

PRESIDENT
Dr. James L. Discipio
VILLAGE MANAGER
Julia A. Cedillo

VILLAGE CLERK
Amanda G. Seidel



TRUSTEES
Rimas V. Kozica
Scott F. Mesick
Patricia B. Rocco
Marshall Seeder
Susan M. Storcel
LaVelle Topps

VILLAGE BOARD WORK SESSION MEETING

Tuesday, MAY 14, 2013 – 7:30 P.M.

AGENDA

1. **Call to Order**
2. **Pledge of Allegiance**
3. **Roll Call**
4. **Installation and Oath of Newly Elected Officials**
 - **Swearing in of Village Clerk**
Amanda G. Seidel
 - **Swearing-in of Village President**
Dr. James L. Discipio
 - **Expression of Appreciation**
Rimas Kozica
LaVelle Topps
Marshall Seeder
Krista Grimm
 - **Swearing-in of Village Trustees**
Michael Sheehan
James Kucera
Mario Fotino
Robert Lautner
5. **Public Participation (agenda and non-agenda related)**
6. **Administration Committee Items**
 - A. Discussion – Establishment of Returned Payment Fee: *Motion to approve Ordinance Amending the "La Grange Park Municipal Code" as Amended*
7. **Public Safety Committee Items**
 - A. Discussion – Pine Tree Lane Parking Restrictions

VILLAGE BOARD WORK SESSION MEETING
Tuesday, MAY 14, 2013 – 7:30 p.m.

AGENDA (continued – Page 2)

8. Public Works Committee Items

- A. Discussion – 2013 Construction Projects – Edwin Hancock: *Motion Authorizing the Village President to Execute Professional Engineering Services Agreements in Support of the 2013 Construction Projects, to include:*
 - i. *Engineering Agreement for Water Main Relocation on Oak at Beach*
 - ii. *Engineering Agreement for Beach Avenue Street Project*
 - iii. *Engineering Agreement for Sewer Lining Project*
 - iv. *Engineering Agreement for Cleaning & Televising Sewer 2013 Program*
 - v. *Relocation of Water Main out of Oak Street Sewer Line*
- B. Discussion – 2013 Beach Avenue Paving – Phase 3: *Motion Approving a "Resolution for Improvement Under the Illinois Highway Code" for the Expenditure of \$235,000 in MFT Funds*
- C. Discussion – Sale of Surplus Vehicles & Equipment at WCMC Spring Auction: *Motion Approving An Ordinance Authorizing the Sale by Public Auction of Personal Property Owned by the Village of La Grange Park*
- D. Discussion – Purchase of Replacement Vehicle: *Motion Authorizing the Purchase of a F150 Pick-up Truck, as Specified from Freeway Ford in the Amount of \$26,898*
- E. Discussion – 2013 Concrete Restoration Program: *Motion to Award a Contract (to a selected vendor – TBD) in the Amount Not to Exceed \$30,000 for Completion of Sidewalk Removal and Restoration and Other Concrete Work to be Performed in the Village*

9. Finance Committee Items

- A. Discussion – Motor Fuel Tax Appropriation: *Motion to Approve the Obligation Retirement Resolution Appropriating \$223,203.48 of Motor Fuel Tax Funds for the Purpose of Paying Bond Principal and Interest*

10. Public Works Garage Committee Items

- A. Public Works Garage – Design Build Agreement:
 - i. Discussion and Action: *Motion to Authorize Environmental Mitigation Work to Begin in Advance of the Renovation Work at the Public Works Garage, in an Amount Not to Exceed \$40,000*
 - ii. Discussion: *Motion Authorizing the Village President to Execute a Design Build Agreement with Leopardo Construction in an Amount Not to Exceed (Amount to be Determined)*

VILLAGE BOARD WORK SESSION MEETING
Tuesday, MAY 14, 2013 – 7:30 p.m.

AGENDA (continued – Page 3)

11. Other Reports:

- A. Village Manager
Discussion: April 17th-18th Rain Event Follow Up
- B. Village President
Proclamation – Emergency Medical Services (EMS) Week
May 19-25, 2013
- C. Village Clerk
- D. Committee

12. Unfinished Business

13. New Business

14. Executive Session

15. Adjourn

Next Village Board Meeting: May 28, 2013
Next Village Work Session Meeting: June 11, 2013



RULES FOR PUBLIC COMMENT

Village Board Work Session Meetings Village Board Meetings

1. Please step up to the microphone before speaking, and announce your name and address before beginning your comments.
2. After announcing your name and address for the record, you will be allowed to speak for three (3) minutes.
3. You may not use profane or obscene language and you may not threaten any person with bodily harm, or engage in conduct which amounts to a threat of physical harm.
4. (a) Agenda-related comments: The Village President reserves the right to disallow comments that are repetitive of comments previously made during the meeting, or comments that do not relate to agenda items.

