

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

 X Resolution or Ordinance (Blue) _____ Waiver of First Requested


Recommendations of Boards, Commissions & Committees (Green)
Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: Scott Niehaus, Village Manager

DATE: March 11, 2015 (COW) (B of T) **Date:** March 19, 2015

TITLE: Highland Avenue Pumping Station Valve Control Vault – Building Design

SUBMITTED BY: Brian M. Jack, Utilities Superintendent 

BACKGROUND/POLICY IMPLICATIONS:

Design of a new above ground building over the top of an existing concrete slab valve control vault located at the Highland Avenue Pumping Station.

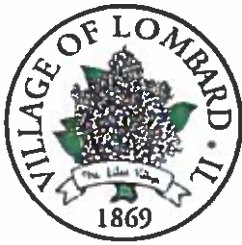
FISCAL IMPACT/FUNDING SOURCE:

Total Contract Amount: Not-To-Exceed \$14,650.00
Funding Source: Water and Sewer Capital Reserve
Account#: DES ENG 520.790.715.75420
Program#: WA 15 01

Review (as necessary):

Village Attorney X _____	Date _____
Finance Director X _____	Date _____
Village Manager X _____	Date _____

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



To: Scott Niehaus, Village Manager
 Through: Carl S. Goldsmith, Director of Public Works
 From: Brian Jack, Utilities Superintendent
 Date: March 11th, 2015
 Subject: Highland Avenue Pumping Station Valve Control Vault – Building Design

Attached please find a resolution, contract, and fee schedule for the Highland Avenue Pumping Station Valve Control Vault – Building Design

BACKGROUND

The Village of Lombard Water Treatment and Wastewater Pumping Division maintains a very elaborate water system. The water system has a low pressure zone (North of Roosevelt Road) and high pressure zone (south of Roosevelt Road). The Highland Avenue Water Pumping Station located at 2020 South Highland Avenue is the primary source of pressure and reserve water for the high pressure zone south of Roosevelt Road. A IMG elevated storage tank is also situated on the site. The Village also maintains a series of submersible shallow and deep wells that are available in the event DuPage Water Commission Lake Michigan feeds are interrupted for an extended period of time. Well #8 sits on this site as well.

The underground Valve Control Vault in question is adjacent to the IMG elevated tank. It is currently covered by a concrete slab flat top structure. Entry into this vault is through a single manhole via confined space entry. This valve vault is a control mechanism for switching from Lake Michigan water and well water. There is an altitude valve, a series of isolations valves, and a sump pump located underground in this vault. The current concrete slab flat top is in dire need of attention. The concrete has started to spall, rebar is now visible from the inside of the structure, and pieces of concrete have fallen onto the floor. The sump pump pit has also collapsed and gravel is now entering the pit.

Due to the critical nature of the piping in this structure and the difficulty in accessing the valves for maintenance, the Village sent a Request for Proposal to the Hydraulics & Hydrology short listed engineering firms. The firms solicited were all capable meeting the desired scope of the project which will also consist of rehabbing the top portion of the vault and correcting any structural deficiencies within the structure itself. The main intent is to have the concrete slab flat top structure removed and a new shed type building erected in its place. The new structure will have water and electric plus a platform and stairwell for entry from ground level into the pipe gallery. The building will be required to meet all current applicable building and electrical codes.

The engineering for this project is funded entirely thru Village funds.

RFP Submittal Results

There are two phases to this project; Phase I will be design in 2015, Phase II will be construction in 2016. Staff prepared a Request for Proposal seeking assistance for the initial design of the project. The proposal was sent to four (4) short listed firms capable of performing such work. Two (2) of the four (4) firms responded to the RFP with one (1) firm declining to submit and one

(1) firm not responding to our request. Engineering Resource Associates, Inc. was determined to be the most qualified firm for this project. Their submittal and reference checks of similarly scoped projects were all satisfactory and received high marks. Engineering Resource Associates, Inc. recently completed design of the new Underground Storage Tank and Fueling Station at Public Works and has designed flood relief projects for the Village in the past. All were completed without incident.

