

RESOLUTION NO. R-2014-05

**A RESOLUTION APPROVING
A LETTER OF ENGAGEMENT, SCOPE OF SERVICES AND
GENERAL TERMS AND CONDITIONS WITH
CHRISTOPHER B. BURKE ENGINEERING, LTD.,
FOR THE MAYWOOD METRA TRAIN STATION PROJECT**

WHEREAS, the President and Board of Trustees of the Village of Maywood, Illinois (the "Village") desire to construct a new train station at the Main Street / 4th Avenue – 5th Avenue location within its corporate boundaries, known as the Maywood Metra Train Station (the "Project"), which will be paid for with federal funds approved under the Congestion Mitigation and Air Quality Improvement ("CMAQ") Program and funds from the St. Charles Road Tax Increment Financing District ("St. Charles TIF District"); and

WHEREAS, in order to complete certain due diligence activities (surveys, geotechnical investigations, site investigations), design work, construction and engineering document preparation, and preparation and processing of the bidding documents and assisting with permitting and construction coordination activities relating to the construction of the Project, the President and Board of Trustees of the Village of Maywood, Illinois desire to enter into a "Letter of Engagement, Scope of Services and General Terms and Conditions" with Christopher B. Burke Engineering, Ltd. ("Burke Engineering"), a copy of the Letter of Engagement, Scope of Services and General Terms and Conditions" are attached hereto as Exhibit "A" and made a part hereof; and

WHEREAS, the President and Board of Trustees of the Village of Maywood, a home rule Illinois municipal corporation, have the authority to approve and enter into the attached Agreement and to approve the expenditure of its Tax Increment Funds for the Project pursuant to its home rule powers and contracting authority provided by Article VII, Sections 6 and 10(a) of the Illinois Constitution of 1970, as well as the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*), and find that entering into the Agreement is in the best interests of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF MAYWOOD, COOK COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: Each Whereas paragraph above is incorporated by reference into this Section 1 and made a part hereof as material and operative provisions of this Resolution.

SECTION 2: The President and Board of Trustees of the Village Maywood authorize and approve of a "Letter of Engagement, Scope of Services and General Terms and Conditions" with Christopher B. Burke Engineering, Ltd. ("Burke

Engineering”), a copy of the Letter of Engagement, Scope of Services and General Terms and Conditions” are attached hereto as **Exhibit “A”** and made a part hereof.

SECTION 3: Further, the President and Board of Trustees of the Village of Maywood authorize and direct the Village President and Village Clerk, or their designees, to execute the Letter of Engagement, Scope of Services and General Terms and Conditions with Burke Engineering and all related documents, and to execute and deliver all other instruments and documents that are necessary to fulfill the Village’s obligations under the Letter of Engagement, Scope of Services and General Terms and Conditions.

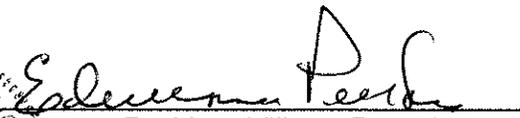
ADOPTED this 19th day of March, 2014, pursuant to a roll call vote as follows:

AYES: Mayor Perkins, Trustee(s) C. Ealey-Cross, A. Jaycox, A. Dorris, M. Rogers and M. Lightford

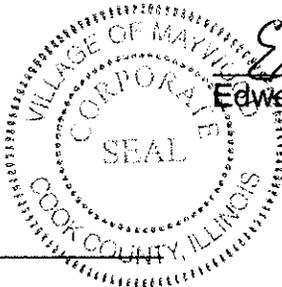
NAYS: None

ABSENT: Trustee R. Rivers

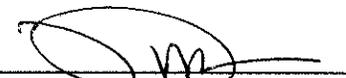
APPROVED this 19th day of March, 2014, by the Village President of the Village of Maywood, and attested by the Village Clerk on the same day.



Edwenna Perkins, Village President



ATTEST:

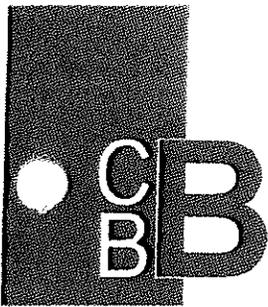


Viola Mims, Village Clerk

Exhibit "A"

**A LETTER OF ENGAGEMENT, SCOPE OF SERVICES
AND GENERAL TERMS AND CONDITIONS
WITH CHRISTOPHER B. BURKE ENGINEERING, LTD.,
FOR THE MAYWOOD METRA TRAIN STATION PROJECT**

(attached)



CHRISTOPHER B. BURKE ENGINEERING, LTD.