(b) Non-agenda-related comments: The Village President reserves the right to disallow comments that are repetitive of comments previously made during the meeting, or comments that do not relate to Village business, Village services or Village governance.
5. The Village of La Grange Park complies with the Americans with Disabilities Act of 1990. If you require accommodations in order to observe or participate in the meeting, please contact Ms. Andy Bagley at (708) 354-0225 between 9:00 and 5:00 before the meeting so that the Village can make reasonable accommodations for you.

Administration Committee

Robert Lautner, Chair

Michael Sheehan

Mario Fotino

Village Board Agenda Memo

Date: May 1, 2013
To: Village President and Board of Trustees
From: Julia Cedillo, Village Manager 
RE: Establishment of Returned Payment Fee

PURPOSE

To approve an amendment to the Village's Municipal Code that establishes a Returned Payment Fee.

GENERAL BACKGROUND

The establishment of a Returned Payment Fee was recently analyzed by staff and discussed by the Village Board as part of the overall Local Revenue Study Data Report. A comparison chart of these fees in other Illinois communities is attached to this memorandum.

The Village currently charges no fee for returned checks or non-sufficient funds (NSF) transactions. When this situation occurs, the Village must work with the bank to pay any fees, contact the resident to secure alternate payment, and then separate those payments from existing accounting procedures for payment. Thus, the entire process is very time-consuming for Village staff. As such, the establishment of a fee is recommended for the cost associated with the administrative time dedicated to this process.

To facilitate the establishment of this new fee, an ordinance was prepared to include a fee of \$20, an amount recommended by Finance Director Garesche. Village Attorney Cathy Keating reviewed the draft ordinance and approved as to form on May 1, 2013.

ACTION / MOTION

This matter is being placed on the agenda for the May 14, 2013 Village Board Work Session for discussion. If there is consensus to support the approval of the Ordinance, this matter will be placed on the May 28, 2013 Village Board Meeting Agenda for approval.

DOCUMENTATION

- NSF Fee Comparison
- Ordinance Amending the La Grange Park Municipal Code As Amended
- Local Revenue Study Village Scorecard

Village of Lincolnwood	<p>Title: Returned Check Charge Imposed - \$25</p> <p>Language: A service charge in an amount set forth in the Annual Fee Resolution <i>Editor's Note: See Ch. A25, Fees.</i> shall be imposed on any person negotiating a check that is returned unpaid by the drawer's bank (\$25).</p> <p>Location: Fee Schedule (Appendix)</p>
Village of Glenview	<p>Under Chapter 30 – Fees and Charges (Under a schedule)</p> <p>Returned ACH Direct Debit fee \$25.00 Returned check fee \$25.00</p>
Hainesville, Illinois	<p>Chapter 13.20.110 – Delinquent Utility Bills Returned checks.</p> <p>Any person who issues a bad check because the drawer does not have an account with the drawee, or because the drawer does not have sufficient funds in his or her account shall pay, in addition to the amount of the check, the sum of twenty-five dollars (\$25.00), or for all costs and expenses, including attorney fees, incurred by the village in connection with collection of the amount for which the check was written, whichever is greater, plus interest. If a bad check is written, the village shall make a written demand by certified mail, return receipt requested, delivered to the last known address of the issuer of the bad check. The written demand must include a demand for payment within thirty (30) days of the mailing of the demand and a notice of liability for the costs and expenses. After issuance of a bad check, the village will only accept the replacement payment via cash, certified check, credit card or money order. Any person who has three checks returned to the village within any one calendar year must thereafter for the following twelve (12) month period make all village utility payments via cash, certified check, credit card or money order.</p>
Village of Roselle	\$10 NSF Fee
Village of Willowbrook	\$25 NSF / Returned Check Fee. Ord. Language on file.
Village of Lombard	\$25 if check has been returned on two occasions. \$25 is immediately assessed for each electronic withdrawal where there is NSF.
Village of Wheaton	\$25 NSF Fee
Village of Westmont	\$50 NSF Fee
Village of Bensenville	\$15 NSF Fee
Village of Riverside	\$35 NSF Fee
Village of Burr Ridge	\$25 NSF Fee
Village of St. Charles	\$20 NSF Fee
City of Darien	\$25 NSF Fee
Village of Romeoville	\$35 NSF Fee
Village of Bloomingdale	\$20 NSF Fee. Ordinance language on file.
Village of South Holland	\$25 NSF Fee
Village of Glenview	\$25 NSF Fee

