



ORDINANCE NO. 2267-23

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH  
CHRSTOPHER B. BURKE ENGINEERING, LTD. - 2023 STREET PROGRAM PHASE III  
ENGINEERING SERVICES

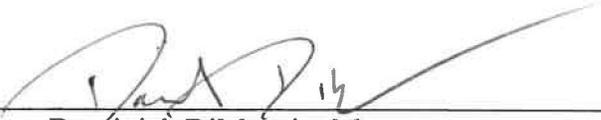
BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Hawthorn Woods, Illinois, that the Mayor and Village Clerk be and the same are, hereby authorized and directed to execute an agreement with Christopher B. Burke Engineering, Ltd., substantially in the form attached hereto as "Exhibit A", and, by this reference made a part hereof.

The foregoing Ordinance was adopted on June 26, 2023 by a roll call vote as follows:

AYES: Kaiser, Mc Carthy, Reynolds, Boyer, Hurst, Rama

NAYS: 0

ABSENT AND NOT VOTING: 0

APPROVED:   
Dominick DiMaggio, Mayor

ATTEST:   
Donna Lobaito, Village Clerk

ADOPTED: June 26, 2023

APPROVED: June 26, 2023



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

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

March 13, 2023

Village of Hawthorn Woods  
2 Lagoon Drive  
Hawthorn Woods, IL 60047

Attention: Erika Frable, PE – Director of PW / Village Engineer

Subject: Hawthorn Woods 2023 Street Program  
Proposal for Phase III Engineering Services

Dear Erika:

At your request, Christopher B. Burke Engineering, Ltd. (CBBEL) is pleased to provide this proposal for professional engineering services related to construction engineering for the construction of the 2023 Street 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 Hawthorn Woods requests construction observation services for the 2023 Street Program. This project will be funded using MFT, RBI, and Local Funds. The proposed improvements include 2" surface removal and replacement with HMA Surface Course (1.5"), and Polymerized HMA Binder Course (0.75"), installation of 4,735 LF of PCC Shoulders (9"), and all necessary restoration in the plans and specifications designed by CBBEL. The project locations include:

1. Hawthorn Drive from Circle Drive to Old McHenry Road
2. Hickory Drive from Hawthorn Drive to Elm Street

The work is required to be completed within 15 working days.

**SCOPE OF SERVICES**

**Task 1 – Preconstruction Services**

CBBEL will perform the following tasks prior to the start of construction:

- Attend pre-construction conference and prepare and circulate minutes.
- Review Contractor's construction schedule for compliance with contract documents.
- Attend any public meetings with concerned residents, if requested. Coordinate initial project notices with impacted stakeholders.
- Review preliminary construction layout in the field and identify potential conflicts.

### **Task 2 – Construction Observation and Documentation**

CBBEL will provide one full-time resident engineer for the duration of construction observation for the 2023 Street Program. We have estimated a duration of 15 working days with observation of 40 hours per week. This includes the following tasks:

- Observe the progress and quality of the executed work and determine if the work is proceeding in accordance with the Contract Documents. The Engineer will 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 advise when the Village should disapprove or reject all work failing to conform to the Contract Documents.
- Serve as the Village's liaison with the Contractor working principally through the Contractor's field superintendent.
- Assist Contractors in dealing with any outside agencies.
- Attend all construction conferences. Arrange a schedule of progress meetings and other job conferences as required. Maintain and circulate copies of records of the meetings.
- Review the Contractor's schedule on a weekly basis. Compare actual progress to Contractor's approved schedule. If the project falls behind schedule, work with the Contractor to determine the appropriate course of action to get back on schedule.
- Maintain orderly files for correspondence, reports of job conferences, shop drawings and other submissions, reproductions or original contract documents including all addenda, change orders, and additional drawings issued subsequent to the award of the contract. Obtain and document all material inspections received from the Contractor as outlined in the Project Procedures Guide of IDOT's Construction Manual.
- Determine if the project has been completed in accordance with the Contract Documents and that the Contractor has fulfilled all of his obligations.
- Record the names, addresses and phone numbers of all Contractors, subcontractors and major material suppliers in the diary.
- Keep an inspector's daily report book as outlined in the IDOT Project Procedures Guide, which shall contain a daily report and quantity of hours on the job site, weather conditions, list of visiting officials, daily activities, job decisions and observations as well as general and specific observations and job progress.
- Prepare payment requisitions and change orders for the Village's approval, review applications for payment with the Contractor for compliance with established procedures for their submission and forward them with recommendations to the Village.

