

7/11/17

RESOLUTION NO. R-2017-07

**RESOLUTION APPROVING
THE AGREEMENT BETWEEN THE VILLAGE OF MAYWOOD AND
EDWIN HANCOCK ENGINEERING COMPANY FOR FURNISHING OF
PROFESSIONAL CONSTRUCTION ENGINEERING SERVICES
FOR THE WATER MAIN REPLACEMENT PROJECT AT
THE UNION PACIFIC RAILROAD TRACKS**

WHEREAS, the President and Board of Trustees of the Village of Maywood desire to enter into an agreement titled AGREEMENT BETWEEN THE VILLAGE OF MAYWOOD AND EDWIN HANCOCK ENGINEERING COMPANY FOR FURNISHING OF PROFESSIONAL CONSTRUCTION ENGINEERING SERVICES FOR THE WATERMAIN REPLACEMENT PROJECT AT THE UNION PACIFIC RAILROAD TRACKS (the "Agreement"), a copy of which is attached hereto as Exhibit "1" and made a part hereof; and

WHEREAS, the attached Agreement relates to design engineering services that need to be completed in regard to the Village's street and water main infrastructure work that needs to be completed as part of the Union Pacific Railroad's construction of the "Third Rail" Project (the "UPRR Project"). The Village's construction work includes the reconstruction of pavement through Main Street at the intersections of First Avenue, Fifth Avenue and Ninth Avenue, and through the intersection of Railroad Avenue at Nineteenth Avenue and the installation of new water main line at those intersections where the water main extends through the Union Pacific Railroad's right-of-way (the "Village Project"). The UPRR is 100% responsible for the costs associated with the pavement reconstruction. The Village is obligated to pay for the remaining work that comprises the Village Project because of the cost shifting provisions contained in one or more right-of-way license agreement(s) that it has entered into with the UPRR; and

WHEREAS, the design engineering costs associated with the Village Project, as described in the attached Agreement, are Forty Thousand and No/100 Dollars (\$40,000.00). The estimated construction costs of the Village Project are within a range of Nine Hundred Ninety-Five Thousand and No/100 Dollars (\$995,000.00) and One Hundred Fifty-Five Thousand and No/100 Dollars (\$155,000.00). The Village Project Costs, including the design engineering fee, the construction engineering service fee and the construction costs, shall be paid by the Village out of general funds. The UPRR has offered to enter into a separate reimbursement agreement with the Village that would allow the Village a five (5) year repayment plan for the actual incurred construction costs associated with the Village Project; and

WHEREAS, the Village of Maywood, a home rule Illinois municipal corporation, has the authority to approve and enter into the attached Agreement (Exhibit "1") and to approve the expenditure of its Madison Street/Washington Street Tax Increment Financing District Funds to pay for the Project costs 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 finds that entering into this 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 approve of the Agreement entitled "AGREEMENT BETWEEN THE VILLAGE OF MAYWOOD AND EDWIN HANCOCK ENGINEERING COMPANY FOR FURNISHING OF PROFESSIONAL CONSTRUCTION ENGINEERING SERVICES FOR THE WATERMAIN REPLACEMENT PROJECT AT THE UNION PACIFIC RAILROAD TRACKS," a copy of which is attached hereto as Exhibit "1" and made a part hereof, for the purposes of paying the design engineering costs associated with the Village Project, as described in the attached Agreement, which are Forty Thousand and No/100 Dollars (\$40,000.00). The President and Board of Trustees of the Village of Maywood also agree to appropriate and authorize the expenditure of the necessary sums from the Village's General Funds for the purpose of paying the costs related to the Village Project. Further, the President and Board of Trustees authorize and direct the Village President and Clerk, or their designees, to execute the Agreement and to execute and deliver all other instruments and documents that are necessary to fulfill the Village's obligations under the Agreement.

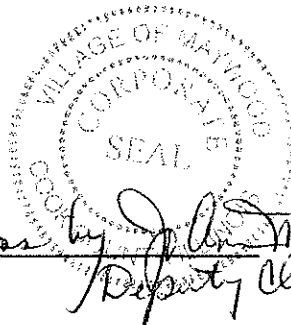
ADOPTED this 24th day of January, 2017, pursuant to a roll call vote as follows:

AYES: Mayor Edwenna Perkins, Trustee(s) H. Yarbrough, Sr., I. Brandon, A. Dorris, M. Rogers, M. Lightford and R. Rivers.