Recommendation

Phase I scope and fees were negotiated with *Engineering Resource Associates, Inc* and agreed to by both parties. This work will be performed for a not-to-exceed design engineering services fee of \$14,650.00. The engineering costs will be charged to the Water and Sewer Capital Reserve Fund WA 15 01. Phase II scope and fees will be negotiated at a later date and additional Board updates will follow in 2016 prior to the start of construction.

Please present this agreement and resolution to the President and Board of Trustees for their review at their regular meeting of March 19, 2015. If approved, please return two (2) original signed copies of the contract to the Water Treatment and Wastewater Pumping Division for further processing.

RESOLUTION
R_____15

A RESOLUTION AUTHORIZING SIGNATURE OF
PRESIDENT AND CLERK ON AN AGREEMENT

WHEREAS, the Corporate Authorities of the Village of Lombard have received an Agreement between the Village of Lombard, and Engineering Resource Associates, Inc. regarding the Highland Avenue Pumping Station Valve Control Vault – Building Design as attached hereto and marked Exhibit "A"; and

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS as follows:

SECTION 1: That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said agreement as attached hereto.

SECTION 2: That the Village Clerk be and hereby is authorized to attest said agreement as attached hereto.

Adopted this 19th day of March, 2015.

Ayes: _____

Nays: _____

Absent: _____

Approved this 19th day of March, 2015.

Keith Giagnorio
Village President

ATTEST:

Sharon Kuderna
Village Clerk



VILLAGE OF LOMBARD CONTRACT

Contract for the Highland Avenue Pumping Station Valve Control Vault – Building Design

This agreement is made this 19th day of March, 2015, between and shall be binding upon the VILLAGE of Lombard, an Illinois municipal Corporation hereinafter referred to as the "VILLAGE" and Engineering Resource Associates, Inc. hereinafter referred to as the "ENGINEER" and its successors.

Witnessed, that in consideration of the mutual promises of the parties delineated in the contract documents, the ENGINEER agrees to perform the services and the VILLAGE agrees to pay for the following services as set forth in the contract documents:

Highland Avenue Pumping Station Valve Control Vault – Building Design

1. This contract shall embrace and include all of the applicable contract documents listed below as if attached hereto or repeated herein:
 - a. Request for Qualifications and Request for Proposal (January 13, 2012) consisting of the following:
 - i) Cover Sheet
 - ii) Table of Contents
 - iii) General Provisions
 - iv) Special Provisions
 - v) Request for Qualifications and Proposals for Resident Engineering Short-List
 - vi) Instructions Regarding the Consultant Evaluation Form
 - vii) Instructions Regarding the Statement of Qualifications Form
 - viii) Consultant Evaluation Form
 - ix) Statement of Qualifications Form
 - b. Request for Proposal dated January 26, 2015
 - c. ENGINEER'S Proposal dated March 10, 2015
 - d. ENGINEER'S Letter and attached Work Effort and Fee Dated March 10, 2015
 - e. Required Certificates and Signatures and Certificate of Insurance
2. The VILLAGE agrees to pay, and the ENGINEER agrees to accept as full payment for the services which are the subject matter of this contract in accordance with the General Provisions.
3. This Contract represents the entire agreement between the parties and may not be modified without the written approval of both parties.

IN WITNESS WHEREOF, the Village of Lombard, Illinois by the Village President and the ENGINEER have hereunto set their hands this 19th day of March, 2015.

If an individual or partnership, all individual names of each partner shall be signed or if a corporation, an officer duly authorized shall sign here:

Engineering Resource Associates, Inc.

Accepted this _____ day of _____, 2015.

Individual or Partnership _____ Corporation _____

By Position/Title

By Position/Title

THE VILLAGE OF LOMBARD, ILLINOIS

Accepted this 19th day of March, 2015.