### **Task 3 – IDOT MFT Final Papers**

Resident Engineer will coordinate and complete IDOT MFT Final Papers required after 100% completion. This includes the following:

- BLR 13210 (Request for Approval of Change in Plans)
- BLR 13231 (Engineers Final Payment Estimate)
- BLR 13510 (Final Report, Notice of Completion)
- Material Certification Letter

### **Task 4 – Record Drawings**

- Finalize a set of record drawings.

### **Task 5 – Post Construction**

CBBEL will perform the following tasks once construction is complete:

- Prior to final inspection, submit to the Contractor a list of observed items requiring correction and verify that each correction has been made.
- Coordinate and conduct the final inspection with the Village, prepare a final punchlist.
- Verify that all the items on the final punchlist have been corrected and make recommendations to the Village concerning acceptance.
- Once Contractor has fulfilled all obligations, prepare a final pay request for the Village's approval.

**Task 6 – QA Material Testing**

- Testing Service Corporation will provide QA testing outlined in the IDOT Project Procedures Guide.

Please note that for any of the observation tasks with CBBEL may be performing, the Contractor(s) shall be informed that neither the presence of CBBEL field staff nor the observation and testing (if any) by our firm or subconsultant of our firm shall excuse the Contractor in any way for defects discovered in the work. It should be understood that CBBEL will not be responsible for any job and site safety on this project; job and site safety shall be the sole responsibility of the Contractor(s). CBBEL does not have the right to stop work and will not advise nor supervise the Contractor(s) means and methods of their work.

**ESTIMATE OF FEE**

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

Task 1 - Preconstruction Services	\$2,148
Task 2 - Construction Observation and Documentation	\$21,480
Task 3 - IDOT MFT Final Papers	\$2,864
Task 4 - Record Drawings	\$716
Task 5 - Post Construction	\$4,296
Task 6 - QA Material Testing	\$7,000
Direct Costs (Vehicle - 15 Working Days)	\$975
<b>Total</b>	<b>\$39,479</b>

We will bill you in accordance with our previously accepted Master Agreement. These previously accepted Standard Charges and General Terms and Conditions are expressly incorporated into and are an integral part of this contract for professional services. Direct costs for blueprints, photocopying, mailing, overnight delivery, messenger services and report compilation, are included in the fee estimate.

If this proposal is acceptable to you, please sign both copies and return one to us for our files.

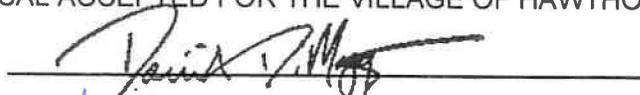
Sincerely,



Michael E. Kerr, PE  
President

THIS PROPOSAL ACCEPTED FOR THE VILLAGE OF HAWTHORN WOODS.

BY:



TITLE:

Mayor

DATE:

6/26/23

**Village of Hawthorn Woods  
2023 Street Program  
Construction Engineering Services**

**Engineering Fee Estimate**

Task	Description	Classification and Hourly Rate		Total Hours	Fee \$
		Engineer V 179	Engineer I/II 102		
1	Preconstruction Services	12		12	\$2,148
2	Construction Observation/Documentation	120		120	\$21,480
3	IDOT MFT Final Papers	16		16	\$2,864
4	Record Drawings	4		4	\$716
5	Post Construction	24		24	\$4,296
6	Material Testing				\$7,000
	Direct Costs (Vehicle Usage - 15 Working Days)				\$975
<b>TOTAL</b>		<b>176</b>	<b>0</b>	<b>176</b>	<b>\$39,479</b>

Total Not-to-Exceed Fee = **\$39,479**

**Key Personnel**  
Bill Sprague

**Classification**  
ENG V

\* Construction Observation based upon a duration of 15 working days (as shown in Contract).

