



ORDINANCE NO. 1783-17

AN ORDINANCE RATIFYING AND CONFIRMING THE EXECUTION OF A PREVIOUSLY EXECUTED AGREEMENT—CHRISTOPHER B. BURKE ENGINEERING, LTD.—PROFESSIONAL ENGINEERING DESIGN SERVICES FOR SCHWERMAN ROAD RESURFACING PROJECT

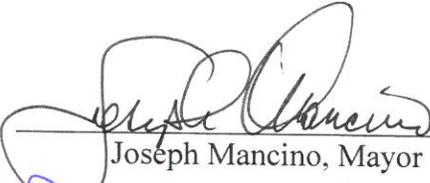
BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Hawthorn Woods, Illinois, that this ordinance is ratification in furtherance of a previously executed Agreement with Christopher B. Burke Engineering, Ltd. for professional engineering design services for the Schwerman Road Resurfacing project. Such Agreement is by and between the Village of Hawthorn Woods and Christopher B. Burke Engineering, Ltd., a copy of which is attached hereto as Exhibit "A", and, by this reference made a part hereof.

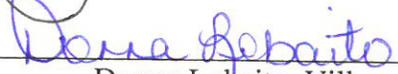
The foregoing Ordinance was adopted by the Village Board of the Village of Hawthorn Woods, Illinois, on September 25, 2017:

AYES: Kaiser, Kosik, Riess, Corrigan, DiMaggio, David

NAYS: 0

ABSENT AND NOT VOTING: 0

APPROVED: 
Joseph Mancino, Mayor

ATTEST: 
Donna Lobaito, Village Clerk

PASSED: September 25, 2017

APPROVED: September 25, 2017

PUBLISHED: October 2, 2017



CHRISTOPHER B. BURKE ENGINEERING, LTD.

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

August 1, 2017

Village of Hawthorn Woods
35 Old McHenry Road
Hawthorn Woods, IL 60047

Attention: Pam Newton, Chief Operating Officer

Subject: Proposal for Professional Engineering Design Services
Schwerman Road Resurfacing Project

Dear Pam:

At your request, Christopher B. Burke Engineering, Ltd. (CBBEL) is providing this proposal for professional engineering services related to the design and preparation of construction documents for the resurfacing on Schwerman Road from N. Gilmer Road to Fairfield Road. Included below you will find our Understanding of the Assignment, Scope of Services and Estimate of Fee.

UNDERSTANDING OF THE ASSIGNMENT

We understand the Village would like to utilize STP funding for the resurfacing of Schwerman Road from N. Gilmer Road to Fairfield Road (approximately 10,500 feet). We will complete the design of the project in 2017 for a fiscal year 2018 Federal letting. Please note that 50% of the construction will be the responsibility of Fremont Township.

SCOPE OF SERVICES

Task 1 – Geotechnical Investigation

A Geotechnical Investigation will be performed by CBBEL's subconsultant, Testing Services Corporation (TSC). The Geotechnical Investigation will include soil borings (approximately 5 cores) and pavement cores 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 flagman are required to take the cores.

The objectives of the Study are to determine whether the associated laboratory analysis provide a basis for TSC to sign IEPA Form LPC-663, Unincorporated Soil Certification by a Licensed Professional Engineer.

Uncontaminated soil including uncontaminated soil mixed with clean construction for demolition debris (CCDD) accepted at a CCDD fill operation must be certified to be uncontaminated soil in accordance with Section 22.51(f)(2)(B) of the Environmental Protection Act {415 ILCS 5/22 (f)(2)(B)}. Uncontaminated soil accepted at an uncontaminated soil fill operation (USFO) must be certified to be uncontaminated soil in accordance with Section 22.51a(d)(2)(B) of the Environmental Protection Act {415 ILCS 5/22.51a(d)(2)(B)}. These certifications must be made by a licensed professional engineer or geologists (PE/PG) using the attached Form LPC-663 when the soil is removed from a site which is determined by the PE/PG to be a "Potentially Impacted Property" (PIP) based on review of readily ascertainable property history, environmental databases and site reconnaissance. Uncontaminated soil from a site which is not identified as a PIP by the PE/PG may be certified by either the source site owner or operator using LPC-662 with pH analysis only.

A summary report will be prepared which describes the sampling procedures followed and presents results of the analytical laboratory testing. If all analytical results meet their respective MACs, Form LPC-663 will be filled out and signed by a Licensed Professional Engineer or Geologist. The report will be included.

Task 2 – Evaluation of Geotechnical Report

CBBEL will evaluate the geotechnical report to determine the resurfacing treatment for the project.

