

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: May 28, 2015 (COW) (B of T) **Date:** June 18, 2015

TITLE: Phase II: Geographic Information System (GIS) Mapping and Implementation Project

SUBMITTED BY: Brian M. Jack, Utilities Superintendent 

BACKGROUND/POLICY IMPLICATIONS:

Phase II Geographic Information System (GIS) Mapping and Implementation Project for all Water, Wastewater and Storm water Pumping Stations

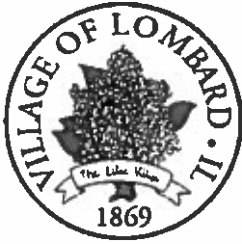
FISCAL IMPACT/FUNDING SOURCE:

Total Contract Amount: Not-To-Exceed \$25,000.00
Funding Source: Water and Sewer Capital Reserve
Account#: DES ENG 520.790.715.75410
Program#: RM PROG 28

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: June 18th, 2015
 Subject: Phase II: Geographic Information System (GIS) Mapping and Implementation Project

Attached please find a resolution and contract for Phase II: Geographic Information System (GIS) Mapping and Implementation Project

Background

In 2014, the Village awarded a contract to Baxter & Woodman Consulting Engineers which was designed to better enhance and identify more attribute information of Village owned facilities; water, wastewater, and storm water pumping stations. At the time Phase I of this project was awarded, attribute data for the water, wastewater, and storm water pumping stations were unavailable to view in the digital mapping software used by staff. The underground infrastructure and mains would end at a point on a map but no other information existed. Tracking down the missing information in separate spread sheets or trying to find as-built drawings used up valuable staff time. JULIE locaters were also having difficulty in tracing out underground infrastructure because the information was not readily available.

To recap, during Phase I of the project Baxter & Woodman assisted the Village in compiling a comprehensive GIS inventory of Village owned facilities. They organized and digitized the information and created a solidified geodatabase repository that now stores all of this data. Types of data now available to staff includes: facility or constructed as-builts, pump and motor information, deep well information, piping layout inside and outside each station which shows direction of flow, rated flows of each pump, wet well information, force main data, Com-Ed feeds and supplied voltages, full load amps of each pump, Nicor services feeds to backup generators, and backup generator and automatic transfer switch data.

Discussion

The goal of this project was to help the Village integrate station asset and attribute information into the current GIS system. Now that the Village has made all of data available to each employee while mobile in the field, there is opportunity to expand on what has been completed to date and further expand the capabilities of the GIS system.

The Village reached out to Baxter & Woodman for additional support in expanding the current system to stay on pace with current industry trends. Phase II of this project will begin with building a state of art 3-dimensional model of Village water and sewer facilities, establishing a web based content management system, and providing GIS viewing and editing capabilities in the field. Phase II will also consist of integration of new and emerging GIS technological advancements including ArcGIS Pro and ArcGIS Online. These advancements will catapult Lombard into the spot light as a leader in technology. By arming staff with real-time, accurate data, they can begin to complete their jobs more effectively.

The Village is currently seeking a new asset management software system. Phase II of this project will ensure that the GIS system and asset management system are seamlessly brought together and that there is no duplication of effort. Benefits of creating a robust GIS system and asset management system will be inventorying capabilities, performance measurement, standardized report generation and asset valuation. With the collection of this data, the Village can begin to move forward and prepare for the regulatory updates that are currently being implemented across the public sector which includes Governmental Accounting Standards Board Statement 34 (GASB 34), National Pollutant Discharge Elimination System (NPDES) reporting, preventative maintenance tracking by using Capacity, Management, Operations and Maintenance (CMOM) protocol, in addition to providing timely responses to Freedom of Information Act (FOIA) requests.

RFP Submittal Results

In 2014, staff prepared a Request for Proposal seeking assistance for the initial data collection stage of Phase I of this project. The proposal was sent to the four (4) short listed firms capable of performing such work. Three (3) of the four (4) firms responded to the RFP with one (1) firm declining to submit. Baxter & Woodman Consulting Engineers, Inc. was determined to be the most qualified firm for Phase I of the project.