\*\* 40 hours / week estimated workload.

\*\*\* Direct Costs - Vehicle Usage \$65/Day



**TESTING SERVICE CORPORATION**

Corporate Office

360 South Main Place, Carol Stream, IL 60188-2404  
630.462.2600

March 9, 2023

Mr. Kevin Wilson  
Christopher B. Burke Engineering, Ltd.  
9575 West Higgins Road Suite 600  
Rosemont, IL 60018-4920

RE: P.N. 70,560  
Construction Material Engineering  
Hawthorn Woods MFT  
Hawthorn Woods, IL 60047

Dear Mr. Wilson:

Testing Service Corporation (TSC) is pleased to submit this proposal to provide the Construction Material Engineering for the referenced project. The broad objectives of our work will be to conduct and interpret tests, and to report our findings as directed by Christopher B. Burke Engineering, Ltd..

TSC is staffed and equipped to provide any of the following services that may be ordered by you:

- **Field Quality Control Services**
  - Observe proof-rolling operations.
  - Recommend amount of undercut using IDOT cone penetrometer procedure.
  - Perform in-place density tests on engineered fill/backfill and granular base course.
  - Test plastic concrete for slump, air content, temperature, unit weight and cast test cylinders.
  - Establish rolling pattern for bituminous concrete pavement mix with nuclear density gauge.
  - Pickup samples in the field for laboratory tests.
- **Bituminous Concrete Batch Plant Quality Control Services**
  - Daily hot bin and extraction analysis.
  - Sampling and testing of stockpile materials.
  - Check and adjust mixing formulas, as necessary.
  - Check temperatures of bitumen, drum and final mix.
  - Mold Marshall samples and check for stability and flow or determine density of Prepared (HMA) specimen by means of Gyratory Compactor.
  - Other tests as required by current IDOT procedures guide.
- **Portland Cement Concrete Batch Plant Quality Control Services**
  - Verify that current IDOT mix design is being used.
  - Check moisture content of fine aggregate.
  - Perform sieve analysis on stockpiled materials, as required by IDOT criteria.
  - Check the slump, air and temperature of final mix.
  - Other tests, as required by current IDOT procedure guide.
- **Laboratory**
  - Perform laboratory compaction curve for each soil type used.
  - Determine density and thickness for core samples submitted by contractor.
  - Aggregate gradation and soundness analysis.
  - Perform compressive and flexural strength tests for concrete cylinders and beams.
  - Other tests, as required.

- **QA Manager Services**

- Review test results performed by our technicians in accordance with IDOT specification.
- Monitor and schedule site visits to test 20% of the total quantities for HMA and PCC mixes.
- Complete the necessary paperwork for PCC and HMA testing and electronically submit them to IDOT and your office.

TSC's field technicians are represented by Local 150 of the International Union of Operating Engineers. Supervision of the testing, observation, and reporting is provided by a Registered Professional Engineer. Reports will generally be issued on a weekly basis as work progresses. Invoices will be issued monthly, subsequent to the reporting period.

A budget amount of Seven Thousand Dollars (\$7,000.00) is recommended for your project. This estimate is based on a review of plans and specifications provided by Christopher B. Burke Engineering, Ltd. and prior experience on similar projects. TSC's itemized estimate is included in the "Assumptions and Estimated Fee" portion of this proposal. Factors such as weather and contractor efficiency and deviations from minimum testing and observation requirements may significantly impact the CME budget. Our fee is further subject to this proposal being accepted by you on or before December 31, 2023.

The Services performed by TSC under this proposal are now subject to prevailing wage regulations under Illinois law. Prevailing wage rates are established in June by the State of Illinois. Should the established wage be changed between the time of this proposal and the time of work, it will be necessary to revise this proposal so that the rates required by law are properly reflected. Prevailing wage categories are defined as follows:

Material Tester I: Hand coring and drilling for testing of materials; field inspection of uncured concrete and asphalt.

Material Tester II: Field inspection of welds, structural steel, fireproofing, masonry, soil, facade, reinforcing steel, formwork, cured concrete and concrete and asphalt batch plants, adjusting proportions of bituminous mixtures.