Keith Giagnorio, Village President

Attest: _____
Sharon Kuderna, Village Clerk

VILLAGE OF LOMBARD ENGINEER'S CERTIFICATION

_____, having been first duly sworn depose and states as follows:
(Officer or Owner of Company)

Engineering Resource Associates, Inc. having submitted a proposal for: Highland Avenue Pumping Station Valve Control Vault – Building Design to the Village of Lombard, hereby certifies that said ENGINEER:

1. has a written sexual harassment policy in place in full compliance with 775 ILCS 5/2-105(A) (4).
2. is not delinquent in the payment of any tax administered by the Illinois Department of Revenue, or if it is:
 - a. it is contesting its liability for the tax or the amount of tax in accordance with procedures established by the approve Revenue Act; or
 - b. it has entered into an agreement with the Department of Revenue for payment of all taxes due and is currently in compliance with that agreement.
3. is in full compliance with the Federal Highway Administration Rules on Controlled Substances and Alcohol Use and Testing, 49 CFR Parts 40 and 382 and that

(Name of employee/driver or "all employee drivers")
is/are currently participating in a drug and alcohol testing program pursuant to the aforementioned rules.

By: _____
Officer or Owner of Company named above

Subscribed and sworn to
before me this _____
day of _____, 2015.

Notary Public



ENGINEERING RESOURCE ASSOCIATES, INC.
Consulting Engineers, Scientists & Surveyors

Sent via email to SharpL@villageoflombard.org

March 10, 2015

Mr. Luke Sharp
Water Treatment and Wastewater Pumping Supervisor
Village of Lombard
1051 S. Hammerschmidt Avenue
Lombard, IL 60148-3926

Subject: Proposal for Civil Engineering and Land Surveying Services
Village of Lombard
Highland Avenue Pumping Station Valve Control Vault – Building Design

Dear Mr. Sharp:

Engineering Resource Associates, Inc. (ERA) is pleased to submit this proposal for site civil engineering and land surveying services for the new construction and site improvements for the subject site. The proposal is based upon your request for proposal, our knowledge of the project, and our experience on similar projects.

Project Understanding

It is our understanding that the Village of Lombard wishes to construct a building on existing concrete foundation wall systems over their existing Highland Avenue Pumping Station Valve Control Vault. The Project consists of a 36' x 42', single story load bearing wood frame and brick masonry veneer structure with a pitched roof system to match existing campus buildings. The structure will have 10 feet high perimeter walls and include one double door 4 feet wide x 8 feet high. The roofing will either be clad in metal standing seam panels or laminated architectural shingles as determined with the Village. The interior wall and ceiling surfaces will be clad with moisture resistant drywall and fiberglass reinforced wall panels for moisture control. The building will have a unit heater to maintain 40 degree temperatures in the winter months. Room exhaust fans will also be specified to control moisture levels in the space. Plumbing design will be limited to the re-direction of the tower main drain piping only coming out of the proposed building structure to an existing stormwater inlet. Electrical for a new unit heater, exhaust fan and for interior lighting is anticipated. An adjacent building will be source of power for the building. The Village has asked that the building electrical & lighting systems be designed for "wet environments".

INITIAL INFORMATION

- The program for the Project is already established by the Village of Lombard.
- The Owner's budget for the Cost of the Work is estimated to be \$90,000.00. The Cost of the Work is the total cost to construct all elements of the Project designed or specified by our team; it does

Warrenville
3s701 West Avenue, Suite 150
Warrenville, IL 60555
P 630.393.3060

Chicago
10 South Riverside Plaza, Suite 1800
Chicago, IL 60606
P 312.683.0110

Champaign
3002 Crossing Court
Champaign, IL 61822
P 217.351.6268

not include A/E fees, land acquisition costs, permit fees, utility service connection or activation fees, financing costs, contingencies for changes in the Work, or other soft costs that are the responsibility of the Owner.

- It is our understanding that the grated flooring and circular spiral staircase will be prefabricated systems.
- The anticipated Project schedule is to complete the project in two phases. Phase 1 include Construction Document Phase with an anticipated completion date of June 30, 2015. Phase 2 includes Bidding & Negotiation and Construction Administration Phase services beginning in March 2016 with substantial completion of the construction Work in August 2016.
- The intended Project delivery method is a single contract for General Construction; single bid package.
- The Owner's representative for the Project will be Mr. Lukas Sharp.
- ERA, Inc.'s representative for the project will be Mr. Jon Green.
- Kluber, Inc.'s representative for the Project will be Mr. Chris Hansen.