After soliciting Baxter & Woodman for a proposal for Phase II of this project, it was discovered that they are the only firm who can assist the Village with the 3-D development process. It would also not be beneficial for the Village to seek out other firms at this time as Baxter & Woodman has just completed Phase I. Baxter & Woodman is very familiar with the Village's GIS system and infrastructure and is attuned to our long term goal for this project. If other engineering firms were brought onboard there would be a significant learning curve to overcome and a potential need for that firm to reformat work which has already been completed. Staff feels that Baxter & Woodman has supplied a reasonable and responsive proposal that compliments the Village's long term goals.

Recommendation

The scope and fee were negotiated with *Baxter and Woodman* and agreed to by both parties. This work will be performed for a not-to-exceed design engineering services fee of \$25,000.00. The engineering costs will be charged to the Water and Sewer Capital Reserve Fund RM PROG 28.

Please present this agreement and resolution to the President and Board of Trustees for their review at their regular meeting of June 18, 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 Baxter & Woodman Consulting Engineers, Inc. regarding the Phase II: Geographic Information System Mapping and Implementation Project 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 18th day of June, 2015.

Ayes: _____

Nays: _____

Absent: _____

Approved this 18th day of June, 2015.

Keith Giagnorio
Village President

ATTEST:

Sharon Kuderna
Village Clerk



VILLAGE OF LOMBARD CONTRACT

Contract for the Phase II: Geographic Information System Mapping and Implementation Project

This agreement is made this 18th day of June, 2015, between and shall be binding upon the VILLAGE of Lombard, an Illinois municipal Corporation hereinafter referred to as the "VILLAGE" and Baxter & Woodman Consulting Engineers, 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:

Phase II: Geographic Information System Mapping and Implementation Project

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. ENGINEER'S Proposal dated March 23, 2015
 - c. ENGINEER'S Letter and attached Work Effort and Fee Dated March 23, 2015
 - d. 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 18th day of June, 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:

Baxter & Woodman Consulting Engineers, Inc.

Accepted this _____ day of _____, 2015.

Individual or Partnership _____ Corporation _____

By _____ Position/Title

By _____ Position/Title

THE VILLAGE OF LOMBARD, ILLINOIS

Accepted this 18th day of June, 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)

Baxter & Woodman Consulting Engineers, Inc. having submitted a proposal for: Phase II: Geographic Information System Mapping and Implementation Project 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

March 23, 2015

Mr. Luke Sharp
Water Treatment & Wastewater Pumping Supervisor
Village of Lombard
255 East Wilson Avenue
Lombard, IL 60148

Subject: Village of Lombard – Phase II, GIS Expansion

Dear Mr. Sharp,

During Phase I, Baxter & Woodman assisted the Village compile a comprehensive GIS inventory of Village owned facilities. After organizing and digitizing the information, we created a solidified geodatabase repository that stores the Village's data. Now that the Village has an established GIS foundation, the Village is ready to build upon existing geographic data, improve the data viewing capabilities (including 3D), and provide new ways for efficient data accessibility.

Phase II of the Village's GIS Expansion includes building 3-Dimensional (3D) models of Village facilities, establishing a web based content management system, and providing GIS viewing and editing capabilities in the field. Baxter & Woodman will integrate new and emerging GIS technological advancements including ArcGIS Pro and ArcGIS Online, in order to create a state-of-the art system that will increase the capabilities of your GIS.

The following scope of services are recommended for the successful completion of Phase II, GIS Expansion:

Scope of Services

1. 3D GIS – ArcGIS Pro Pilot Integration

Our staff will build 3D models of two facilities as determined by Baxter & Woodman and the Village. 3D models will provide scalable, visual renderings of each building and the facility's components available in GIS. Utilizing Esri's latest 3D rendering technology, ArcGIS Pro, the Village will be able to visualize and inspect each rendering from a desktop computer.