TSC's fees include TSC's services being performed subject to the attached General Conditions (as modified for CBBEL) which are incorporated herein. Unless we receive written instructions to the contrary, invoices will be sent to:

Mr. Kevin Wilson  
Christopher B. Burke Engineering, Ltd.  
9575 West Higgins Road Suite 600  
Rosemont, IL 60018-4920  
Tel: (847) 823-0500  
Email: kwilson@cbbel.com

When completing the attached project data form, kindly indicate who is to receive copies of TSC's report and other project data.

Your consideration of our proposal is appreciated. We look forward to being of service to you on this project.

Respectfully Submitted,

TESTING SERVICE CORPORATION



Jeffrey Schmitz, P.E.  
Project Engineer

Enc: General Conditions  
Project Data Sheet

Approved and accepted for \_\_\_\_\_ by:

\_\_\_\_\_  
(NAME)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(DATE)

**SCHEDULE OF FEES**

CONSTRUCTION MATERIALS ENGINEERING SERVICES

ITEM I      FIELD SERVICES

A.	Material Tester I	Per Hour: \$ 117.00
B.	Material Tester II	Per Hour: \$ 120.00
C.	Transportation, Light Vehicle	Per Trip: \$ 60.00
	<p>The time is portal-to-portal from the office servicing the project.          Increase hourly rate by 1.5 for over 8.0 hours per day on Saturday.          Increase hourly rate by 1.7 for Sunday or Holiday work.          The minimum trip charge for 0 to 4 hours is four (4) hours and for          4 to 8 hours is eight (8) hours Monday through Friday and eight (8)          hours on Saturday and Sunday.</p> <p>Engineering services for summary report preparation are invoiced          at the Graduate Engineer Rate.</p>	
D.	Use of Nuclear Moisture/Density Gauge	Per Day: \$ 50.00
E.	Pickup Concrete Test Samples	
	1. Fewer than 20 Cylinders at Grade Level	Per Trip: \$ 100.00
	2. 20 or more Cylinders or Cylinders in Basement or on Elevated Deck or Concrete Beams	Per Trip: \$ 150.00
F.	Structural Steel Test Equipment	
	1. Ultrasonic Flaw Detector	Per Day: \$ 50.00
	2. Magnetic Particle Yoke	Per Day: \$ 35.00
G.	Fire-Proofing	
	1. Cohesion Test Supplies	Per Day: \$ 60.00
	2. Density Test	Each: \$ 45.00

ITEM II      LABORATORY SERVICES

A. Soils

1.	Compaction Curve to establish the Maximum Dry Unit weight and optimum water content	
	a. Modified (AASHTO T180, ASTM D1557)	Each: \$ 250.00
	b. Standard (AASHTO T99, ASTM D698)	Each: \$ 225.00
	c. Add for Methods B, C, or D	Each: \$ 20.00

2. Thin-Walled Tube Samples		
a. Combined Water Content & Dry Unit Weight Determination	Each: \$	20.00
b. Unconfined Compressive Strength	Each: \$	20.00
B. Portland Cement Concrete/Aggregates		
1. Concrete Test Cylinders (4"x8")		
a. Compressive Strength	Each: \$	16.00
b. Spares/Handling Charge	Each: \$	16.00
c. Trim End of Specimen When Necessary	Additional: \$	10.00
2. Concrete Test Cylinders (6"x12")		
a. Compressive Strength	Each: \$	19.00
b. Spares/Handling Charge	Each: \$	19.00
c. Trim End of Specimen When Necessary	Additional: \$	10.00
3. Concrete Beams for Flexural Strength Testing	Each: \$	50.00
4. Mortar Cubes		
a. Compressive Strength	Each: \$	19.00
b. 2" Cube Mold	Per Day: \$	8.00
5. Contractor Made Cylinders	Each: \$	30.00
a. Trim End of Specimen When Necessary	Additional: \$	10.00
6. Evaluation of Mortars for Plain & Reinforced Masonry		
a. Pre-Construction	Each: \$	350.00
b. Cement/Aggregate Ratio	Each: \$	50.00
7. Masonry Block Prisms	Each: \$	50.00
8. Sieve Analysis		
a. Washed w/200 Sieve	Each: \$	100.00
b. Unwashed	Each: \$	75.00
C. Bituminous Concrete		
1. Extraction Analysis		
a. Unwashed	Each: \$	225.00
b. Washed	Each: \$	250.00
2. Compaction of Bituminous Mixture by Gyratory Methods and Bulk Specific Gravity Test	Set of Two \$	225.00
3. Theoretical Maximum Specific Gravity of Paving Mixture	Each: \$	100.00
4. Determining Asphalt Content by Ignition Oven:	Each: \$	125.00