The foregoing is based on our scope review meeting with you and Mr. Lukas Sharp with the Village of Lombard conducted on Thursday, February 26, 2015 at the Village of Lombard facilities office.

Scope of Services

ERA will provide site civil engineering and land surveying services in accordance with the following work plan:

- 1 Field Survey – This task will include partial topographic survey measurement of the underground vault and surrounding areas. Survey information will be downloaded directly into our AutoCAD based electronic drafting system. The following planimetric features will be surveyed:
 - 1.1.1. The survey will extend to approximately 50 ft outside the limits of the existing vault.
 - 1.1.2. Vertical and horizontal locations of topographic features including hydrants, valves, manholes, inlets, power poles, edge of pavement, signs, and any found property corners.
 - 1.1.3. Driveways, sidewalks, and structures will be located.
 - 1.1.4. Inventory and survey of utility structures including rim to invert depths, pipe types, and sizes.
2. Construction Document Phase: (Denoted as Phase 1 work in Owners RFQ Statement)
 - 1 Conduct one site visit to verify existing conditions.
 - 2 Prepare Construction Drawings to be incorporated into an overall drawing set.
 - 3 Perform code review as required for the building structure, mechanical and electrical engineering systems.
 - 4 Prepare technical specifications sections to be incorporated into an overall project manual.
 - 5 Prepare construction cost estimate for the work.
 - 6 Attend up to two (2) design meetings.
 - 7 Structural Design of foundation modification, floor grating and spiral stairway.
3. Bidding Phase: (Denoted as Phase 2 work in Owners RFQ Statement)



- 1 Respond to Bidder's inquiries and prepare technical content for incorporation into Addenda.
 - 2 Preparation of building permit application.
 - 3 Review and respond to code official comments on drawings submitted for building permit.
4. Construction Administration Phase: (Denoted as Phase 2 work in Owners RFQ Statement)
- 1 Perform periodic site visits as requested and to confirm substantial completion.
 - 2 Prepare field reports to document site visits and construction progress.
 - 3 Perform up to two (2) reviews of each construction submittal.
 - 4 Review of RFI's and Change Order Requests and comment on same.

Schedule

The work described in this agreement will be performed as expeditiously as weather and other physical conditions permit. The Engineer shall not be liable to the Owner, if delayed in, or prevented from performing the work as specified herein through any cause or causes beyond the control of the Engineer and not caused by his own fault or negligence including acts of God, or the public enemy, inclement weather conditions, acts of the government after the effective date of this agreement, fires, floods, epidemics, strikes, jurisdictional disputes, lockouts, and freight embargoes.

Services Not Included

Only services specifically described in this proposal are included in our scope of work. The following are specifically excluded, although they may be added as a contract amendment at a future date for an agreed additional fee:

- CCDD or Geotechnical Services, Other Than Described in Scope of Services
- Construction Phase Services, Other Than Described in Scope of Services
- Wetland or Floodplain Services
- Permitting, Other Than Described in Scope of Services
- Environmental Assessment or Permitting
- Archeological or Historical Survey or Permitting
- Design of Offsite Utility Extensions except as identified in Scope of Services
- Landscaping or Signage Design

Fees

The cost associated with the services included in this proposal will be Phased Fixed Fee according to the following schedule (Exhibit 2).

Invoices will be issued monthly reflecting the percent of the project completed as of the date of the invoice. Any unpaid ERA invoices over 30 days old must be paid in full prior to our release of the project's final deliverable.



1. Phase 1 Services:		
1.1.	Topographical Plan	\$ 1,500.00
1.2.	Construction Documents Phase	\$ 13,150.00
2. Phase 2 Services:		
2.1.	Bidding & Negotiation Phase	\$ 2,280.00
2.2.	Construction Administration Phase (In Office)	\$ 3,160.00
2.3.	Construction Administration (Each Site Visit)	\$ 450.00

Direct costs/reimbursables including printing costs, mileage and postage will be charged at the actual rate incurred.

