limited to Amount of Insurance Proceeds Available:** Engineer shall procure and maintain insurance as required by and set forth in this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by State law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, consultants and employees to the Client and anyone claiming by, through or under the Client for any and all claims, losses, costs or damages whatsoever arising out of, resulting from, or in any way related to the work to be performed by Engineer under this Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty expressed or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees or consultants (hereafter "Client's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Client's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense and appeal), up to the amount of insurance required under this Agreement and available. Similarly, the total amount potentially due the Engineer, or on behalf of the Engineer, from the Client, under the indemnification provisions of Section 7(B) of this Agreement, shall be capped in the same manner as provided above relative to the Engineer, and at the amounts of insurance required to be carried by Engineer under Section 6 of this Agreement, so that the monetary liability cap for the Client and the Engineer, under this Agreement, are the same."

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.

The Client agrees to require the Contractor, to the fullest extent permitted by law, to indemnify, hold harmless, and defend the Engineer, its consultants, and the employees and agents of any of them from and against any and all claims, suits, demands,

liabilities, losses, damages, and costs ("Losses"), including but not limited to costs of defense, arising in whole or in part out of the negligence of the Contractor, its subcontractors, the officers, employees, agents, and subcontractors of any of them, or anyone for whose acts any of them may be liable, regardless of whether or not such Losses are caused in part by a party indemnified hereunder. Specifically excluded from the foregoing are Losses arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications, and the giving of or failure to give directions by the Engineer, its consultants, and the agents and employees of any of them, provided such giving or failure to give is the primary cause of Loss. The Client also agrees to require the Contractor to provide to the Engineer the required certificate of insurance.

The Client further agrees to require the Contractor to name the Engineer, its agents and consultants as additional insureds on the Contractor's policy or policies of comprehensive or commercial general liability insurance. Such insurance shall include products and completed operations and contractual liability coverages, shall be primary and noncontributing with any insurance maintained by the Engineer or its agents and consultants, and shall provide that the Engineer be given thirty days, unqualified written notice prior to any cancellation thereof.

In the event the foregoing requirements, or any of them, are not established by the Client and met by the Contractor, the Client agrees to indemnify and hold harmless the Engineer, its employees, agents, and consultants from and against any and all Losses which would have been indemnified and insured against by the Contractor, but were not.

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. **Insurance and Indemnification:** The Engineer and the Client understand and agree that the Client will contractually require the Contractor to defend and indemnify the Engineer and/or any subconsultants from any claims arising from the Work. The Engineer and the Client further understand and agree that the Client will contractually require the Contractor to procure commercial general liability insurance naming the Engineer as an additional named insured with respect to the work. The Contractor shall provide to the Client certificates of insurance evidencing that the contractually required insurance coverage has been procured. However, the Contractor's failure to provide the Client with the requisite certificates of insurance shall not constitute a waiver of this provision by the Engineer.

The Client and Engineer waive all rights against each other and against the Contractor and consultants, agents and employees of each of them for damages to the extent covered by property insurance during construction. The Client and Engineer each shall require similar waivers from the Contractor, consultants, agents and persons or entities awarded separate contracts administered under the Client's own forces.

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.

31. **Insurance:**

(A) During the term of the Agreement, the Engineer shall provide the following types of insurance in not less than the specified amounts:

1. Comprehensive General Liability - \$1,000,000.00 per occurrence;
2. Auto Liability - Combined Single Limit Amount of \$1,000,000.00 on any Engineer owned, and/or hired, and/or non-owned motor vehicles engaged in operations within the scope of this Agreement;
3. Workers Compensation - Statutory; Employers Liability \$1,000,000.00 (the policy shall include a 'waiver of subrogation');

4. Umbrella Coverage - \$2,000,000.00 (this shall apply to General Liability, Auto Liability and Professional Liability, except if the amount for Professional Liability exceeds these combined limits, then Umbrella Coverage does not need to apply to Professional Liability); and
5. Professional Liability - \$1,000,000.00.

(B) The Engineer shall furnish to the Client satisfactory proof of coverage of the above insurance requirements, by a reliable company or companies, before commencing any work. Such proof shall consist of certificates executed by the respective insurance companies and filed with the Client. Said certificates shall contain a clause to the effect that, for the duration of the Agreement, the insurance policy shall be canceled, expire or changed so as to the amount of coverage only after written notification 30 days in advance to the Client. In addition, said certificates shall list the Client and its officers, agents, employees, representatives and assigns as additional insureds on all required insurance policies except the policy for professional liability.

(C) The Engineer shall require sub-contractors of Engineer, if any, not protected under the Engineer's policies, to take out and maintain insurance of the same nature in amounts, and under the same terms, as required of the Engineer. Certificates as described in (B) above shall be provided to the Client for the sub-contractors of Engineer.

(D) Certificates of insurance shall be provided to the Client on standard certificate forms, signed by an authorized agent of the brokerage firm or carrier providing the certificates. Carriers providing coverage shall be reputable, and only those insurance companies having an A.M. Best rating of A; class VI or better shall be used unless prior written approval is obtained from the Client."