NAYS: None

ABSENT: None

APPROVED this 26th day of January, 2017, by the Village President of the Village of Maywood, and attested by the Village Clerk on the same day.



Edwenna Perkins
Village President

ATTEST: Vicki Massey
Village Clerk

Jill An Mully
Deputy Clerk

Exhibit "1"

**AGREEMENT BETWEEN THE
VILLAGE OF MAYWOOD AND EDWIN HANCOCK ENGINEERING COMPANY
FOR FURNISHING OF PROFESSIONAL CONSTRUCTION ENGINEERING SERVICES
FOR THE WATERMAIN REPLACEMENT PROJECT AT
THE UNION PACIFIC RAILROAD TRACKS**

(attached)

AGREEMENT
between the
VILLAGE OF MAYWOOD
and the
EDWIN HANCOCK ENGINEERING COMPANY
for
FURNISHING OF PROFESSIONAL ENGINEERING SERVICES
for the
WATER MAIN REPLACEMENT PROJECT AT UNION PACIFIC RAILROAD
in
MAYWOOD, ILLINOIS

January 2017

AGREEMENT
between the
VILLAGE OF MAYWOOD
and the
EDWIN HANCOCK ENGINEERING COMPANY
for
FURNISHING OF PROFESSIONAL ENGINEERING SERVICES
for the
WATER MAIN REPLACEMENT PROJECT AT UNION PACIFIC RAILROAD
in
MAYWOOD, ILLINOIS

THIS Agreement, made and entered into between the Village of Maywood, hereinafter referred to as "VILLAGE", and the Edwin Hancock Engineering Co., hereinafter referred to as "ENGINEER", covers the furnishing of Professional Engineering Services necessary to provide the engineering services required for the WATER MAIN REPLACEMENT PROJECT AT UNION PACIFIC RAILROAD, hereinafter referred to as "PROJECT", which will generally include replacement of four (4) Village water mains which cross the Union Pacific Railroad between 9th Avenue and 1st Avenue, inclusively, and described in detail as follows:

The scope of work of the project shall include replacement of water main supply pipes within steel casing pipe, water main connections and disconnections to the existing water system, installation of valves, fire hydrants, fittings and other associated water main appurtenances, intermittent restoration of pavement, curb and gutter, sidewalk, driveways, and landscaping as necessary.

Design Engineering includes the preparation of plans, specifications and bidding documents for the proposed work, preparation and submittal of applications for permits required from the IEPA and IDOT, and performance of other necessary engineering services outlined in Section A.I of this Agreement.

WITNESSETH THAT; in consideration of these premises and of the mutual covenants set forth,

A. THE ENGINEER AGREES:

- I. To perform, or be responsible for the performance of, the following Design Engineering services for the proposed improvement:
 - a. Preparing preliminary design criteria.
 - b. Preparing preliminary plans.

- c. Making engineering field topographic surveys as are necessary for the preparation of detailed plans.
 - d. Preparing and submitting necessary applications and plans to various governmental agencies, on behalf of the VILLAGE, for permission to construct the proposed site improvements.
 - e. Preparing detailed plans, specifications, and estimates of construction costs and furnishing the VILLAGE with sufficient sets of these documents to be used for obtaining bids from contractors.
 - f. Endorsing all plans and other documents furnished by the ENGINEER pursuant to this Agreement by showing his signature and professional seal where Law requires such.
- II. That ENGINEER will save harmless the VILLAGE and its employees from all damages and liabilities caused by negligent or wrongful acts or omissions of ENGINEER in the performance of professional services or by anyone for whose acts ENGINEER is liable. ENGINEER shall carry insurance as agreed upon between VILLAGE and ENGINEER, including insurance covering this indemnity. Such insurance shall remain in force until all work is completed and all final measurements and reports have been made and accepted by the VILLAGE.
- III. The proposed project schedule will complete the project design and permit approval by March 29, 2017. In order to complete the above work by the completion date, the following schedule is proposed:

Approval of Engineering Agreement	January 24, 2017
Plan Submittal to Permitting Agencies	February 15, 2017
Response from Permitting Agencies	March 27, 2017
Final Design Completed	March 29, 2017

B. THE VILLAGE AGREES;

- I. That for the performance by the ENGINEER of the engineering services set forth above, the VILLAGE shall pay the ENGINEER on the following basis of payment:
 - a. **To pay the Engineer as compensation for all Preliminary Design Engineering services performed as stipulated in above Section A.I, a Lump Sum Fee of Forty Thousand dollars (\$40,000.00), unless there is a substantial change in the scope, complexity, or character of the work to be performed or there is a substantial overrun in the time necessary for the ENGINEER to complete the work due to causes beyond its control, no increase in Fees shall occur without the advance written agreement of the VILLAGE. Under such circumstances, adjustments in the total compensation to the ENGINEER shall be determined through discussions between the parties of this AGREEMENT, and shall be documented by a change order or amendment to this AGREEMENT.**
 - b. **Total Fee Payments. The VILLAGE, for and in consideration of the rendering of the engineering services enumerated herein agrees to pay to the ENGINEER for rendering such services the total fee hereinbefore established in the following manner:**
 - (1) **Partial Payments – Upon receipt of monthly invoices from the ENGINEER and the approval thereof by the VILLAGE monthly payments for the work performed shall be due and payable to the ENGINEER, such payment to be equal to One Hundred Percent (100%) of the value of the partially completed work minus all previous payments made to the ENGINEER.**
 - (2) **Final Payment – Upon approval by the VILLAGE but not later than sixty (60) days after the work is completed and all final measurements and reports have been made and accepted by the VILLAGE, a sum of money equal to the total fee as determined in this AGREEMENT less the total amounts of partial payments previously paid to the ENGINEER under Section B.I. a and c of this AGREEMENT shall be due and payable to the ENGINEER.**

C. IT IS MUTUALLY AGREED;

- I. ENGINEER shall neither have control over or charge of, nor be responsible for, the construction, means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction Work, since these are solely the contractor's rights and responsibilities under the contract documents.

- II. Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the institution of legal proceedings by either party. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the county 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.
- III. The VILLAGE and the ENGINEER waive consequential damages for claims, disputes or other matters in question arising out of or relating to this AGREEMENT. This mutual waiver applicable, without limitation, to all consequential damages due to either party's termination in accordance with the terms of this AGREEMENT.
- IV. Along with the General Conditions Attachment to Engineering Agreement attached hereto, this AGREEMENT represents the entire and integrated agreement between the VILLAGE and the ENGINEER and supersedes all prior negotiations, representations, or agreements, either written or oral. This AGREEMENT may be amended only by written instruments signed by both parties hereto.

In witness whereof, the parties have caused this Agreement to be executed in duplicate counterparts, each of which shall be considered as an original, by their duly authorized officers as of the dates below indicated.

Executed by the VILLAGE, this

_____ day of _____, 2017

VILLAGE OF MAYWOOD
Cook County, Illinois
Acting through its
President and Board of Trustees

By _____
Edwenna Perkins, Village President

ATTEST:

By _____
Viola Mims, Village Clerk

(SEAL)

Executed by the ENGINEER, this

_____ day of _____, 2017

EDWIN HANCOCK ENGINEERING COMPANY
9933 ROOSEVELT ROAD
WESTCHESTER, ILLINOIS 60154

By _____
Derek Treichel, P.E., President

ATTEST:

By _____
Mark Lucas, P.E., Vice President

(SEAL)

GENERAL CONDITIONS ATTACHMENT TO ENGINEERING AGREEMENT

A. THE ENGINEER AGREES:

1. That the ENGINEER shall procure and maintain for the duration of its AGREEMENT and for three years thereafter insurance against errors and omissions and claims for injuries to its employees which may rise from or are in conjunction with the performance of the work hereunder by the ENGINEER, its agents, representatives, employees, or subcontractors.

a. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- (1) Insurance Services Office Commercial General Liability occurrence form CG 0001 (Ed. 11/85);
- (2) Insurance Services Office form number CA 0001 (ed. 1/87) covering Automobile Liability, symbol 01 "any auto" and endorsement CA 0029 (Ed. 12/88) changes in Business Auto and Truckers coverage forms - Insured Contract or ISO form number CA 0001 (Ed. 12/90);
- (3) Professional Liability/Malpractice Liability policy; and
- (4) Worker's Compensation as required by the Labor Code of the State of Illinois and Employers' Liability insurance.

b. Minimum Limits of Insurance

The ENGINEER shall maintain limits no less than:

- (1) Commercial 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.
- (2) Automobile Liability: \$1,000,000 combined single limit per accident or bodily injury and property damage.
- (3) Professional Liability: \$1,000,000 single limit for errors and omissions, professional/malpractice liability.
- (4) Worker's Compensation and Employers' Liability: Worker's Compensation limits as required by the Labor Code of the State of Illinois and Employers' Liability limits of \$100,000 per accident.

c. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the VILLAGE. At the option of the VILLAGE, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the VILLAGE, its officials, employees and volunteers; or the ENGINEER shall procure a bond guaranteeing payment of losses and related investigation, claim administration and defense expenses.

d. Other Insurance Provisions

The policies are to contain, or be endorsed to contain the following provisions:

- (1) General Liability and Automobile Liability Coverages
 - (a) The VILLAGE, its officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the ENGINEER; or automobiles owned, lease, hired or borrowed

by the ENGINEER. The coverage shall contain no special limitations on the scope of protection afforded to the VILLAGE, its officials, employees, and volunteers.

- (b) The ENGINEER's insurance coverage shall be primary as respects the additional insureds. Any insurance or self-insurance maintained by the VILLAGE, its officials, agents, employees, and volunteers shall be excess of ENGINEER's insurance and shall not contribute with it.
- (c) Any failure to comply with reporting provisions of the policies shall not effect coverage provided to the VILLAGE, its officials, agents, employees, and volunteers.
- (d) The ENGINEER's insurance shall contain a severability of interests clause or language stating that ENGINEER's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(2) **All Coverages**

Each insurance policy required by this clause shall be endorsed to state that the coverage shall not be voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the VILLAGE.

e. **Acceptability of Insurers**

The insurance carrier used by the ENGINEER shall have a minimum insurance rating of B according to the AM Best Insurance Rating Schedule and licensed to do business in the State of Illinois.

f. **Verification of Coverage**

The ENGINEER shall furnish the VILLAGE with certificates of insurance and with copies of endorsements affecting coverage. The certificates and endorsement for the insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements may be on forms provided by the insurance carrier and are to be received and approved by the VILLAGE before any work commences. The VILLAGE reserves the right to request full certified copies of the insurance policies.

- 2. To the fullest extent permitted by law, the ENGINEER shall indemnify and hold harmless the VILLAGE, its officials, employees and volunteers against all injuries, deaths, loss, damages, claims, suits, liabilities, judgments, cost and expenses, which may accrue against the VILLAGE, its officials, employees and volunteers, arising in consequence of the negligent or willful performance of this work by the ENGINEER, its employees, or subcontractors, except that arising out of the negligence or willful act of the VILLAGE, its officials, employees and volunteers. Notwithstanding any of the foregoing, nothing contained in this paragraph shall require the ENGINEER to indemnify the VILLAGE, its officials, agents and employees for their own negligent acts or omissions..
- 3. Any insurance policies required by this AGREEMENT, or otherwise provided by the ENGINEER, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the VILLAGE, its officials, agents, employees and volunteers and herein provided.
- 4. The ENGINEER will comply with all applicable federal and Illinois statutes, and local ordinances of the VILLAGE and shall operate within and uphold the ordinances, rules and regulations of the VILLAGE while engaged in services herein described.
- 5. The VILLAGE 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 VILLAGE shall negotiate appropriate adjustments acceptable to both parties to accommodate such changes.
- 6. The VILLAGE 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. The VILLAGE, 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.