Fees for services beyond the scope of this proposal, when approved by the Client, will be compensated for on an hourly basis in accordance with the attached schedule of hourly rates (Exhibit 2).

We appreciate the opportunity to submit this proposal and trust that it meets with your approval. If acceptable, please sign the proposal where indicated below (Exhibit 1) and return one (1) copy for our files. Receipt of executed proposal will serve as authorization to continue with the project to the full extent of the contract. The attached General Terms and Conditions are expressly incorporated into and are an integral part of this proposal for engineering services.

If you have any questions, please contact me at 630-393-3060x43 or jgreen@eraconsultants.com.

Sincerely,
ENGINEERING RESOURCE ASSOCIATES, INC.

Jon P. Green, PE, CFM

JPG/kkp
Attachments
Enclosure



Exhibit 1

Acceptance & Authorization Form – March 10, 2015 Proposal
Highland Avenue Pumping Station Valve Control Vault – Building Design

Engineering Resource Associates, Inc.

Village of Lombard

Authorized Signature
Jon P. Green, PE, CFM

Printed Name and Title

Authorized Signature

Printed Name and Title

3S701 West Avenue
Suite 150
Warrenville, Illinois 60555
630-393-3060 t, 630-393-2152 f

Date

Please Provide Contact Information:

Mailing Address:
(please provide street address for UPS deliveries)

Telephone & Facsimile Numbers:

Email Address:

INVOICES should be sent via:

Email USPS Mail Email & USPS Mail

If different than above address,
invoices should be addressed to:

Attn:

Invoice Email Address (if different than above):

Note any billing procedures/forms:



Exhibit 2

ENGINEERING RESOURCE ASSOCIATES, INC.**STANDARD CHARGES FOR PROFESSIONAL SERVICES
JANUARY 1, 2015 THROUGH DECEMBER 31, 2015**

<i>Staff Category</i>	<i>Hourly Billing Rate</i>
Professional Engineer VI	\$225.00
Professional Engineer V	\$200.00
Professional Engineer IV	\$168.00
Professional Engineer III	\$135.00
Professional Engineer II	\$122.00
Professional Engineer I	\$99.00
Structural Engineer VI	\$225.00
Structural Engineer III	\$126.00
Staff Engineer III	\$95.00
Staff Engineer II	\$87.00
Staff Engineer I	\$82.00
Engineering Intern II	\$38.00
Engineering Intern I	\$35.00
Engineering Technician V	\$110.00
Engineering Technician IV	\$93.00
Engineering Technician III	\$78.00
Engineering Technician II	\$53.00
Engineering Technician I	\$30.00
Environmental Director	\$184.00
Environmental Specialist III	\$104.00
Environmental Specialist II	\$95.00
Environmental Specialist I	\$82.00
Professional Surveyor II	\$160.00
Professional Surveyor I	\$130.00
Surveyor IV	\$83.00
Surveyor III	\$72.00
Surveyor II	\$65.00
Surveyor I	\$44.00
Administrative Director	\$140.00
Administrative Staff IV	\$84.00
Administrative Staff III	\$75.00
Administrative Staff II	\$65.00
Administrative Staff I	\$58.00

DIRECT COSTS

Direct Costs will be billed at their actual rate incurred plus ten (10%) percent.



Engineering Resource Associates, Inc.**GENERAL TERMS AND CONDITIONS**

1. **COMPLIANCE WITH LAWS:** Engineering Resource Associates, Inc. (Engineer) will strive to exercise usual and customary professional care in his 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.

2. **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.
3. **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. 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.
4. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with Articles previously set forth by Item 1. of this Agreement, together with the laws of the State of Illinois.
5. **RESPONSIBILITY OF THE ENGINEER:** 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.
6. **CLIENT'S RESPONSIBILITIES:** 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, to the extent arising in whole or in part out of the negligence of the Contractor, its subcontractors, the officers, employees, agents, and subcontractors of any of them, or anyone for whose acts any of them may be liable, regardless of whether or not such Losses are caused in part by a party indemnified hereunder. Specifically excluded from the foregoing are Losses arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications, and the giving of or failure to give directions by the Engineer, its consultants, and the agents and employees of any of them, provided such giving or failure to give is the primary cause of Loss.