- |   |                 |
|---|-----------------|
| 5. Determining Asphalt Content by Ignition Oven and Washed Gradation: | Each: \$ 200.00 |
| 6. Bulk Density of Core Specimens                                     | Each: \$ 50.00  |

ITEM III    CONSULTATION AND REPORT PREPARATION

- |  |                       |
|--|-----------------------|
| A. Registered Professional Engineer, Principal | Per Hour: \$ 200.00   |
| B. Registered Professional Engineer            | Per Hour: \$ 175.00   |
| C. Graduate Civil Engineer                     | Per Hour: \$ 160.00   |
| D. Daily Engineering Services                  | Per Hour: \$ 160.00   |
| E. Transportation                              |                       |
| 1. Light Vehicle                               | Trip Charge: \$ 60.00 |
| 2. Light Vehicle (Over 100 miles round trip)   | Per Mile: \$ 0.60     |
| 3. Public Transportation                       | Cost + 10%            |

The above rates are valid through December 31, 2023.

**ASSUMPTIONS & ESTIMATED FEE**

The following estimate is based on our current cost structure.

<b>Portland Cement Concrete/Plant</b>					
Item No.	ITEMS	Unit	Quantity	Unit Price	Amount
1	Material Tester II	Hour	4	120.00	\$ 480.00
2	Material Tester II (Overtime)	Hour		180.00	\$ 0.00
3	Travel, Light Vehicle	Trip	2	60.00	\$ 120.00
4	Pickup Test Samples	Each		100.00	\$ 0.00
5	Concrete Test Cylinders (6" x 12")	Each		19.00	\$ 0.00
6	Concrete Test Cylinders (4" x 8")	Each		16.00	\$ 0.00
7	Sieve Analysis, Aggregate	Each		75.00	\$ 0.00
8	Sieve Analysis with #200 Wash	Each		100.00	\$ 0.00
9	Density of Core Sample	Each		50.00	\$ 0.00
<b>Subtotal</b>					<b>\$ 600.00</b>

Estimate Basis – Two site visits to monitor and test PCC mixes at the plant.

<b>Portland Cement Concrete/Field</b>					
Item No.	ITEMS	Unit	Quantity	Unit Price	Amount
1	Material Tester I	Hour	4	117.00	\$ 468.00
2	Material Tester I (Overtime)	Hour		175.00	\$ 0.00
3	Travel, Light Vehicle	Trip		60.00	\$ 0.00
4	Pickup Test Samples	Each	2	100.00	\$ 200.00
5	Concrete Test Cylinders (6" x 12")	Each	8	19.00	\$ 152.00
6	Concrete Test Cylinders (4" x 8")	Each		16.00	\$ 0.00
7	Sieve Analysis, Aggregate	Each		100.00	\$ 0.00
<b>Subtotal</b>					<b>\$ 820.00</b>

Estimate Basis – Two site visits to test and sample concrete placed for shoulders and driveways.

Bituminous Concrete/Plant					
Item No.	ITEMS	Unit	Quantity	Unit Price	Amount
1	Material Tester II	Hour	12	120.00	\$ 1,440.00
2	Material Tester II (Overtime)	Hour		180.00	\$ 0.00
3	Travel, Light Vehicle	Trip	2	60.00	\$ 120.00
4	Pickup Test Samples	Each		100.00	\$ 0.00
5	Nuclear Moisture Density Gauge	Day		50.00	\$ 0.00
6	Bituminous Concrete Extraction Analysis	Each	2	225.00	\$ 450.00
7	Compaction of Bituminous Mixture by Gyratory Methods and Bulk Specific Gravity Test	Set of Two	2	225.00	\$ 450.00
8	Theoretical Maximum Specific Gravity of Paving Mixture	Each	2	100.00	\$ 200.00
Subtotal					\$ 2,660.00

Estimate Basis – Two plant visits to monitor and sample HMA mixes placed for poly-leveling binder and surface courses.