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

March 5, 2014

LETTER OF THE ENGAGEMENT

Village of Maywood
40 Madison Street
Maywood, IL 60153

Attention: Mr. David Myers, Acting Village Manager

Subject: Maywood Train Station – Union Pacific West Line (UP-W)

Dear Mr. Barlow,

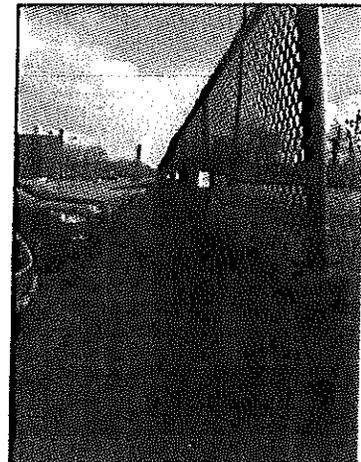
Christopher B. Burke Engineering, Ltd. (CBBEL) is pleased to provide this proposal for professional engineering and architectural services related to Phase II for the subject project. This proposal includes our Understanding of the Assignment, Scope of Services, and Estimate of Fee.

UNDERSTANDING OF THE ASSIGNMENT

CBBEL understands that the Village of Maywood has received Federal Funds (CMAQ) to improve their stop along Metra's Union Pacific West Line. This stop is located between Main Street and the UPRR and between 4th Avenue and 5th Avenue, in an area owned by the UPRR in the Village's Central Business District (CBD).

The current stop is underutilized compared to neighboring communities. The existing stop has no station or warming shelter and consists of only a platform with a bus shelter. Several utilities including water and AT&T exist within the UPRR ROW. The existing platform is supported by a timber retaining wall that seems to be leaning toward the sidewalk adjacent to Main Street.

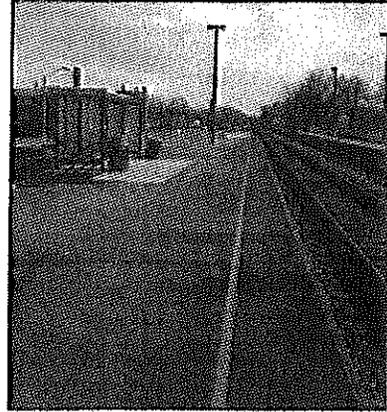
The Village would like to increase ridership at this stop by providing a modern warming shelter thereby improving the vitality and vibrancy of their CBD. The Village views the station improvement as a key to promoting economic prosperity to its residents and businesses.



CBBEL understands the connection between a heavily used train station and a revitalized CBD and has worked on many similar projects. CBBEL has successfully completed Phase I Engineering and has completed the attached conceptual plan and renderings. The Concept Plan includes the following highlights:

- ◇ The plan accounts for a third UPRR track being added north of the existing two tracks which is in the UP's long range plans.

- ◇ The plan includes provisions for a new inbound platform meeting Metra's minimum design requirements. The minimum platform clear width is 10' and the minimum platform length is 380'. The platform has been set to accommodate the future third track. The platform also includes a pedestrian diverter at 5th Avenue for pedestrian safety and ADA improvements across the tracks along 5th Avenue and into the new station. It is anticipated that the existing platform will be modernized until such time that the third track is added and the new platform is constructed.



- ◇ The proposed warming shelter has been sited to avoid conflicts with the future improvements listed above. The proposed warming shelter will be approximately 700 sf with wind shelters on either end.

- ◇ The site plan includes additional parking spaces and kiss and ride spaces and includes the removal and replacement of the existing retaining wall. The site plan also includes accessible ramps and other ADA improvements.



- ◇ The site plan includes covered bike parking to encourage multi-modal transportation.
- ◇ The project will also include platform/site lighting, Voice of Metra, VIS, and various utility relocations.

CBBEL understands that the Village will fund Phase II engineering/architecture with local TIF dollars and construction of the station improvements with federal (CMAQ) dollars. The Village has received \$1,222,000 of federal dollars for the \$2,271,000 project. CBBEL has prepared this proposal to meet the architectural/engineering requirements of Metra/UPRR.