7. This AGREEMENT may be terminated by the VILLAGE by removal of the ENGINEER from the office of Village Engineer as provided by statute, upon written notice to the ENGINEER, at its last known post office address. Provided that should this AGREEMENT be terminated by the VILLAGE, the ENGINEER shall be paid for any services completed and any services partially completed. All field notes, test records, drawings, and reports completed or partially completed at the time of termination shall become the property of, and made available to, the VILLAGE. Within five (5) days after notification and request, the ENGINEER shall deliver to the successor Village Engineer all property, books and effects of every description in its possession belonging to the VILLAGE and pertaining to the office of Village Engineer.
8. This AGREEMENT may additionally be terminated by the VILLAGE upon written notice to the ENGINEER, at its last known post office address, upon the occurrence of any one or more of the following events, without cause and without prejudice to any other right or remedy:
 - a. If ENGINEER commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereinafter in effect, or if ENGINEER takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;
 - b. If a petition is filed against ENGINEER under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against ENGINEER under any other federal or state law in effect at the time relating to bankruptcy or insolvency.
 - c. If ENGINEER makes a general assignment for the benefit of creditors;
 - d. If a trustee, receiver, custodian or agent of ENGINEER is appointed under applicable law or under contract, whose appointment or authority to take charge of property of ENGINEER is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of ENGINEER's creditors;
 - e. If ENGINEER admits in writing an inability to pay its debts generally as they become due;
9. Upon termination, the ENGINEER shall deliver to the VILLAGE, copies of partially completed drawings, specifications, partial and completed estimates, and data, if any, from investigations and observations, with the understanding that all such material becomes the property of the VILLAGE. In such case, ENGINEER shall be paid for all services and any expense sustained, less all costs incurred by the VILLAGE to have the services performed which were to have been performed by the ENGINEER.
10. The ENGINEER is qualified technically and is conversant with the laws and regulations applicable to the PROJECT and sufficient, properly trained, and experienced personnel will be retained to perform the services enumerated herein.
11. The ENGINEER shall maintain its records relating to the performance of the Agreement in compliance with the requirements of the Local Records Act (50 ILCS 205/1 et seq.) and the Freedom of Information Act (5 ILCS 140/1 et seq.) until written approval for the disposal of such records is obtained from the Local Records Commission. All books and records required to be maintained by the ENGINEER shall be available for review and audit by the Village. The ENGINEER shall cooperate with the Village (a) with any request for public records made pursuant to the Freedom of Information Act (5 ILCS 140/1 et seq.), (b) with any request for public records made pursuant to any audit, and (c) by providing full access to and copying of all relevant books and records within a time period which allows the Village to timely comply with the time limits imposed by the Freedom of Information Act (5 ILCS 140/1 et seq.).
12. The ENGINEER warrants that he has not employed or retained any company or person, other than an employee working solely for the ENGINEER, to secure this AGREEMENT; and he has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. For breach or violation of this warranty, the VILLAGE shall have the right to annul this AGREEMENT without liability, or, in

its discretion, to deduct from the AGREEMENT price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