In addition, our team will train Village technical staff on how to operate ArcGIS Pro. We will highlight key differences between Pro and Desktop, new features available and extended functionality. Training will not only focus on 3D but, on general use as well.

Tasks:

- a. Create ArcGIS Pro 3D workspaces of two Village facilities
- b. 3D models will take advantage of Esri's latest application release ArcGIS for Professional. The 3D Application will provide the following functionality:
 - i. 3D rendering of facility assets
 - ii. Ability to measurement distances/lengths
 - iii. 3D feature attribution
- c. Prepare File Geodatabase schema to store 3D facility information
- d. Create necessary geodatabase domains to necessitate 3D integration
- e. Digitize 3D facility features via as-builts and other supplied record drawings collected during Phase I
- f. Facility visits as needed for supplemental information
- g. Quality Control/Quality Assurance
 - i. Attribute verification
 - ii. Model completeness
- h. Installation and delivery
 - i. Provide new 3D GIS datasets to local environment
 - ii. Test on local environment
- i. Train Village Technical Staff on how to use ArcGIS Pro

2. Esri Web App Builder Assistance

Our team will work with Village staff to further enhance their existing ArcGIS Web App. Builder instance and maps. We will aid staff in the creation of new map widgets, tasks, analysis techniques and / or with any other new functionality as needed, to create a more successful web map application.

3. Field Capabilities - Collector for ArcGIS

Utilizing Esri's Collector for ArcGIS application and an ArcGIS Online Organizational Account, our team will provide Village staff with the ability to use GIS in the field. Staff will be able to collect, view and edit specific data in real-time from any location using a smartphone. Other staff accessing the data will instantly see changes made by others. The Collector App. is designed to provide exceptional functionality, ease of use, and efficient tools. In addition to being able to collect, modify, and delete data, the application also provides the ability to take and associate photos with features as well.

During this phase our team will setup and configure two Collector App. maps for staff use. We will also train staff on how to use the software and make future configuration updates, as needed.

Baxter & Woodman will coordinate with Village staff and the selected asset management software vendor to ensure there is no duplication of effort and that all Collector applications are designed to complement the asset management application.

Tasks:

- a. Configure data for field use
- b. Setup feature service definitions
- c. Create two customized Collector App. applications (determined in cooperation with the Village)
- d. Train GIS technical staff how to:
 - i. Create Collector Maps
 - ii. Manage field content
- e. Train Village Staff how to use the application

4. Completion of Remaining Facilities Digitization Attribution

Our team was able to obtain a large portion of the Village's inventory in Phase I, however, elevation information for a few remaining locations will need to be obtained in order to provide a comprehensive inventory for the Village. With remaining information provided by Village, our team will complete the inventory of the Village's remaining facilities.

Tasks:

- a. Coordination with Village staff to obtain necessary elevation data
- b. Complete digitization process for remaining facility locations as identified in Phase I

5. Continued Forward Thinking

Technology in GIS continues to evolve. Third party applications, powerful hardware, and mobile devices continue to provide new opportunities for GIS. Our team works closely with industry leaders, organizations, and other GIS professionals. With this network, we are constantly following trends and learning about new opportunities as they evolve. Throughout the course of this project, our team will look for new and emerging opportunities which might provide added value to Lombard's GIS.

6. GIS Technical Staff Training

Our team will train Village technical staff and keep them involved in the GIS expansion process, be available to answer questions, and look for ways to share technical knowledge. Additionally, technical training will be provided for each task as outlined above.

Available Licensing with Village's Current Software

- ArcGIS Pro: 1 Free with each Desktop License Owned
- Collector for ArcGIS: 1 Free with each Desktop License Owned
- ArcGIS Online Organizational Account: 1 Free with each Desktop License Owned

Fee

Our engineering fee is based upon our standard hourly billing rates for actual work time performed plus reimbursement of out-of-pocket expenses including travel, which will not exceed \$25,000. Costs for any additional software in order to complete Phase II is not included in our not-to-exceed fee.