SCOPE OF SERVICES

Task 1 – Boundary Survey, Pick-up Topographic Survey, and Plats and Legal Descriptions

CBBEL will supplement the survey performed in Phase I with the following:

1. Horizontal and Vertical Control
2. Research of the existing UPRR ROW and easements.
3. Research at the Cook County Recorder's Office.
4. Field recon and survey to locate existing monumentation and boundary evidence.
5. Review research and field data and compute boundaries and right-of-way within the project limits.
6. Topographic survey of the existing station and adjacent streets, including spot elevations and cross sections at 50' (ft) stations for the 380' proposed platform.
 - All trees of 6 inch caliper or greater to be surveyed. Provide tree size, location and elevation on survey.
 - All above ground utilities including, but not limited to: water, sanitary sewer, storm sewer, telephone, electric, cable and gas, etc. Identify size, type, rim, and invert elevations.
 - Existing hardscape improvements located within the project limits, including paving, curbs, light fixtures, walks, street signs, parking, fencing and gates, and buildings (if any).
7. Office calculations and plotting of field and record data.
8. Office contouring of field data and one foot contour intervals.
9. Drafting of an Existing Conditions Plan at a scale of 1"=20', to be compiled with previous CBBEL site work.
10. Development of Plats of Easements and Legal Descriptions to be used to supplement the Village's existing agreement with the UPRR.

Task 2 – Geotechnical Investigation

CBBEL's subconsultant, Material Service Testing (MST), will prepare a geotechnical analysis for the proposed project. MST will perform 3 borings along the proposed platform and will perform 1 boring at the warming shelter site. They will prepare foundation recommendations for the proposed retaining walls and building foundation.

Task 3 – Preliminary Site Investigation (PSI)

A PSI will be conducted in accordance with ASTM requirements and IDOT guidance. Approximately six borings will be performed. Each boring will be continuously sampled, logged by a geologist and evaluated for evidence of contamination. A PSI report will be prepared documenting site conditions and analytical results.

Task 4 – Schematic Design Phase (30% Design Stage)

In accordance with Metra procedures, CBBEL will submit concept and site schematic drawings. It is anticipated that CBBEL will submit the following:

	<u>Sheets</u>
Title Sheet	1
Survey Plan (1"=20')	1
Final Plat of Survey (1"=20')	1
Utility Plan	1
Site Plan (1"=20')	1
Electrical Site Plan including Photometrics (1"=20')	1
Subtotal	<u>6</u>

In addition to the above sheets, CBBEL's subconsultant, FGM Architects, will prepare a floor plan and elevations of the warming shelter.

CBBEL will also submit Special Provisions and Estimates of working days and construction cost.

Task 5 – Design Development Phase (60% Design Stage)

In accordance with Metra procedures, CBBEL will submit design development drawings reflecting all comments received on the site schematic drawings. It is anticipated that CBBEL will submit the following:

	<u>Sheets</u>
Title Sheet	1
Survey Plan (1"=20')	1
Final Plat of Survey (1"=20')	1
Site Plan (1"=20')	1
Grading Plan (1"=20')	1
Utility Plan (1"=20')	1
Retaining Wall Plan	1
Retaining Wall Sections & Details	1
Construction Details	5
Landscaping Plan (1"=20')	1
Erosion Control Plans (1"=20')	1
Cross-Sections	<u>5</u>
Subtotal	<u>20</u>

With regards to site lighting, CBBEL will prepare the following:

CBBEL will prepare lighting plans for the Warming Shelter and Platforms. CBBEL will meet with the appropriate personnel to determine the minimum lighting requirements, source of electrical service, and preferred lighting and control equipment for the proposed improvement.

Based on the information collected above, a photometric computer program analysis will be utilized to determine pole spacing in accordance with Metra requirements. A proposed lighting layout will be prepared and overlaid on the survey base sheets. Preliminary plans, photometric calculations, and voltage drop calculations will be prepared and submitted to reviewing agencies.

Upon approval from the reviewing authorities, we will provide proposed lighting plans. The plans will include locations of the lighting units along with electric cable and raceways, power source location, controller (if necessary) and electrical hand holes. Detail sheets of the lighting installation will be prepared to accompany the plan drawings.

CBBEL will also prepare construction documents consisting of technical specifications and drawings for V.O.M. public address system and changeable LED message signage. These documents will be in accordance with the latest Metra standards.