13. The ENGINEER, during the period commencing upon the execution of this AGREEMENT and concluding one year following the completion of the PROJECT, shall not accept employment from any developer developing land within the VILLAGE or any contractor, subcontractor or material supplier performing work or supplying material to the VILLAGE without the express written consent of the VILLAGE.
14. This AGREEMENT shall be deemed to be exclusive between the VILLAGE and the ENGINEER. This AGREEMENT shall not be assigned by the ENGINEER without first obtaining permission in writing from the VILLAGE.
15. All books, papers, notes, records, lists, data, files, forms, reports, accounts, documents, manuals, handbooks, instructions, computer programs, computer software, computer disks and diskettes, magnetic media, electronic files, printouts, backups, and computer databases created or modified by the ENGINEER relating in any manner to the work performed by the ENGINEER or by anyone else and used by the ENGINEER in performance of this services under this AGREEMENT (the "Work") shall be a "work made for hire" as defined by the laws of the United States regarding copyrights.
16. The ENGINEER hereby assigns to the VILLAGE and its successors and assigns all of its right, title, interest and ownership in the Work, including but not limited to copyrights, trademarks, patents, and trade secret rights and the rights to secure any renewals, reissues, and extensions thereof. ENGINEER grants permission to the VILLAGE to register the copyright and other rights in the Work in the VILLAGE's name. ENGINEER shall give the VILLAGE or any other person designated by the VILLAGE all assistance reasonably necessary to perfect its rights under this AGREEMENT and to sign such applications, documents, assignment forms and other papers as the VILLAGE requests from time to time to further confirm this assignment. ENGINEER further grants to the VILLAGE full, complete and exclusive ownership of the Work. ENGINEER shall not use the Work for the benefit of anyone other than the VILLAGE, without the VILLAGE's prior written permission. Upon completion of the Work or other termination of this AGREEMENT the ENGINEER shall deliver to the VILLAGE all copies of any and all materials relating or pertaining to this AGREEMENT.
17. The 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 VILLAGE for the use of the VILLAGE. The 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. The VILLAGE 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. Any reuse of PROJECT documents, without the express written consent of the ENGINEER, shall be at VILLAGE's sole risk, and the VILLAGE shall indemnify and hold harmless the ENGINEER from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom. When and if record drawings are to be provided by the ENGINEER, the 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. 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 VILLAGE to be included on the record drawings, then the ENGINEER will be due additional compensation for additional services. 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 VILLAGE's confidential and proprietary information.
18. The ENGINEER will not at any time, either directly or indirectly, disclose, use or communicate or attempt to disclose, use or communicate to any person, firm, or corporation any confidential information or any other information concerning the business, services, finances or operations of the VILLAGE except as expressly authorized by the VILLAGE. ENGINEER shall treat such information at all times as confidential. ENGINEER acknowledges that each of the following can contain confidential information of the VILLAGE and that the disclosure of any of the following by the ENGINEER without the VILLAGE's express authorization would be harmful and damaging to the VILLAGE's interests:
 - a. Compilations of resident names and addresses, resident lists, resident payment histories, resident information reports, any other resident information, computer programs, computer software,

printouts, backups, computer disks and diskettes, and computer databases and which are not otherwise known to the public.

- b. All information relating to the Engineering Services being performed by ENGINEER under this AGREEMENT, regardless of its type or form and which are not otherwise known to the public.
- c. Ideas, concepts, designs and plans which are specifically involved with the Engineering Services being performed by ENGINEER under this AGREEMENT which are created, designed, enhanced by the ENGINEER and which are not otherwise known to the public.
- d. Financial information and police records.

This itemization of confidential information is not exclusive; there may be other information that is included within this covenant of confidentiality. This information is confidential whether or not it is expressed on paper, disk, diskette, magnetic media, optical media, monitor, screen, or any other medium or form of expression. The phrase "directly or indirectly" includes, but is not limited to, acting through ENGINEER's wife, children, parents, brothers, sisters, or any other relatives, friends, partners, trustees, agents or associates.

- 19. All books, papers, records, lists, files, forms, reports, accounts, documents, manuals, handbooks, instructions, computer programs, computer software, computer disks and diskettes, printouts, backups, and computer databases relating in any manner to the VILLAGE's business, services, programs, software or residents, whether prepared by ENGINEER or anyone else, are the exclusive property of the VILLAGE. In addition, all papers, notes, data, reference material, documentation, programs, diskettes (demonstration or otherwise), magnetic media, optical media, printouts, backups, and all other media and forms of expression that in any way include, incorporate or reflect any confidential information of the VILLAGE (as defined above) are the exclusive property of the VILLAGE. ENGINEER shall immediately return said items to the VILLAGE upon termination of ENGINEER's engagement or earlier at the VILLAGE's request at any time.
- 20. The ENGINEER's opinions of probable PROJECT construction cost provided for herein are to be made on the basis of the ENGINEER's experience and qualifications and represent the ENGINEER's judgment as a design professional familiar with the construction industry, but the ENGINEER does not guarantee that proposal, bids or the construction cost will not vary from opinions of probable construction cost prepared by the ENGINEER.
- 21. The VILLAGE, for and in consideration of the rendering of the engineering services enumerated herein shall pay to the ENGINEER for rendering such services the fee hereinbefore established in the following manner:
 - a. Upon receipt of monthly statements from the ENGINEER and the approval thereof by the VILLAGE, payments for the work performed shall be due and payable to the ENGINEER within 30 days after approval by the VILLAGE.
 - b. Payments shall be made in accordance with the Local Government Prompt Payment Act (50 ILCS 505/1 et seq.).
- 22. This AGREEMENT may be terminated by the ENGINEER by resignation from the office of Village Engineer, upon thirty (30) days' written notice to the VILLAGE should the VILLAGE fail substantially to perform in accordance with the terms of this AGREEMENT through no fault of the ENGINEER. Upon such termination, the ENGINEER shall make available to the VILLAGE, copies of partially completed drawings, specifications, partial and completed estimates, and data, if any, from investigations and observations, with the understanding that all such material becomes the property of the VILLAGE. The ENGINEER shall be paid promptly for all services provided to the date of termination.
- 23. 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 VILLAGE. Nothing contained in this AGREEMENT shall create a contractual relationship with a cause of action in favor of a third party against either the VILLAGE or ENGINEER.
- 24. Written notices between the VILLAGE and the ENGINEER shall be deemed sufficiently given after being placed in the United States mail, registered or certified, postage pre-paid, addressed to the appropriate party as follows:

- a. If to the VILLAGE:
VILLAGE OF MAYWOOD
40 Madison Street
Maywood, Illinois 60153
Attn: Mr. Willie Norfleet, Village Manager
 - b. If to the ENGINEER:
EDWIN HANCOCK ENGINEERING COMPANY.
9933 Roosevelt Road
Westchester, Illinois 60154-2780
Attn: Derek Treichel, P.E., President
 - c. Either party may change its mailing address by giving written notice to the other party as provided above. Whenever this AGREEMENT requires one party to give the other notice, such notice shall be given only in the form and to the addresses described in this paragraph.
- 25. This AGREEMENT represents the entire and integrated contract between the parties and supersedes all prior negotiations, representations or understandings, whether written or oral. This AGREEMENT may only be amended by written instrument executed by authorized signatories of the VILLAGE and the ENGINEER.
 - 26. The terms of this AGREEMENT shall be binding upon and inure to the benefit of the parties and their respective successors.
 - 27. 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.
 - 28. If any term, covenant, or condition of this AGREEMENT or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this contract shall not be affected thereby, and each term, covenant or condition of this AGREEMENT shall be valid and shall be enforced to the fullest extent permitted by law.
 - 29. This AGREEMENT shall be construed under and governed by the laws of the State of Illinois, and all actions brought to enforce the dispute resolution provisions of this AGREEMENT shall be so brought in the Circuit Court of Cook County, State of Illinois.

B. CERTIFICATION OF ENGINEER

- 1. The ENGINEER certifies that the ENGINEER, its shareholders holding more than five percent (5%) of the outstanding shares of the ENGINEER, its officers and directors are:
 - a. not delinquent in the payment of taxes to the Illinois Department of Revenue in accordance with 65 ILCS 5/11-42.1-1;
 - b. not barred from contracting as a result of a violation of either Section 33E-3 (bid rigging) or Section 33E-4 (bid rotating) of the Criminal Code of 1961 (720 ILCS 5/33E-3 and 5/33E-4);
 - c. not in default, as defined in 5 ILCS 385/2, on an educational loan, as defined in 5 ILCS 385/1;
 - d. in compliance with the Veterans Preference Act (330 ILCS 55/0.01 *et seq.*)
 - e. in compliance with equal employment opportunities and during the performance of the AGREEMENT, the ENGINEER shall:
 - (1) 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) If it hires additional employees in order to perform this AGREEMENT or any portion hereof, it will determine the availability (in accordance with the Illinois Department of Human Rights' 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) 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) 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 ENGINEER'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 ENGINEER in its efforts to comply with such Act and Rules and Regulations, the ENGINEER will promptly so notify the Illinois Department of Human Rights and the VILLAGE and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
 - (5) Submit reports as required by the Illinois Department of Human Rights, 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) Permit access to all relevant books, records, accounts, and work sites by personnel of the contracting agency and the Illinois Department of Human Rights for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.
 - (7) Not maintain or provide for its employees any segregated facilities at any of its establishments, and not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. As used in this section, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin because of habit, local custom, or otherwise.
- f. in compliance with 775 ILCS 5/2-105(A)(4) by having in place and enforcing a written sexual harassment policy.
- g. in agreement that in the event of non-compliance with the provisions of this certification relating to equal employment opportunity, the Illinois Human Rights Act or the Illinois Department of Human Rights, Rules and Regulations, the ENGINEER may be declared ineligible for future contracts with the VILLAGE, and this AGREEMENT 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.
- h. in compliance with 30 ILCS 580/1 et seq. (Drug Free Workplace Act) by providing a drug-free workplace by:
- (1) Publishing a statement:
 - (a) Notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in the ENGINEER's workplace.