Task 3 – Field Reconnaissance

CBBEL Staff will perform a Field Reconnaissance of the streets to be resurfaced with Public Works. The purpose of the Field Reconnaissance will be to determine the limits and estimate the quantity of full depth bituminous pavement patching, and drainage structure to be adjusted. The results of the Field Reconnaissance will be reviewed with the Department of Public Works and compared to previous estimates to determine their impact on the estimated construction cost.

Task 4 – Plans, Specifications, and Estimates

CBBEL will prepare plans and specifications for the project. The plans and specifications will be submitted for review to the Department of Public Works for the State letting.

The following sheets and associated manhours will be required:

Sheet	# of Sheets	Manhours Per Sheet	Total Manhours
Title Sheet	1	8	8
General Notes/Summary of Quantities	1	12	12
Typical Sections (Existing and Proposed)	1	10	10
Existing Conditions/Removal Sheets	11	10	110
Proposed Plan Sheets	11	10	110
Construction Details	2	10	20
IDOT Details	4	8	32
Specifications			16
Cost Estimate/Quantities			10
TOTAL	31		328

Prefinal Plans, Specifications, and Estimates will be submitted to the Village and IDOT for review.

Task 5 – Coordination Meetings

CBBEL has assumed that two coordination meetings will be required with the Village and IDOT regarding the projects.

ESTIMATE OF FEE

We have determined the following costs for each of the tasks described in this proposal.

Task 1	Geotechnical Investigation	\$ 7,000
Task 2	Evaluation of Geotechnical Report	\$ 500
Task 3	Field Reconnaissance	\$ 3,500
Task 4	Plans, Specifications, and Estimates	\$ 22,000
Task 5	Coordination Meetings	<u>\$ 500</u>
	Total	\$ 33,500

We will bill you at the hourly rates specified on the attached Schedule of Charges and 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,



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

Encl. Schedule of Charges
General Terms and Conditions

THIS PROPOSAL, SCHEDULE OF CHARGES AND GENERAL TERMS AND CONDITIONS
ACCEPTED FOR VILLAGE OF HAWTHORN WOODS.

BY: Pamela D. Newton
TITLE: COO
DATE: 8/7/17

CHRISTOPHER B. BURKE ENGINEERING, LTD.
STANDARD CHARGES FOR PROFESSIONAL SERVICES
JANUARY, 2004

<u>Personnel</u>	<u>Charges*</u> <u>(\$/Hr)</u>
Principal	191
Engineer VI	166
Engineer V	122
Engineer IV	109-
Engineer III	102
Engineer I/II	83
Survey V	122
Survey IV	105
Survey III	98
Survey II	78
Survey I	61
Resource Planner V	93
Resource Planner IV	88
Resource Planner III	80
Resource Planner II	72
Engineering Technician IV	105
Engineering Technician III	102
Engineering Technician I/II	84
CAD Manager	109
Assistant CAD Manger	105
CAD II	102
CAD I	83
GIS Specialist	102
GIS Clerk	60
Environmental Resource Specialist V	105
Environmental Resource Specialist IV	105
Environmental Resource Specialist III	93
Environmental Resource Specialist II	76
Environmental Resource Technician	70
Administrative	72
Engineering Intern	42
Survey Intern	42

Direct Costs

Outside Copies, Blueprints, Messenger, Delivery Services, Mileage Cost + 10%

* Charges include overhead and profit

Christopher B. Burke Engineering, Ltd. reserves the right to increase these rates and costs by 5% after December 31, 2004.

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1. Relationship Between Engineer and Client: Christopher B. Burke Engineering, Ltd. (Engineer) shall serve as Client's professional engineer consultant for those services 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 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 any 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 any project. Nor shall the Engineer be responsible for the acts or omissions of the Client, or for the failure of the Client, any architect, other engineer or consultant, contractor or subcontractor to carry out their respective responsibilities in accordance with any project documents, this Agreement or any other agreement concerning any 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 until Engineer is served with such order of suspension.

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 notice terms, whenever Client

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shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by Engineer prior to the termination date shall be reimbursed by Client. Reasonable cost for compiling records and files after termination 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 duplicate originals of all documents and drawings for its files. Furthermore, it is understood and agreed that any project documents such as, but not limited to reports, calculations, drawings, and specifications prepared for a specific Project, whether in hard copy or machine readable form, are instruments of professional service intended for one-time use in the construction of such Project. The Client is the Owner of all documents.