CBBEL's subconsultant, FGM Architects, will provide warming house and platform canopy drawings. It is anticipated that FGM Architects will provide the following sheets:

<u>Warming House/Platform Canopy</u>	<u>Sheets</u>
Abbreviations & Symbol Legends/General Notes	1
Architectural Site Plan/Site Details	1
Signage Details	1
Foundation Plan	1
Structural Concrete & Framing Details	1
Architectural Plan/Reflected Ceiling Plan	1
Roof Plan/Details	1
Elevations/Details	1
Building Sections/Details	1
Wall Sections/Details	1
Schedules/Details	1
Subtotal	<u>11</u>

CBBEL will also prepare mechanical and electrical plans for the proposed building. Plan drawings will be prepared to illustrate the general configuration of the proposed equipment in the building. These plan drawings will be supplemented by HVAC, plumbing and electrical riser diagrams to illustrate the building's mechanical/electrical systems. The technical specifications will be performance based and will be developed to conform to Metra standards.

Task 6 – Construction Phase Documents (90% Design Stage)

CBBEL will prepare Construction Phase Documents reflecting all comments received during the Design Development Phase. CBBEL will also develop final special provisions and update the cost and working day estimates. The final plan set will include the following:

<u>Civil Plans</u>	<u>Sheets</u>
Title Sheet	1
General Notes & Summary of Quantities	1
Survey Plan	1
Final Plat of Survey	1
Alignment, Ties & Benchmarks	1
Removal Plan	1
Staging Plan	1
Detailed Site Plan	1
Grading Plan	1
Signing Plan	1
Typical Sections & Platform Details	1
Civil Details	5
Signage Details	1
Cross Sections	3
Subtotal	<u>20</u>
<u>Landscape Plans</u>	<u>Sheets</u>
Detailed Landscape Plan	1
Subtotal	<u>1</u>
<u>Structural Plans</u>	<u>Sheets</u>
General Notes	1
Retaining Wall Plan	2
Retaining Wall Sections and Details	1
Switchback and Ramp Plan	1
Switchback Sections and Details	1
Warming Shelter Foundation Plans	1
Warming Shelter Foundation Sections and Details	1
Warming Shelter Building Structural Details	1
Warming Shelter Structural Roof Framing Plan	1
Subtotal	<u>10</u>
<u>Architectural Plans</u>	<u>Sheets</u>
Warming Shelter Plans	1
Reflected Ceiling Plans and Floor Finish Plans	1
Warming Shelter Ceiling Frame Plans	1
Warming Shelter Elevations	1
Warming Shelter Building Sections	1
Wall Sections	3
Sections and Details	3
Schedules and Details	2
Subtotal	<u>13</u>

<u>Plumbing Plans</u>	<u>Sheets</u>
Warming House Sanitary Plumbing Plan	1
Warming Shelter Water Piping Plan	1
Plumbing Diagrams, Symbols, Abbreviations & Details	1
Subtotal	<u>3</u>
<u>Mechanical Plans</u>	<u>Sheets</u>
Warming Shelter Mechanical Plan	1
Mechanical Details	1
Subtotal	<u>2</u>
<u>Electrical Plans</u>	<u>Sheets</u>
Lighting/Electrical Notes & Schedule of Work	1
Proposed Lighting Plan	1
Warming House Lighting and Power Plan	1
Lighting Details	4
VIS Sign Details	1
Electrical/Lighting Symbols, Abbreviations & Schedules	1
Wiring Diagrams & Panelboard Schedules	1
Subtotal	<u>10</u>
Total # of Sheets per 90% Complete Plan Set	<u>59</u>

Task 7 – Bidding Phase (100% Design Stage)

CBBEL will finalize the construction phase documents for bidding purposes. CBBEL will revise the construction phase documents based on comments received from Metra and IDOT. CBBEL will also prepare any required addenda and attend all pre-bid meetings.

CBBEL will also submit Special Provisions and Estimates of working days and construction cost.

Task 8 – Permitting

It is anticipated that the above improvements will require permits from the Village of Maywood and UPRR. CBBEL will utilize the Design Development Plans to apply for all necessary permits. The various permit applications will require CBBEL to fill out all necessary permit applications.

Task 9 – Coordination

CBBEL will coordinate the proposed improvement with the Village of Maywood, the UPRR, and IDOT. It is anticipated that several meetings will be required.