The Client further agrees to require the Contractor to name the Engineer, its agents and consultants 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 non-contributing with any insurance maintained by the Engineer or its agents and consultants, and shall provide that the Engineer be given thirty days, unqualified written notice prior to any cancellation thereof.

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

When Contract Documents prepared under the Scope of Services of this contract require insurance(s) to be provided, obtained and/or otherwise maintained by the Contractor, the Client agrees to be wholly responsible for setting forth any and all such insurance requirements. Furthermore, any document provided for Client review by the Engineer under this Contract related to such insurance(s) shall be considered as sample insurance requirements and not the recommendation of the Engineer. Client agrees to have their own risk management department review any and all insurance requirements for adequacy and to determine specific types of insurance(s) required for the project. Client further agrees that decisions concerning types and amounts of insurance are specific to the project and shall be the product of the Client. As such, any and all insurance requirements made part of Contract Documents prepared by the Engineer are not to be considered the Engineer's recommendation, and the Client shall make the final decision regarding insurance requirements.

7. **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.
8. **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.
9. **DOCUMENTS DELIVERED TO CLIENT:** Drawings, specifications, and reports prepared by Engineer in connection with any or all of the services furnished hereunder shall be delivered to the Client for the use of the Client. Engineer shall have the right to retain originals of all Project Documents and drawings for its files. Furthermore, it is understood and agreed that the Project Documents such as, but not limited to reports, calculations, drawings, and specifications prepared for the Project, whether in hard copy or machine readable form, are instruments of professional service intended for one-time use in the construction of this Project. These Project Documents are and shall remain the property of the Engineer. The Client may retain copies, including copies stored on magnetic tape or disk, for information and reference in connection with the occupancy and use of the Project.

It is also understood and agreed that because of the possibility that information and data delivered in machine readable form may be altered, whether inadvertently or otherwise, the Engineer reserves



the right to retain the original tapes/disks and to remove from copies provided to the Client all identification reflecting the involvement of the Engineer in their preparation. The Engineer also reserves the right to retain hard copy originals of all Project Documentation delivered to the Client in machine readable form, which originals shall be referred to and shall govern in the event of any inconsistency between the two.

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

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

10. **REUSE OF DOCUMENTS:** All Project Documents including but not limited to reports, original boring logs, field data, field notes, laboratory test data, calculations, 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.
11. **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.
12. **RELATIONSHIP BETWEEN ENGINEER AND CLIENT:** 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.
13. **SUSPENSION OF SERVICES:** Client may, at any time, by written order to Engineer (Suspension of Services Order) require Engineer to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, Engineer shall immediately comply with its terms and take all reasonable steps to minimize the costs associated with the services affected by such order. Client, however, shall pay all costs incurred by the suspension, including all costs necessary to maintain continuity and for the resumption of the services upon expiration of the Suspension of Services Order. Engineer will not be obligated to provide the same personnel employed prior to suspension, when the services are resumed, in the event that the period of suspension is greater than thirty (30) days.
14. **TERMINATION:** This Agreement may be terminated by either party upon thirty (30) days written notice



in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by Engineer either before or after the termination date shall be reimbursed by Client.

15. **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.
16. **ENTIRE UNDERSTANDING OF AGREEMENT:** This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and the Engineer hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of the Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.
17. **AMENDMENT:** This Agreement shall not be subject to amendment unless another instrument is duly executed by duly authorized representatives of each of the parties and entitled "Amendment of Agreement".
18. **PAYMENT:** Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within thirty (30) days of its receipt. The client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law, whichever is the lesser) until paid. Client further agrees to pay Engineer's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney's fees, as well as costs attributed to suspension of services accordingly. 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. 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 13 of this Agreement. Payments due Engineer are not contingent upon project approval or project financing and are the sole responsibility of the Client. If an invoice for work performed by Engineer remains unpaid sixty (60) days from the date of the invoice and, if there is no written resolution of payment from the client during the sixty (60) day period, Engineer will stop all work on the assignment.
19. **INDEMNIFICATION:** Engineer agrees, to the fullest extent permitted by law, to indemnify and hold harmless Client up to the amount of this contract fee (for services) from loss or expense, including reasonable attorney's fees to the extent caused by Engineer's negligent acts, errors or omissions in the performance of professional services under this Agreement. Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Engineer from any damage, liability or cost, including reasonable attorneys' fees and costs of defense, to the extent caused by the Client's negligent acts, errors or omissions and those of his or her contractors, subcontractors or consultants or anyone for whom the Client is legally liable, and arising from the project that is the subject of this Agreement. 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.