- (b) Specifying the actions that will be taken against employees for violations of such prohibition.
 - (c) Notifying the employee that, as a condition of employment on such AGREEMENT, the employee will:
 - (i) abide by the terms of the statement; and
 - (ii) 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:
 - (a) the dangers of drug abuse in the workplace;
 - (b) the ENGINEER's policy of maintaining a drug-free workplace;
 - (c) any available drug counseling, rehabilitation, and employee assistance program; and
 - (d) the penalties that may be imposed upon employees for drug violations.
 - (3) Making it a requirement to give a copy of the statement required by subparagraph B.1.h.(1) to each employee engaged in the performance of the AGREEMENT, and to post the statement in a prominent place in the workplace.
 - (4) Notifying the VILLAGE within ten (10) days after receiving notice under Subparagraph B.1.h.(1)(c) (ii) from any 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 30 ILCS 580/5.
 - (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 this section.
- i. in compliance with the Code of Ordinances of the Village of Maywood, in that no Village of Maywood official, spouse or dependent child of a Village of Maywood official, agent on behalf of any Village of Maywood official or trust in which a Village of Maywood official, the spouse or dependent child of a Village of Maywood official or a beneficiary is a holder of more than five percent (5%) of the ENGINEER.
 - j. in compliance with the Code of Ordinances of the Village of Maywood, in that no officer or employee of the Village of Maywood has solicited any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to cash, food and drink, and honoraria for speaking engagements related to or attributable to the government employment or the official position of the employee or officer from the ENGINEER.
 - k. The ENGINEER has not given to any officer or employee of the Village any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, and honoraria for speaking engagements related to or attributable to the government employment or the official position of the employee or officer in violation of the Code of Ordinances of the Village of Maywood.

- i. No Village officer, spouse or dependent child of a Village officer, agent on behalf of any Village officer or trust in which a Village officer, the spouse or dependent child of a Village officer or a beneficiary is a holder of any interest in the ENGINEER; or, if the ENGINEER's stock is traded on a nationally recognized securities market, that no Village officer, spouse or dependent child of a Village officer, agent on behalf of any Village officer or trust in which a Village officer, the spouse or dependent child of a Village officer or a beneficiary is a holder of more than one percent (1%) of the ENGINEER, but if any Village officer, spouse or dependent child of a Village officer, agent on behalf of any Village officer or trust in which a Village officer, the spouse or dependent child of a Village officer or a beneficiary is a holder of less than one percent (1%) of such ENGINEER, the ENGINEER has disclosed to the Village in writing the name(s) of the holder of such interest.
- m. The ENGINEER is in compliance with the Substance Abuse Prevention on Public Works Projects Act (Public Act 95-0635), the Contractor is a party to a collective bargaining agreement dealing with the subject matter of the Substance Abuse Prevention on Public Works Projects Act or has in place and is enforcing a written program which meets or exceeds the program requirements of the Substance Abuse Prevention on Public Works Projects Act.
- n. The ENGINEER shall not refuse or deny any person employment in any capacity on the ground of unlawful discrimination, as that term is defined in the Illinois Human Rights Act, nor subject any person to unlawful discrimination in any manner, in connection with the contracting for or the performance of any work or service of any kind, by, for, on behalf of, or for the benefit of the Village. The ENGINEER, subcontractor, nor any person on his or her behalf shall not, in any manner, discriminate against or intimidate any employee hired for the performance of work for the benefit of the Village on account of race, color, creed, sex, religion, physical or mental handicap unrelated to ability, or national origin; and there may be deducted from the amount payable to the contractor by the Village, under this contract, a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this section.
- o. Neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specially Designated National and Blocked Person and that the Contractor and its principals, shareholders, members, partners, or affiliates, as applicable, are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person.