FEE ESTIMATE

Please find below our fee for the proposed scope described above. This fee will be billed utilizing our attached billing rates and is considered a not-to-exceed fee.

Task	Fee
Task 1 – Boundary Survey Pick-up, Topographic Survey & Plats and Legal Descriptions	\$8,000
Task 2 – Geotechnical Investigation	\$6,500
Task 3 – Preliminary Site Investigation	\$11,000
Task 4 – Schematic Design Phase (30% Design Stage)	\$40,000
Task 5 – Design Development Phase (60% Design Stage)	\$80,000
Task 6 – Construction Phase Documents (90% Design Stage)	\$55,000
Task 7 – Bidding Phase (100% Design Stage)	\$35,000
Task 8 – Permitting	\$15,000
Task 9 - Coordination	\$25,000
Directs Costs	\$10,000
Total	\$285,500

We will bill you at the hourly rates specified on the attached Schedule of Charges and establish our contract in accordance with the attached General Terms and Conditions. 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. Please note that any requested meetings or additional services are not included in the preceding fee estimate and will be billed at the attached hourly rates.

Please sign and return one copy of this agreement as an indication of acceptance and notice to proceed. Please feel free to contact us anytime.

Sincerely,



Michael Kerr, PE
Executive Vice President

Encl. Schedule of Charges
General Terms and Conditions

THIS LETTER OF ENGAGEMENT, SCOPE OF SERVICES, SCHEDULE OF CHARGES AND GENERAL TERMS AND CONDITIONS ARE ACCEPTED BY THE VILLAGE OF MAYWOOD.

BY: _____
TITLE: _____
DATE: _____

CHRISTOPHER B. BURKE ENGINEERING, LTD.
STANDARD CHARGES FOR PROFESSIONAL SERVICES
JANUARY, 2014

<u>Personnel</u>	<u>Charges*</u> <u>(\$/Hr)</u>
Principal	248
Engineer VI	217
Engineer V	179
Engineer IV	143
Engineer III	129
Engineer I/II	102
Survey V	200
Survey IV	169
Survey III	144
Survey II	104
Survey I	81
Resource Planner V	112
Resource Planner IV	108
Resource Planner III	100
Resource Planner I/II	88
Engineering Technician V	169
Engineering Technician IV	137
Engineering Technician III	123
Engineering Technician I/II	100
CAD Manager	149
Assistant CAD Manager	130
CAD II	129
CAD I	101
GIS Specialist III	124
GIS Specialist I/II	69
Landscape Architect	143
Environmental Resource Specialist V	183
Environmental Resource Specialist IV	141
Environmental Resource Specialist III	118
Environmental Resource Specialist I/II	97
Environmental Resource Technician	93
Administrative	92
Engineering Intern	55
Survey Intern	53
Information Technician III	109
Information Technician I/II	100

Direct Costs

Outside Copies, Blueprints, Messenger, Delivery Services, Mileage Cost + 12%

*Charges include overhead and profit

Christopher B. Burke Engineering, Ltd. reserves the right to increase these rates and costs by 5% after December 31, 2014.

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 resumptions

of the services upon expiration of the Suspension of Services Order, provided that the Engineer identifies such costs in writing at the time of receipt of the Suspension of Suspension Order and the Parties mutually agree to those costs. 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.- Upon receipt of a termination notice, the Engineer shall immediately comply with its terms and take all reasonable steps to minimize the costs associated with the services affected by such notice. Actual, documented cCosts of termination incurred by the Engineer, including portions of salaries, overhead and fees, incurred by Engineer either before or after the termination notice date shall be reimbursed by Client.

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6. Documents Delivered to Client: Drawings, specifications, reports, and any other Project Documents prepared by Engineer in connection with any or all of the services furnished hereunder shall be delivered to the Client for the use of the Client. Engineer shall have the right to retain originals of all Project Documents and drawings for its files. Furthermore, it is understood and agreed that the Project Documents such as, but not limited to reports, calculations, drawings, and specifications prepared for the Project, whether in hard copy or machine readable form, are instruments of professional service intended for one-time use in the construction of this Project. These Project Documents are and shall remain the property of the Engineer. The Client may retain copies, including copies stored on magnetic tape or disk, for information and reference in connection with the occupancy and use of the Project.

