

RESOLUTION NO.

A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT FOR ENGINEERING SERVICES BETWEEN THE VILLAGE OF DOWNERS GROVE AND CHRISTOPHER B. BURKE ENGINEERING, LTD.

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Engineering Services Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and Christopher B. Burke Engineering, Ltd. (the "Engineer"), for professional engineering services related to appointing P. Kay Whitlock, P.E. of Christopher B. Burke Engineering, Ltd. to the position of Administrator of Stormwater for the Downers Grove Stormwater and Flood Plain Ordinance; and to provide other municipal and stormwater engineering as requested, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Mayor and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

**AGREEMENT FOR ENGINEERING SERVICES BETWEEN
THE VILLAGE OF DOWNERS GROVE AND
CHRISTOPHER B. BURKE ENGINEERING, LTD.**

This agreement, made and entered into this _____ day of November, 2001, by and between the Village of Downers Grove, an Illinois municipal corporation, whose address is 801 Burlington Avenue, Downers Grove, IL 60515 (hereinafter referred to as "Client") and Christopher B. Burke Engineering, Ltd., an Illinois corporation, whose address is 9575 West Higgins Road, Suite 600, Rosemont, IL 60018-4920 (hereinafter referred to as "Engineer" or "CBBEL") for certain engineering services more fully described herein:

Whereas, CBBEL has agreed to provide professional engineering services related to staffing the position of Administrator of Stormwater for the Downers Grove Stormwater and Flood Plain Ordinance; and to provide other municipal and stormwater engineering as requested.

Whereas, CBBEL has a total staff of approximately 170 people located in Rosemont, Peoria, St. Charles, Fort Wayne (IN) and Indianapolis (IN). This staff includes four survey crews; civil, structural, mechanical, environmental, traffic, construction management, transportation and water resource engineers; biologists, wetland specialists, a landscape architect and a forest ecologist.

Whereas, CBBEL provides stormwater related plan reviews for 29 municipalities and 9 counties in Illinois and Indiana. In addition, CBBEL performs services as Municipal Engineer for 14 communities and provides other municipal services to a number of municipalities throughout the northeastern Illinois region and Indiana. CBBEL has provided services to the Counties of Cook, DuPage, Kane, Lake, McHenry and Will; and numerous counties and municipalities in Indiana.

Now therefore, in consideration of the mutual covenants herein, the parties agree as follows:

PROJECT UNDERSTANDING

CBBEL understands that the Village of Downers Grove desires to take steps necessary to maintain their current "complete waiver" status within DuPage County. Recent complaints have been lodged with the DuPage County Stormwater Management Committee regarding the Village's enforcement of the ordinance; Village actions will be required to respond to the complaints and to the Committee.

SCOPE OF SERVICES

Task 1. Provide Administrator Services. CBBEL will provide P. Kay Whitlock, P.E. to serve as Village Administrator of the Stormwater and Flood Plain Ordinance. As Administrator, Ms. Whitlock will serve under the direction of John J. Bajor, Director of Public Works. The Administrator shall perform the Duties of Administrator in Waiver Community as listed in Sec. 15-93 of the DuPage County Countywide Stormwater And Flood Plain Ordinance.

Task 2. Provide Stormwater and Engineering Review services. CBBEL will provide stormwater ordinance review services. CBBEL will review submittals as determined by the Director of Public Works and the Stormwater Administrator.

Task 3. Develop Village understanding. CBBEL will meet, as appropriate, with Village Mayor, Village Manager, interested Council members and Village staff to fully understand goals for ordinance administration. CBBEL will review the existing complaints and determine steps necessary to resolve complaint issues. The Administrator must develop a clear understanding of Village guidance as to her external role.

Task 4. Develop external assessment. The Administrator will evaluate the waiver status of the Village of Downers Grove regarding enforcement of the Stormwater and Flood Plain Ordinance. CBBEL will review audits, complaints against the Village, and findings of DuPage County staff. CBBEL will initiate meetings with DuPage County staff and Stormwater Management Committee, as appropriate. Until the Village role is stabilized, CBBEL will attend DuPage County Stormwater Management Committee and Municipal Engineer meetings on behalf of the Village. The results of the external assessment will be provided to the Village in memo form.

Task 5. Establish Village presence. As Administrator, CBBEL will establish a visible presence within the Village. CBBEL will attend Council and Committee meetings as appropriate. The Administrator will occupy a Village office a minimum of 2-4 hours per week.

Task 6. Coordinate Oversight Committee. CBBEL will coordinate and attend meetings of the Village's oversight committee, the Flood Plain and Stormwater Advisory Committee, as appropriate. The Committee's role is outlined in Sec. 26-30 through 26-35 of the Downers Grove Stormwater and Flood Plain Ordinance. CBBEL will develop recommendations to the Village Manager and Public Works Director as to the role of the Advisory Committee.

Task 7. Provide Municipal Engineering Services. Upon request of the Public Works Director, CBBEL will provide municipal engineering services.