Bituminous Concrete/Field					
Item No.	ITEMS	Unit	Quantity	Unit Price	Amount
1	Material Tester I	Hour	12	117.00	\$ 1,404.00
2	Material Tester I (Overtime)	Hour		175.00	\$ 0.00
3	Travel, Light Vehicle	Trip	3	60.00	\$ 180.00
4	Pickup Test Samples	Each		100.00	\$ 0.00
5	Nuclear Moisture Density Gauge	Day	2	50.00	\$ 100.00
6	Bituminous Concrete Extraction Analysis	Each		225.00	\$ 0.00
7	Compaction of Bituminous Mixture by Gyratory Methods and Bulk Specific Gravity Test	Set of Two		225.00	\$ 0.00
8	Density of Core Samples	Each	10	50.00	\$ 500.00
Subtotal					\$ 2,184.00

Estimate Basis – Two site visits to monitor the compaction of HMA mixes placed for poly-leveling binder and surface course. One plant visit to pick up core samples for density determinations.

Project Coordination & Report Preparation					
Item No.	ITEMS	Unit	Quantity	Unit Price	Amount
1	Project Engineer	Hour	4	175.00	\$ 700.00
2	QA Manager	Hour		160.00	\$ 0.00
Subtotal					\$ 700.00

TSC's base fee schedule includes up to three copies of each report.

Estimated Total: \$ 6,964.00

RECOMMENDED BUDGET: \$ 7,000.00



## TESTING SERVICE CORPORATION

# GENERAL CONDITIONS

## Geotechnical and Construction Services

**1. PARTIES AND SCOPE OF WORK:** If Client is ordering the services on behalf of another, Client represents and warrants that Client is the duly authorized agent of said party for the purpose of ordering and directing said services, and in such case the term "Client" shall also include the principal for whom the services are being performed. Prices quoted and charged by TSC for its services are predicated on the conditions and the allocations of risks and obligations expressed in these General Conditions. Unless otherwise stated in writing, Client assumes sole responsibility for determining whether the quantity and the nature of the services ordered by Client are adequate and sufficient for Client's intended purpose. Unless otherwise expressly assumed in writing, TSC's services are provided exclusively for client. TSC shall have no duty or obligation other than those duties and obligations expressly set forth in this Agreement. TSC shall have no duty to any third party. Client shall communicate these General Conditions to each and every party to whom the Client transmits any report prepared by TSC. Ordering services from TSC shall constitute acceptance of TSC's proposal and these General Conditions.

**2. SCHEDULING OF SERVICES:** The services set forth in this Agreement will be accomplished in a timely and workmanlike manner. If TSC is required to delay any part of its services to accommodate the requests or requirements of Client, regulatory agencies, or third parties, or due to any cause beyond its reasonable control, Client agrees to pay such additional charges, if any, as may be applicable.

**3. ACCESS TO SITE:** TSC shall take reasonable measures and precautions to minimize damage to the site and any improvements located thereon as a result of its services or the use of its equipment; however, TSC has not included in its fee the cost of restoration of damage which may occur. If Client desires or requires TSC to restore the site to its former condition, TSC will, upon written request, perform such additional work as is necessary to do so and Client agrees to pay to TSC the cost thereof plus TSC's normal markup for overhead and profit.

**4. CLIENT'S DUTY TO NOTIFY ENGINEER:** Client represents and warrants that Client has advised TSC of any known or suspected hazardous materials, utility lines and underground structures at any site at which TSC is to perform services under this Agreement. Unless otherwise agreed in writing, TSC's responsibility with respect to underground utility locations is to contact the Illinois Joint Utility Locating Information for Excavators for the location of public, but not private, utilities.