Thank you for the opportunity to submit our proposal for this Village's Phase II, GIS Expansion project. Upon your written authorization to proceed, we will begin working immediately. Please contact me if you should have any questions or need additional information.

The attached Standard Terms and Conditions apply to this proposal. If you find this proposal acceptable, **please sign and return** one copy for our files.

Sincerely,

BAXTER & WOODMAN, INC.
CONSULTING ENGINEERS



John V. Ambrose, PE
Vice President
Attachment

VILLAGE OF LOMBARD, IL

ACCEPTED BY: _____

TITLE: _____

DATE: _____

STANDARD TERMS AND CONDITIONS

Agreement - These Standard Terms and Conditions, together with the letter proposal, constitute the entire integrated agreement between the Owner and Baxter & Woodman, Inc. (BW) and take precedence over any other provisions between the Parties. These terms may be amended, but only if both parties consent in writing.

Owner's Responsibility - Provide BW with all criteria and full information for the Project. BW will rely, without liability, on the accuracy and completeness of all information provided by the Owner including its consultants, contractor, specialty contractors, manufacturers, suppliers and publishers of technical standards without independently verifying that information. The Owner warrants that all known hazardous materials on or beneath the site have been identified to BW. BW and their consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, unidentified or undisclosed hazardous materials unless this service is set forth in the proposal.

Schedule for Rendering Services - The agreed upon services shall be completed within a reasonable amount of time. If BW is hindered, delayed or prevented from performing the services as a result of any act or neglect of the Owner or force majeure, BW's work shall be extended and the rates and amounts of BW's compensation shall be equitably adjusted in writing executed by all Parties.

Invoices and Payments - The fees to perform the proposed scope of services constitute BW's estimate to perform the agreed upon scope of services. Circumstances may dictate a change in scope, and if this occurs, an equitable adjustment in compensation and time shall be made by all parties. No service for which added compensation will be charged will be provided without first obtaining written authorization from the Owner. BW invoices shall be due and owing by Owner in accordance with the terms and provisions of the Local Government Prompt Payment Act.

Opinion of Probable Construction Costs - BW's opinion of probable construction costs represents its reasonable judgment as a professional engineer. Owner acknowledges that BW has no control over construction costs of contractor's methods of determining prices, or over competitive bidding, of market conditions. BW cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from BW's opinion of probable construction costs.

Standards of Performance - (1) The standard of care for all services performed or furnished by BW, will be completed with the same care and skill ordinarily used by professionals practicing under similar circumstances, at the same time and in the same locality on similar projects. BW makes no guarantees or warranties, express or implied, in connection with its services; (2) BW shall be responsible for the technical accuracy of its services and documents; (3) BW shall use reasonable care to comply with all applicable laws and regulations and Owner-mandated standards; (4) BW may employ such sub-consultants as BW deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objection by Owner; (5) BW shall not supervise, direct, control, or have authority over any contractor work, nor have authority over or be responsible for the means, methods, techniques sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety of the site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work; (6) BW neither guarantees the performance of any contractor nor assumes responsibility for contractor's failure to furnish and perform the work in accordance with the contract documents; (7) BW is not responsible for the acts of omissions of any contractor, subcontractor, or supplier, or any of their agents or employees or any other person at the site or otherwise furnishing or performing any work; (8) Shop drawing and submittal review by BW shall apply to only the items in the submissions and only for the purpose of assessing if upon installation or incorporation in the Project work they are generally consistent with the construction documents. Owner agrees that the contractor is solely responsible for the submissions (regardless of the format in which provided, i.e. hard copy or electronic transmission) and for compliance with the construction documents. Owner further agrees that BW's review and action in relation to these submissions shall not constitute the provision of means, methods, techniques, sequencing or procedures of construction or extend to safety programs or precautions. BW's consideration of a component does not constitute acceptance of the assembled item; (9) BW's site observation during construction shall be at the times agreed upon in the Project scope. Through standard, reasonable means, BW will become generally familiar with observable completed work. If BW observes completed work that is inconsistent with the construction documents, that information shall be communicated to the contractor and Owner for them to address.