20. **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 Engineer's fee for professional engineering services rendered on this project as made part of this Agreement. Such causes included but 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.
21. **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.
22. **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.
23. **WAIVER OF CONTRACT BREACH:** The waiver of one party of any breach of the 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.
24. **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 opinions of probable Project Construction Cost provided for herein are to be made on the basis of his experience and qualifications and represent his best 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. 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.
25. **CONSTRUCTION OBSERVATION CLAUSE:** The Owner will include the following clause in the construction contract documents and Owner 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 Workers Compensation Act, court interpretations of said Act or otherwise; and agrees to indemnify and defend Owner and Engineer and their agents, employees and consultants (the "Indemnities") from and against all such loss, expense, damage or injury, including reasonable attorneys' fees, that



the indemnities may sustain as a result of such claims, except to the extent that Illinois law prohibits indemnity for the indemnities' own negligence.

26. **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.
27. **HAZARDOUS MATERIALS:** It is acknowledged by both parties that Engineer's scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event Engineer or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that such materials may be present at the job site or any adjacent areas that may affect the performance of Engineer's services, Engineer may at his option and without liability for consequential or any other damages, suspend performance of services on the project until Client retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials, and warrant that the job site is in full compliance with applicable laws and regulations.
28. **RIGHT OF ENTRY:** Client hereby grants Engineer and its subcontractors or agents the right to enter from time to time property owned by Client and/or other(s) in order for Engineer to fulfill the scope of services included hereunder. Client understands that use of exploration equipment may cause some damage, the correction of which is not part of this Agreement. Client also understands that the discovery of certain hazardous conditions and/or taking preventive measures relative to these conditions may result in a reduction of the Property's value. Accordingly, Client waives any claim against Engineer and its subcontractors or agents, and agrees to defend, indemnify and hold Engineer harmless from any claim or liability for injury or loss allegedly arising from procedures associated with subsurface exploration activities or discovery of hazardous materials or suspected hazardous materials. In addition, Client agrees to compensate Engineer for any time spent or expenses incurred by Engineer in defense of any such claim with compensation to be based upon Engineer's prevailing fee schedule and expense reimbursement policy. Engineer shall not be liable for damage or injury from damage to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to Engineer's attention in writing and correctly shown on the diagram(s) furnished by Client to Engineer.
29. **SAMPLES:** Soil, rock, water and/or other samples obtained from the Project site are the property of Client. Engineer shall preserve such samples for no longer than sixty (60) calendar days after the issuance of any document that includes the data obtained from them, unless other arrangements are mutually agreed upon in writing. Should any of these samples be contaminated by hazardous substances or suspected hazardous substances, it is Client's responsibility to select and arrange for lawful disposal procedures, that is, procedures which encompass removing the contaminated samples from Engineer's custody and transporting them to a disposal site. Client is advised that, in all cases, prudence and good judgment should be applied in selecting and arranging for lawful disposal procedures. Due to the risks to which Engineer is exposed, Client agrees to waive any claim against Engineer, and to defend, indemnify and hold Engineer harmless from any claim or liability for injury or loss arising from containing, labeling, transporting, testing, storing, or other handling of contaminated samples. Client also agrees to compensate Engineer for any time spent and expenses incurred by Engineer in defense of any such claim, with such compensation to be based upon Engineer's prevailing fee schedule and expense reimbursement policy.

END OF GENERAL TERMS AND CONDITIONS