The Engineer also reserves the right to retain hard copy duplicate originals of all documentation delivered to the Client in machine readable form, which duplicate 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 any 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 any specific project documentation on other projects, for additions to such Project, or for completion of engineering on such Project by others, excepting only such use as may be authorized, in writing, by the Engineer.

7. Reuse of Documents: All specific 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 such Project only. They cannot be used by Client or others on extensions of such Project or any other project. Any reuse, without specific written verification or adaptation by Engineer, shall be at Client's sole risk, and

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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 any 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.

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.

Further to the law and code compliance, the Client understands that the Engineer will 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/Insurance: The Engineer shall indemnify and hold harmless the Client from loss or expense, including reasonable attorneys' fees for claims for personal injuries (including death) or property damage arising out of the sole negligent act, error or omission of the Engineer.

The Client shall indemnify and hold harmless the Engineer, up to the same amount that Engineer undertakes to indemnify the Client under this Agreement, from loss or expense, including reasonable attorneys' fees, for claims for personal injuries (including death) or property damage arising out of the sole negligent act, error or omission of the Village.

In the event of joint or concurrent negligence of the Engineer and the 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.

The Engineer shall not be liable for special, incidental or consequential of damages, including, but not limited to, loss of profits, revenue, use of capital, claims of customers, cost of purchased or replacement power, or for any other loss of any nature, whether based on contract, tort, negligence, strict liability or otherwise, by reasons of the services rendered under this Agreement.

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The following insurance requirements will be met by the Engineer prior to beginning services under this Agreement.

General Liability: Limits of coverage evidenced shall be at least \$1,000,000 per claim and aggregate. Coverage shall include premises, completed operations, explosion, collapse, and underground (XCU), contractual liability, personal injury, bodily injury and property damage.

Professional Liability: The Engineer will provide evidence of \$1,000,000 per claim and aggregate limit of Professional Liability Coverage.

The Engineer's General Liability policy shall be endorsed with the following language:

"The Village of Hawthorn Woods, it's officers, employees and agents are named as additional insureds as their interests may appear."

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. Carriers shall also be required to furnish a thirty-(30) day notice of cancellation or material alteration to the Client at the following address:

Village of Hawthorn Woods
Attention: Russell Benford
2 Lagoon Drive
Hawthorn Woods, IL 60517-4199

11. Opinions of Probable Cost: Since Engineer has no control over the cost of labor, materials or equipment, or over contractor(s) method of determining process, or over competitive bidding or market conditions, his/her opinions of probable project construction cost provided for any project 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 proposals, bids or the construction costs 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 construction costs, 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 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.

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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, unless specifically so agreed in any such document.
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", except as otherwise noted in #15 above.
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 any work under this Agreement. 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.

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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. Client's Responsibilities: The Client agrees to provide full information regarding requirements for and about work to be performed by Engineer, 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 any project, including auditing services which the Client may require to verify any contractor's application for payment or to ascertain how or for what purpose any contractor has used the money paid by or on behalf of the Client.

The Client agrees to require any 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 any 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 any contractor to provide to the Engineer the required certificate of insurance.

The Client further agrees to require any contractor to name the Engineer, its agents and consultants on such 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.

When contract documents prepared under the Scope of Services of this contract require insurance(s) to be provided, obtained and/or otherwise maintained by any 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 such 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

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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.

24. 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.
25. 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.
26. 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 agrees to indemnify 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.
27. Job Site Safety/Supervision & Construction Observation: The Engineer shall neither have control over or charge of, nor be responsible for, the construction means, methods,

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techniques, sequences of procedures, or for safety precautions and programs in connection with any work since they are solely any contractor's rights and responsibilities. The Client agrees that any contractor shall supervise and direct the work efficiently with his/her best skill and attention; and that any 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 any contractor. The Client further agrees that any contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work; and that any 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 any contractor or the work of any subcontractor on any 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 any 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 any work; 2) to bring to the Client's attention defects and deficiencies in any work and; 3) To determine in general if any work is being performed in a manner indicating that any 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 any 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 any contractor, subcontractor, any entity performing any portions of any work, or any agents or employees of any of them. The Engineer does not guarantee the performance of any contractor and shall not be responsible for any 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, to the extent permitted by law.

28. Insurance and Indemnification: The Engineer and the Client understand and agree that the Client will contractually require any contractor to defend and indemnify the Engineer and/or any subconsultants from any claims arising from any work. The Engineer and the

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Client further understand and agree that the Client will contractually require any 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, any 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 any 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.

29. Hazardous Materials: 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 in any form at any project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.