TERMS AND CONDITIONS

Ms. Whitlock and CBBEL staff are available to begin work immediately upon the execution of a consultant agreement. Services will be provided on a case-by-case, time and materials basis and will be billed in accordance with the attached Schedule of Charges, attached hereto and incorporated herein as Exhibit A. The attached Schedule of Charges shall remain in effect for one year from the date of this Agreement.

CBBEL is currently working with a few ongoing projects within the Village of Downers Grove. Should the situation arise where a CBBEL client requires a Downers Grove Stormwater or Flood Plain permit, CBBEL will consult with the Village in determining a course of action.

CBBEL will establish this contract in accordance with the attached General Terms and Conditions, attached hereto and incorporated herein as Exhibit B. These General Terms and conditions are expressly incorporated into and are an integral part of this contract for professional services.

The cost of services for this contract shall not exceed fifty-thousand dollars (\$50,000.00). Any additional services provided that would increase the cost beyond \$50,000.00 must be authorized in writing by the Village prior to its commencement.

This Agreement represents the entire agreement between the Client and the Engineer and supercedes all prior negotiations, representatives or agreements, either written or oral.

VILLAGE OF DOWNERS GROVE,
an Illinois Municipal Corporation

BY: _____
Mayor

DATE: _____

ATTEST: _____
Village Clerk
(SEAL)

CHRISTOPHER B. BURKE ENGINEERING, LTD.

BY: _____

TITLE: _____

DATE: _____

ATTEST: _____
(SEAL)

CHRISTOPHER B. BURKE ENGINEERING, LTD.
STANDARD CHARGES FOR PROFESSIONAL SERVICES
JANUARY, 2001

<u>Personnel</u>	Charges* (\$/Hr)
Principal	165
Senior Engineer	143
Engineer V	105
Engineer IV	94
Engineer III	88
Engineer II	72
Land Surveying Manager	105
Senior Project Surveyor	88
Project Surveyor	77
Staff Surveyor	61
Environmental Planner	72
Junior Engineer	61
Senior Engineering Technician	91
Engineering Technician II	88
Engineering Technician I	72
Senior Environmental Resources Specialist	88
Environmental Resource Specialist III	80
Environmental Resource Specialist II	66
Environmental Resource Technician	61
Accounting	77
Word Processing/Secretary	66
 <u>Direct Costs</u>	
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, 2001.

PKW
2002 11/19/01

**CHRISTOPHER B. BURKE ENGINEERING, LTD.
GENERAL TERMS AND CONDITIONS**

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

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. Insurance

- a. Prior to execution of this contract, the ENGINEER must provide evidence to the OWNER that it possesses and will maintain the following minimum standards of insurance coverage to protect the ENGINEER and the OWNER, its officers and employees as additional insured where noted, until completion of the work under this contract and any extra work in connection therewith. Specific types of coverage and the dollar limits of liability are detailed on the example certificate of insurance which follows; the contents of which are essential items of this contract.

- b. Professional Liability Insurance - minimum amount of \$1,000,000.00

- c. General Liability Insurance to pay on behalf of the ENGINEER or the

OWNER, as additional insured, any sums which the ENGINEER or the OWNER, its officers and employees may be legally obligated to pay as damages because of bodily injury, personal injury, or property damage caused by an occurrence arising out of the ENGINEER operations pursuant to this contract, including liability incurred as a result of the actions by it, including subcontractors and their employees who the ENGINEER may let portions of work pursuant to the completion of this contract and any extra work in connection therewith.

d. Worker's Compensation Insurance as provided for by statute, including occupational disease provisions, for all persons employed by the ENGINEER or to whom the ENGINEER may let any of the work to be performed pursuant to this contract. The ENGINEER shall also maintain Employer's Liability Insurance to pay on behalf of the ENGINEER any sums which it shall be legally obligated to pay as damages for bodily injury, including death, which may result from the action of any person related to the performance of hazardous work pursuant to this contract.

e. Automobile Liability Insurance to pay on behalf of the ENGINEER or any subcontractor to whom the ENGINEER may let any of the work performed pursuant to this contract, any sums which they may be legally obligated to pay as damages for bodily injury and property damage arising out of the ownership, maintenance or use of any motor vehicle (including owned, hired, and non-owned vehicles for use on the public highways).

f. Excess Insurance (if required) to pay on behalf of the ENGINEER or OWNER any sums in excess of the amounts previously accorded by the specified primary insurance coverage, which the ENGINEER or the OWNER may be legally obligated to pay for claims of bodily injury, personal injury, or property damage caused by an occurrence arising out of the ENGINEER'S operations pursuant to this contract including liability incurred from the actions by the ENGINEER or any person directly or indirectly employed by it, including subcontractors and their employees who the ENGINEER may let portions of work pursuant to the completion of this contract and any extra work in connection therewith.

g. Certificates of Insurance within fifteen (15) days after the ENGINEER shall furnish certificates of insurance to the OWNER, evidencing all of the aforesaid coverage, and naming the OWNER as additional insured, such certificates to include a non-cancellation clause, preventing cancellation of coverage without thirty (30) days prior notice to the OWNER.