**5. DISCOVERY OF POLLUTANTS:** TSC's services shall not include investigation for hazardous materials as defined by the Resource Conservation Recovery Act, 42 U.S.C. § 6901, et. seq., as amended ("RCRA") or by any state or Federal statute or regulation. In the event that hazardous materials are discovered and identified by TSC, TSC's sole duty shall be to notify Client.

**6. MONITORING:** If this Agreement includes testing construction materials or observing any aspect of construction of improvements, Client's construction personnel will verify that the pad is properly located and sized to meet Client's projected building loads. Client shall cause all tests and inspections of the site, materials and work to be timely and properly performed in accordance with the plans, specifications, contract documents, and TSC's recommendations. No claims for loss, damage or injury shall be brought against TSC unless all tests and inspections have been so performed and unless TSC's recommendations have been followed.

TSC's services shall not include determining or implementing the means, methods, techniques or procedures of work done by the contractor(s) being monitored or whose work is being tested. TSC's services shall not include the authority to accept or reject work or to in any manner supervise the work of any contractor. TSC's services or failure to

perform same shall not in any way operate or excuse any contractor from the performance of its work in accordance with its contract. "Contractor" as used herein shall include subcontractors, suppliers, architects, engineers and construction managers.

Information obtained from borings, observations and analyses of sample materials shall be reported in formats considered appropriate by TSC unless directed otherwise by Client. Such information is considered evidence, but any inference or conclusion based thereon is, necessarily, an opinion also based on engineering judgment and shall not be construed as a representation of fact. Subsurface conditions may not be uniform throughout an entire site and ground water levels may fluctuate due to climatic and other variations. Construction materials may vary from the samples taken. Unless otherwise agreed in writing, the procedures employed by TSC are not designed to detect intentional concealment or misrepresentation of facts by others.

**7. DOCUMENTS AND SAMPLES:** Client is granted an exclusive license to use findings and reports prepared and issued by TSC and any sub-consultants pursuant to this Agreement for the purpose set forth in TSC's proposal provided that TSC has received payment in full for its services. TSC and, if applicable, its sub-consultant, retain all copyright and ownership interests in the reports, boring logs, maps, field data, field notes, laboratory test data and similar documents, and the ownership and freedom to use all data generated by it for any purpose. Unless otherwise agreed in writing, test specimens or samples will be disposed immediately upon completion of the test. All drilling samples or specimens will be disposed sixty (60) days after submission of TSC's report.

**8. TERMINATION:** TSC's obligation to provide services may be terminated by either party upon (7) seven days prior written notice. In the event of termination of TSC's services, TSC shall be compensated by Client for all services performed up to and including the termination date, including reimbursable expenses. The terms and conditions of these General Conditions shall survive the termination of TSC's obligation to provide services.

**9. PAYMENT:** Client shall be invoiced periodically for services performed. Client agrees to pay each invoice within thirty (30) days of its receipt. Client further agrees to pay interest on all amounts invoiced and not paid or objected to in writing for valid cause within sixty (60) days at the rate of twelve (12%) per annum (or the maximum interest rate permitted by applicable law, whichever is the lesser) until paid and TSC's costs of collection of such accounts, including court costs and reasonable attorney's fees.

**10. WARRANTY:** TSC's professional services will be performed, its findings obtained and its reports prepared in accordance with these General Conditions and with generally accepted principles and practices. In performing its professional services, TSC will use that degree of care and skill ordinarily exercised under similar circumstances by members of its profession. In performing physical work in pursuit of its professional services, TSC will use that degree of care and skill ordinarily used under similar circumstances. This warranty is in lieu of all other warranties or representations, either express or implied. Statements made in TSC reports are opinions based upon engineering judgment and are not to be construed as representations of fact.

Should TSC or any of its employees be found to have been negligent in performing professional services or to have made and breached any express or implied warranty, representation or contract, Client, all parties claiming through Client and all parties claiming to have in any way relied upon TSC's services or work agree that the maximum aggregate amount of damages for which TSC, its officers, employees and agents shall be liable is limited to \$50,000 or the total amount of the fee paid to TSC for its services performed with respect to the project, whichever amount is greater.