When and if record drawings are to be provided by the Engineer, Client understands that information used in the preparation of record drawings is provided by others and Engineer is not responsible for accuracy, completeness, nor sufficiency of such information. Client also understands that the level of detail illustrated by record drawings will generally be the same as the level of detail illustrated by the design drawing used for project construction. If additional detail is requested by the Client to be included on the record drawings, then the Client understands and agrees that the Engineer will be due additional compensation for additional services.

It is also understood and agreed that because of the possibility that information and data delivered in machine readable form may be altered, whether inadvertently or otherwise, the Engineer reserves the right to retain the original tapes/disks and to remove from copies provided to the Client all identification reflecting the involvement of the Engineer in their preparation. The Engineer also reserves the right to retain hard copy originals of all Project Documentation delivered to the Client in machine readable form, which originals shall be referred to and shall govern in the event of any inconsistency between the two.

The Client understands that the automated conversion of information and data from the system and format used by the Engineer to an alternate system or format cannot be accomplished without the introduction of inexactitudes, anomalies, and errors. In the event Project Documentation provided to the Client in machine readable form is so converted, the Client agrees to assume all risks associated therewith and, to the fullest extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising therefrom or in connection therewith.

The Client recognizes that changes or modifications to the Engineer's instruments of professional service introduced by anyone other than the Engineer may result in adverse consequences which the Engineer can neither predict nor control. Therefore, and in consideration of the Engineer's agreement to deliver its instruments of professional service in machine readable form, the Client agrees, to the fullest extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising out of or in any way connected with the modification, misinterpretation, misuse, or reuse by others of the machine readable information and data provided by the Engineer under this Agreement. The foregoing indemnification applies, without limitation, to any use of the Project Documentation on other projects, for additions to this Project, or for completion of this Project by others, excepting only such use as may be authorized, in writing, by the Engineer.

7. Reuse of Documents: All Project Documents including but not limited to reports, opinions of probable costs, drawings and specifications furnished by Engineer pursuant to this Agreement are intended for use on the Project only. They cannot be used by Client or others on extensions of the Project or any other project. Any reuse, without specific written verification or adaptation by Engineer, shall be at Client's sole risk, and Client shall indemnify and hold harmless Engineer from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom.

The Engineer shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Engineer's promotional and professional materials. The Engineer's materials shall not include the Client's confidential and proprietary information if the Client has previously advised the Engineer in writing of the specific information considered by the Client to be confidential and proprietary.

8. Standard of Practice: The Engineer will strive to conduct services under this agreement in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions as of the date of this Agreement.

9. The Engineer shall procure and maintain for the duration of this Agreement insurance against claims for personal injuries or death to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Engineer, its agents, representatives, employees or subcontractors. The Engineer's policy or policies of insurance (and that of its subcontractors and agents) shall specifically recognize and cover

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the Engineer's (subcontractors' and agents') indemnification obligations under this Agreement and shall not exclude or limit in any manner the coverage provided to the parties named as additional insureds under this Agreement. The Engineer's insurer(s) shall be licensed to do business in Illinois and shall be a financially solvent, nationally recognized insurance company.

The Engineer shall furnish the Client with certificates of insurance naming the Client, its officers, appointed and elected officials, president and trustees, employees, agents and volunteers as additional insureds, and with original endorsements affecting coverage required by this Agreement. Certificates of insurance, which list only the Client as a Certificate Holder, will not be acceptable. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Client reserves the right to request full certified copies of the insurance policies. Each of the Engineer's liability coverages required by this Agreement shall be primary coverage in all respects and in regard to the Client. Any insurance or self-insurance maintained by the Client or its agents shall be in excess of the Engineer's insurance and shall not contribute with it.

The Engineer shall maintain limits no less than:

General liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. The general aggregate shall be twice the required occurrence limit. Minimum general aggregate shall be no less than \$2,000,000.

Professional Liability Coverage (separate coverage at the following minimum limits for engineering work): \$2,500,000 per occurrence and \$4,000,000 in the annual aggregate of professional liability insurance that provides indemnification and defense for the Engineer, its subcontractors, agents, or surveyor for injury or damage of any kind arising out of acts, errors or omissions in providing professional services, including, but not limited to, the following:

Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications. Providing engineering services or failing to provide them, if that is the primary cause of the injury or damage.

Automobile liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

Workers' Compensation and Employees' Liability: Workers' Compensation limits as required by State statute and Employer's Liability limits of \$500,000 per accident.

Excess liability: \$1,000,000 per occurrence and in the aggregate.