10. Compliance With Laws:

a. 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.

b. Vehicle Backing Precautions

Pursuant to Sections 14-139(b) and 14-171.1 of the Downers Grove Municipal Code,

any motor vehicle which has an obstructed view to the rear and is to be operated at any time in reverse gear on the public streets of the Village of Downers Grove by the Engineer or any subcontractor shall either be equipped with a reverse signal alarm (back up alarm) audible above and distinguishable from the surrounding noise level, or shall provide an observer to signal that it is safe to back up.

c. Overweight, Overwidth and Overheight Permits

The Village has and supports an overweight truck enforcement program. Engineers are required to comply with weight requirements and safety requirements as established by Illinois Law or Village Ordinance, for vehicles, vehicle operators and specialty equipment. In some instances, specialty equipment for road repairs or construction projects requires the movement of overweight, overwidth, or overheight loads utilizing a Village of Downers Grove roadway. Such movement will require obtaining a permit and permission as follows:

- i. The Police Department Traffic Supervisor will receive and issue all overweight, overwidth, or overheight permits.
- ii. The Police Department, upon receiving such a request, will determine and direct permit applicant which route will be authorized.
- iii. The Police Department will retain one copy of the completed permit form, and one copy will be forwarded to Village Operations Center (V.O.C.).

d. Equal Employment Opportunity:

In the event of the Engineer's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), the Engineer may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this contract, the Engineer agrees as follows:

1. That it will not discriminate against any employee or applicant for employment because of race, color religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
2. That, if it hires additional employees in order to perform this contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.

3. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.

4. That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the contractor's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the contractor in its efforts to comply with such Act and Rules and Regulations, the contractor will promptly so notify the Department and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.

5. That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.

6. That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.

7. That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this contract, the contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, the contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivision or municipal corporations.

e. Sexual Harassment

The Engineer shall, as a party to a public contract, have a project specific written sexual harassment policy amended so that it:

1. Notes the illegality of sexual harassment;
2. Sets forth the State law definition of sexual harassment;
3. Describes sexual harassment utilizing examples;
4. Describes the Engineer's internal complaint process including penalties;

5. Describes the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and how to contact these entities, and;

6. Describes the protection against retaliation afforded under the Illinois Human Rights Act.

f. Drug Free Work Place

The Engineer, as party to a public contract, certifies and agrees that it will provide a drug free workplace by:

1. Publishing a statement: (1) Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in the grantee's or contractor's workplace. (2) Specifying the actions that will be taken against employees for violations of such prohibition. (3) Notifying the employee that, as a condition of employment on such contract or grant, the employee will: abide by the terms of the statement; and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

2. Establishing a drug free awareness program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the grantee's or contractor's policy of maintaining a drug free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; (4) the penalties that may be imposed upon employees for drug violations.

3. Providing a copy of the statement required by subparagraph (a) to each employee engaged in the performance of the contract or grant and to post the statement in a prominent place in the workplace.

4. Notifying the contracting or granting agency within ten (10) days after receiving notice under part (B) of paragraph (3) of subsection (a) above from an employee or otherwise receiving actual notice of such conviction.

5. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted as required by section 5 of the Drug Free Workplace Act.

6. Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation is required and indicating that a trained referral team is in place.

7. Making a good faith effort to continue to maintain a drug free workplace through implementation of the Drug Free Workplace Act.

g. Discrimination

1. Engineer, its employees and subcontractors, agree not to commit unlawful

discrimination and agree to comply with applicable provisions of the Illinois Human Rights Act, the Public Works Employment Discrimination Act, the U.S. Civil Rights Act and Section 504 of the Federal Rehabilitation Act, and rules applicable to each. The equal opportunity clause of the Department of Human Rights' rules are specifically incorporated herein.

2. The American's with Disabilities Act (42 U.S.C. 12101) and the regulations thereunder (28 CFR 35.130)(ADA) prohibit discrimination against persons with disabilities by the State, whether directly or through contractual arrangements, in the provision of any aid, benefit or service. As a condition of receiving this contract, the undersigned Engineer certifies that services, programs and activities provided under this contract are and will continue to be in compliance with the ADA.

3. 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.

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

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

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

Engineer shall not be liable for special, incidental or consequential 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.

12. 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.

13. Governing Law: 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**.
14. 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.
15. 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.
16. 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.
17. 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".
18. 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.
19. 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.

20. Subcontracts: Engineer may subcontract portions of the work, but each subcontractor must be approved by Client in writing.
21. 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.
22. 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.
23. 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.
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 further agrees to require the Contractor to name the Engineer, its agents and consultants 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.

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.

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 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.

28. Jobsite 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 by Contractor: 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: 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 the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.