In the event Client is unwilling or unable to limit the damages for which TSC may be liable in accordance with the provisions set forth in the preceding paragraph, upon written request of Client received within five days of Client's acceptance of TSC's proposal together with payment of an additional fee in the amount of 5% of TSC's estimated cost for its services (to be adjusted to 5% of the amount actually billed by TSC for its services on the project at time of completion), the limit on damages shall be increased to \$500,000 or the amount of TSC's fee, whichever is the greater. This charge is not to be construed as being a charge for insurance of any type, but is increased consideration for the exposure to an award of greater damages.

**11. INDEMNITY:** Subject to the provisions set forth herein, TSC and Client hereby agree to indemnify and hold harmless each other and their respective shareholders, directors, officers, partners, employees, agents, subsidiaries and division (and each of their heirs, successors, and assigns) from any and all claims, demands, liabilities, suits, causes of action, judgments, costs and expenses, including reasonable attorneys' fees, arising, or allegedly arising, from personal injury, including death, property damage, including loss of use thereof, due in any manner to the negligence of either of them or their agents or employees or independent contractors. In the event both TSC and Client are found to be negligent or at fault, then any liability shall be apportioned between them pursuant to their pro rata share of negligence or fault. TSC and Client further agree that their liability to any third party shall, to the extent permitted by law, be several and not joint. The liability of TSC under this provision shall not exceed the policy limits of insurance carried by TSC. Neither TSC nor Client shall be bound under this indemnity agreement to liability determined in a proceeding in which it did not participate represented by its own independent counsel. The indemnities provided hereunder shall not terminate upon the termination or expiration of this Agreement, but may be modified to the extent of any waiver of subrogation agreed to by TSC and paid for by Client.

**12. SUBPOENAS:** TSC's employees shall not be retained as expert witnesses except by separate, written agreement. Client agrees to pay TSC pursuant to TSC's then current fee schedule for any TSC employee(s) subpoenaed by any party as an occurrence witness as a result of TSC's services.

**13. OTHER AGREEMENTS:** TSC shall not be bound by any provision or agreement (i) requiring or providing for arbitration of disputes or controversies arising out of this Agreement or its performance, (ii) wherein TSC waives any rights to a mechanics lien or surety bond claim; (iii) that conditions TSC's right to receive payment for its services upon payment to Client by any third party or (iv) that requires TSC to indemnify any party beyond its own negligence. These General Conditions are notice, where required, that TSC shall file a lien whenever necessary to collect past due amounts. This Agreement contains the entire understanding between the parties. Unless expressly accepted by TSC in writing prior to delivery of TSC's services, Client shall not add any conditions or impose conditions which are in conflict with those contained herein, and no such additional or conflicting terms shall be binding upon TSC. The unenforceability or invalidity of any provision or provisions shall not render any other provision or provisions unenforceable or invalid. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois. In the event of a dispute arising out of or relating to the performance of this Agreement, the breach thereof or TSC's services, the parties agree to try in good faith to settle the dispute by mediation under the Construction Industry Mediation Rules of the American Arbitration Association as a condition precedent to filing any demand for arbitration, or any petition or complaint with any court. Paragraph headings are for convenience only and shall not be construed as limiting the meaning of the provisions contained in these General Conditions.

**PROJECT DATA SHEET**



**TESTING SERVICE CORPORATION**

General Information: \_\_\_\_\_

Project Name: \_\_\_\_\_

Project Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

County: \_\_\_\_\_

Project Manager: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone: \_\_\_\_\_

Site Contact: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone: \_\_\_\_\_

Send Invoice to: \_\_\_\_\_

Purchase Order Number: \_\_\_\_\_

Attention: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone: \_\_\_\_\_

Cell Phone: \_\_\_\_\_

If waivers are required, please provide the Owner's name here \_\_\_\_\_

IMPORTANT NOTES: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Completed by: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Distribute Reports as Follows:

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone: \_\_\_\_\_

Cell Phone: \_\_\_\_\_

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone: \_\_\_\_\_

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone: \_\_\_\_\_