Each subcontractor or agent shall maintain the minimum limits of insurance set forth above for the Engineer and shall provide certificates of insurance, containing the same terms and provisions as required in this section, to the Client as required of the Engineer prior to performing any work or services. In regard to the Workers' Compensation and Employers' Liability Coverage, the insurer shall agree to waive all rights of subrogation against the Client, its officials, appointed and elected officers, president and trustees, employees, agents, and volunteers for losses arising from work performed by the Engineer for the Client.

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Each insurance policy required by this Section shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt required, has been given counsel for the Client at: Attn: Village Manager, Village of Maywood, 40 West Madison Avenue, Maywood, Illinois 60153.

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It is understood and agreed that the Client and Engineer have no duties whatsoever relating to the safety of persons and property on and about any construction site. In order that the Client and Engineer may be fully protected against claims in this regard on Client projects, the Client agrees to secure from all Contractors and Subcontractors working directly or indirectly on Client projects, prior to the commencement of work of any kind, a separate policy of insurance covering public liability, death and property damage naming the Client and Engineer and their respective officers, employees and agents as additional insured, and to maintain such insurance in effect and bear all costs for the same until the completion or acceptance of the work. Certificates of said insurance shall be delivered to the Client and to Engineer as evidence of compliance with this provision.

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109. Compliance With Laws: The Engineer will strive to exercise usual and customary professional care in his/her efforts to comply with those laws, codes, ordinance and regulations which are in effect as of the date of this Agreement.

With specific respect to prescribed requirements of the Americans with Disabilities Act of 1990 or certified state or local accessibility regulations (ADA), Client understands ADA is a civil rights legislation and that interpretation of ADA is a legal issue and not a design issue and, accordingly, retention of legal counsel (by Client) for purposes of interpretation is advisable. As such and with respect to ADA, Client agrees to waive any action against Engineer, and to indemnify and defend Engineer against any claim arising from Engineer's alleged failure to meet ADA requirements prescribed.

Further to the law and code compliance, the Client understands that the Engineer will strive to provide designs in accordance with the prevailing Standards of Practice as previously set forth, but that the Engineer does not warrant that any reviewing agency having jurisdiction will not for its own purposes comment, request changes and/or additions to such designs. In the event such design requests are made by a reviewing agency, but which do not exist in the form of a written regulation, ordinance or other similar document as published by the reviewing agency, then such design changes (at substantial variance from the intended design developed by the Engineer), if effected and incorporated into the project documents by the Engineer, shall be considered as Supplementary Task(s) to the Engineer's Scope of Service and compensated for accordingly.

110. Indemnification: Engineer shall indemnify and hold harmless Client up to the amount of its insurance (including any excess or umbrella coverage) ~~this contract fee~~ (for services) from loss or expense, including reasonable attorney's fees for claims for personal injury (including death) or property damage to the extent caused by the sole negligent act, error or omission of Engineer.

Client shall indemnify and hold harmless Engineer under this Agreement, up to the amount of its insurance (including any excess or umbrella coverage) 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.

124. 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.

132. Governing Law & Dispute Resolutions: This Agreement shall be governed by and construed in accordance with Articles previously set forth by (Item 9 of) this Agreement, together with the laws of the **State of Illinois**.

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

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

proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

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

- | 143. 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.
- | 154. 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.
- | 165. 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.
- | 176. 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".
- | 187. 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.
- | 198. 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.
- | 2049. Subcontracts: Engineer may subcontract portions of the work, but each subcontractor must be approved by Client in writing.

210. 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.
224. 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.
232. 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.
243. Limit of Liability: The Client and the Engineer have discussed the risks, rewards, and benefits of the project and the Engineer's total fee for services. In recognition of the relative risks and benefits of the Project to both the Client and the Engineer, the risks have been allocated such that the Client agrees that to the fullest extent permitted by law, the Engineer's total aggregate liability to the Client for any and all injuries, claims, costs, losses, expenses, damages of any nature whatsoever or claim expenses arising out of this Agreement from any cause or causes, including attorney's fees and costs, and expert witness fees and costs, shall not exceed the total amount of Engineer's insurance coverage (including any excess or umbrella coverage) required under fee for professional engineering services rendered on this project as made part of this Agreement. Such causes included but are not limited to the Engineer's negligence, errors, omissions, strict liability or breach of contract. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.
254. Client's Responsibilities: The Client agrees to provide full information regarding requirements for and about the Project, including a program which shall set forth the Client's objectives, schedule, constraints, criteria, special equipment, systems and site requirements.