Insurance - BW will maintain insurance coverage with the following limits and Certificates of Insurance will be provided to the Owner upon written request:

Worker's Compensation: Statutory Limits	Excess Umbrella Liability:	\$5 million per claim and aggregate
General Liability: \$1 million per claim	Professional Liability:	\$5 million per claim
\$2 million aggregate		\$5 million aggregate
Automobile Liability: \$1 million combined single limit		

BW's liability under this Agreement, based on any theory of liability or for any cause of action, shall not exceed the total amount of BW's contract amount for the project. Any claim against BW arising out of this Agreement may be asserted by the Owner, but only against the

entity and not against BW's directors, officers, shareholders or employees, none of whom shall bear any liability and may not be subject to any claim.

Indemnification and Mutual Waiver - (1) To the fullest extent permitted by law, BW shall indemnify and hold harmless the Owner and its officers and employees from claims, costs, losses, and damages arising out of or relating to the Project, provided that such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of BW or its officers, directors, employees, agents, or consultants; (2) Owner shall indemnify and hold harmless BW and its officers, directors, employees, agents and consultants from and against any all claims, costs, loses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death of to injury or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or its officers, directors, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project; (3) To the fullest extent permitted by law, Owner and BW waive against each other, and the other's employees, officers, directors, insurers, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project; (4) In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of the ENGINEER and OWNER, they shall be borne by each party in proportion to its negligence; (5) The Owner acknowledges that the BW is a business corporation and not a professional service corporation, and further acknowledges that the corporate entity, as the party to this contract, expressly avoids contracting for individual responsibility of its officers, directors, or employees. The Owner and BW agree that any claim made by either party arising out of any act of the other party, or any officer, director, or employee of the other party in the execution or performance of the Agreement, shall be made solely against the other party and not individually or jointly against such officer, director, or employees.

Termination - Either party may terminate this Agreement upon ten (10) business days' written notice to the other party in the event of failure by the other party to perform with the terms of the Agreement through no fault of the terminating party. A condition precedent to termination shall be an opportunity for the Parties to meet. If this Agreement is terminated, Owner shall receive reproducible copies of drawings, developed applications and other completed documents. Owner shall be liable for, and promptly pay for all services and reimbursable expenses rendered to the date of suspension/termination of services.

Use of Documents - BW documents are instruments of service and BW retains ownership and property interest (including copyright and right of reuse). Client shall not rely on such documents unless in printed form, signed or sealed by BW or its consultant. Electronic format of BW's design documents may differ from the printed version and BW bears no liability for errors, omissions or discrepancies. Reuse of BW's design documents is prohibited and Client shall defend and indemnify BW from all claims, damages, losses and expenses, including attorney's fees, consultant/expert fees, and costs arising out of or resulting from said reuse. BW's document retention policy will be followed upon Project closeout, and project documents will be kept for a period of 14 years after Project closeout.

Successors, Assigns, and Beneficiaries - Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Client or BW to any third party, including any lender, Contractor, Contractor's subcontractor, supplier, manufacturer, other individual, entity or public body, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement are for the sole and exclusive benefit of the Client and BW and not for the benefit (intended, unintended, direct or indirect) of any other entity or person.

Dispute Resolution - All disputes between the Parties shall first be negotiated between them for a period of thirty (30) days. If unresolved, disputes shall be then submitted to mediation as a condition precedent to litigation. If mediation is unsuccessful, litigation in the county where the Project is pending shall be pursued.

Miscellaneous Provisions - (1) This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located. (2) All notices must be in writing and shall be deemed effectively served upon the other party when sent by certified mail, return receipt requested; (3) All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason; (4) Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Owner and BW, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close to expressing the intention of the stricken provision; (5) A party's non-enforcement of any provision shall not constitute a waiver of the provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement; (6) To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of substantial completion, which is the point where the Project can be utilized for the purposes for which it was intended.