The Client agrees to furnish and pay for all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services which the Client may require to verify the Contractor's Application for Payment or to ascertain how or for what purpose the Contractor has used the money paid by or on behalf of the Client.

The Client agrees to require the Contractor, to the fullest extent permitted by law, to indemnify, hold harmless, and defend the Engineer, its consultants, and the employees and agents of any of them from and against any and all claims, suits, demands, liabilities, losses, damages, and costs ("Losses"), including but not limited to costs of defense,

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

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

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

When Contract Documents prepared under the Scope of Services of this ~~Agreement~~ contract require insurance(s) to be provided, obtained and/or otherwise maintained by the Contractor, the Engineer agrees to include in the Contract Documents all such Client insurance obligations and provisions set forth in this Agreement, including but not limited to those Client insurance obligations and provisions set forth in Sections 11, 24, 25, 28 and 30 herein. The Parties the Client agree to share equally to be wholly the responsibility for setting forth any and all such insurance requirements and any resulting liability for failure to include such Client insurance obligations and provisions shall be shared equally. 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.

265. 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.

276. 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 in accordance with the Illinois Prompt Payment Act (50 ILCS 505/1 et. seq.) at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law, whichever is the lesser) until paid. Client further agrees to pay Engineer's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney's fees, as well as costs attributed to suspension of services accordingly and as follows:

Collection Costs. In the event legal action is necessary to enforce the payment provisions of this Agreement, the Engineer shall be entitled to collect from the Client any judgement or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by the Engineer in connection therewith and, in addition, the reasonable value of the Engineer's time and expenses spent in connection with such collection action, computed at the Engineer's prevailing fee schedule and expense policies.

Suspension of Services. If the Client fails to make payments when due or otherwise is in breach of this Agreement, the Engineer may suspend performance of services upon five (5) calendar days' notice to the Client. The Engineer shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Client will reimburse Engineer for all associated costs as previously set forth in (Item 4 of) this Agreement.

287. When construction observation tasks are part of the service to be performed by the Engineer under this Agreement, the Client will include the following clause in the Construction Contract Documents and Client agrees not to modify or delete it:

Kotecki Waiver. Contractor (and any subcontractor into whose subcontract this clause is incorporated) agrees to assume the entire liability for all personal injury claims suffered by its own employees, including without limitation claims under the Illinois Structural Work Act, asserted by persons allegedly injured on the Project; waives any limitation of liability defense based upon the Worker's Compensation Act, court interpretations of said Act or otherwise; and to the fullest extent permitted by law, agrees to indemnify and hold harmless and defend Owner and Engineer and their agents, employees and consultants (the "Indemnitees") from and against all such loss, expense, damage or injury,

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including reasonable attorneys' fees, that the Indemnitees may sustain as a result of such claims, except to the extent that Illinois law prohibits indemnity for the Indemnitees' own negligence. The Owner and Engineer are designated and recognized as explicit third party beneficiaries of the Kotecki Waiver within the general contract and all subcontracts entered into in furtherance of the general contract.

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298. Job Site Safety/Supervision and 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.

30-29. Insurance and Indemnification: The Engineer and the Client understand and agree that the Client will contractually require the Contractor to defend and indemnify the Engineer and/or any subconsultants from any claims arising from the Work. The Engineer and the Client further understand and agree that the Client will contractually require the Contractor to procure commercial general liability insurance naming the Engineer as an additional named insured with respect to the work. The Contractor shall provide to the Client certificates of insurance evidencing that the contractually required insurance coverage has been procured. However, the Contractor's failure to provide the Client with the requisite certificates of insurance shall not constitute a waiver of this provision by the Engineer.

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

30-31. Hazardous Materials/Pollutants: Unless otherwise provided by this Agreement, the Engineer and Engineer's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials/pollutants in any form at the Project site, including but not limited to mold/mildew, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic/hazardous/pollutant type substances.

Furthermore, Client understands that the presence of mold/mildew and the like are results of prolonged or repeated exposure to moisture and the lack of corrective action. Client also understands that corrective action is a operation, maintenance and repair activity for which the Engineer is not responsible.

June 13, 2005

Revised 3-5-14 (Mike Jurusik at KTJ)

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