ORDINANCE NO. _____

**ORDINANCE AMENDING THE “LA GRANGE PARK
MUNICIPAL CODE” AS AMENDED**

Whereas, the Board of Trustees has determined that it is in the best interests of the Village of La Grange Park to amend Chapter 10 of the La Grange Park Municipal Code.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of La Grange Park, Cook County, Illinois, as follows:

SECTION 1: That Chapter 10 of the La Grange Park Municipal Code is hereby amended to include the following language:

“§ 10.98 RETURNED PAYMENT

Any person who makes a payment of any type to the Village that proves for any reason to be null and therefore invalid, shall pay the sum of twenty dollars (\$20.00) to the Village in addition to the dollar amount of the original payment. After such a null and invalid payment has been made, the Village will only accept the replacement payment in the form of cash, certified check, cashier’s check or money order. Any person who makes three such null and invalid payments to the Village within a twelve (12) month period of time, must thereafter make all payments by cash, certified check, cashier’s check, money order or credit card for a two year period of time.”

SECTION 2: That all ordinances and resolutions, or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, expressly repealed.

SECTION 3: That this Ordinance shall be in full force and effect after its passage, approval and public as required by law;

ADOPTED BY THE PRESIDENT AND THE BOARD OF TRUSTEES of the Village of La Grange Park, Cook County, Illinois this ___ day of May, 2013.

YES:

NO:

ABSENT:

Approved this ___ day of May, 2013.

Dr. James L. Discipio, Village President

ATTEST:

Amanda Seidel, Village Clerk

APPROVED AS TO FORM-
VILLAGE ATTORNEY: 5/1/2013

Local Revenue Study **SCORECARD**

#	Item	Recommendation / Option	Board Direction	Status
<i>Administration</i>				
1	Liquor License Class A - Original Pack	No Change (\$750)		
2	Liquor License Class B - Beer/Wine Rest.	Increase from \$600 to \$800	YES <input checked="" type="checkbox"/> No <input type="checkbox"/> MAYBE <input type="checkbox"/> FUTURE <input type="checkbox"/>	Complete ORD TO INCREASE FEES
3	Liquor License Class C - All Liquors off premises	No Change (\$1,500)		
4	Liquor License - Class D - All Liquors consumption off premises	No Change (\$1,500)		
5	Liquor License - Retail Sale Class E - Amend Classification	Increase from \$5 per occurrence to \$25 per occurrence, per day	YES <input checked="" type="checkbox"/> No <input type="checkbox"/> MAYBE <input type="checkbox"/> FUTURE <input type="checkbox"/>	Complete ORD TO INCREASE FEES
6	Tobacco License Fee	Increase from \$50 to \$75	YES <input checked="" type="checkbox"/> No <input type="checkbox"/> MAYBE <input type="checkbox"/> FUTURE <input type="checkbox"/>	Complete ORD TO INCREASE FEES
7	Business License - New Restaurant	No Change (\$125)		
8	Annual Business License	No Change (\$75)		
9	New Zoning Fee Structure	\$500 Application Fee, Escrow est., recapture of out-of pocket costs	YES <input checked="" type="checkbox"/> No <input type="checkbox"/> MAYBE <input type="checkbox"/> FUTURE <input type="checkbox"/>	SEPARATE ORD - ZONING CODE
10	Vehicle Sticker Fee	Increase from \$30 to \$35	YES <input checked="" type="checkbox"/> No <input type="checkbox"/> MAYBE <input type="checkbox"/> FUTURE <input type="checkbox"/>	Complete ORD TO INCREASE FEES
11	Vehicle Sticker Replacement Fee	Increase from \$1 to \$5	YES <input checked="" type="checkbox"/> No <input type="checkbox"/> MAYBE <input type="checkbox"/> FUTURE <input type="checkbox"/>	Complete ORD TO INCREASE FEES
12	Water Turn On Fee	Increase from \$25 to \$50; increase from \$50 to \$100 After Hours	YES <input checked="" type="checkbox"/> No <input type="checkbox"/> MAYBE <input type="checkbox"/> FUTURE <input type="checkbox"/>	Complete ORD TO INCREASE FEES
13	Returned Payment NSF Fee	New NSF Fee at \$20	YES <input checked="" type="checkbox"/> No <input type="checkbox"/> MAYBE <input type="checkbox"/> FUTURE <input type="checkbox"/>	NEW FEE
14	Recycle Bin Fee	New \$1 to \$2 processing fee New \$5 processing fee	YES <input checked="" type="checkbox"/> No <input type="checkbox"/> MAYBE <input type="checkbox"/> FUTURE <input type="checkbox"/>	NEW FEE
15	Administratively and VB Review Temporary Use Permit Fee	New \$25 Administrative \$50 VB Review Fee	YES <input checked="" type="checkbox"/> No <input type="checkbox"/> MAYBE <input type="checkbox"/> FUTURE <input type="checkbox"/>	SEPARATE ORD - ZONING CODE
16	Block Party Request	No change (\$0)		
17	Village Hall Room Rental Recurring Fee	New \$10 per year (for 4 or more)	YES <input checked="" type="checkbox"/> No <input type="checkbox"/> MAYBE <input type="checkbox"/> FUTURE <input type="checkbox"/>	NEW FEE
18	Village Hall Room Rental Equipment Fee	New \$10 per use	YES <input checked="" type="checkbox"/> No <input type="checkbox"/> MAYBE <input type="checkbox"/> FUTURE <input type="checkbox"/>	NEW FEE
19	Electronic Waste - Revenue Sharing	In place		
<i>Building Department</i>				
20	Building Permit Fees New Const or Remodel	Review Fee structure, which is now 1.15% of cost	YES <input checked="" type="checkbox"/> No <input type="checkbox"/> MAYBE <input type="checkbox"/> FUTURE <input type="checkbox"/>	BUILDING DEPT REVIEW
21	Building Permit Fee Other construction: parking lots, garages, auxiliary structures, decks, fences, driveways, swimming pools	Increase from 1% to 1.15% or align with other (Review)	YES <input checked="" type="checkbox"/> No <input type="checkbox"/> MAYBE <input type="checkbox"/> FUTURE <input type="checkbox"/>	BUILDING DEPT REVIEW
22	Plumbing Alterations Permits	Increase from \$35 to \$50 (Review w/all Building Permit Fees)	YES <input checked="" type="checkbox"/> No <input type="checkbox"/> MAYBE <input type="checkbox"/> FUTURE <input type="checkbox"/>	BUILDING DEPT REVIEW
23	Sign Permit Fee	Increase from \$35 to \$50 (Review w/all Building Permit Fees)	YES <input checked="" type="checkbox"/> No <input type="checkbox"/> MAYBE <input type="checkbox"/> FUTURE <input type="checkbox"/>	BUILDING DEPT REVIEW
24	Single Family Occupancy Permit	Increase from \$15 to \$25 (Review w/all Building Permit Fees)	YES <input checked="" type="checkbox"/> No <input type="checkbox"/> MAYBE <input type="checkbox"/> FUTURE <input type="checkbox"/>	BUILDING DEPT REVIEW
25	HVAC Permit	Increase from \$25 to \$50 per unit (Review w/all Building Permit Fees)	YES <input checked="" type="checkbox"/> No <input type="checkbox"/> MAYBE <input type="checkbox"/> FUTURE <input type="checkbox"/>	BUILDING DEPT REVIEW
26	Building Code Violation/Fines	Research P-Ticket Enforcement Option for certain Code Violations	YES <input checked="" type="checkbox"/> No <input type="checkbox"/> MAYBE <input type="checkbox"/> FUTURE <input type="checkbox"/>	BUILDING DEPT REVIEW
27	Building Code Variation Fee	New Fee (\$100 to \$500)	YES <input checked="" type="checkbox"/> No <input type="checkbox"/> MAYBE <input type="checkbox"/> FUTURE <input type="checkbox"/>	BUILDING DEPT REVIEW

Public Safety Committee

Mario Fotino, Chairman

Patricia Rocco

Robert Lautner

Village Board Agenda Memo

Date: April 30, 2013
To: Village President and Board of Trustees
From: Julia Cedillo, Village Manager 
Daniel L. McCollum, Chief of Police 
Re: Pine Tree Lane Parking Restrictions

GENERAL BACKGROUND

The Police Department, in response to the request of Mr. Jack Bone of LaGrange Park, reviewed Pine Tree Lane and the current parking allowed on the roadway. At present, parking is allowed on both sides of the street, which is 20 feet wide from curb to curb. Mr. Bone's concern was that once the construction begins on the McNaughton Development, traffic will not be able to travel down the street if any cars are parked, especially on both sides. Most other side streets are 28-30 feet wide. Currently, if two cars are parked directly across from one another on the street, no cars or trucks can get through.

This matter was discussed at the Traffic Safety and Engineering Committee Meeting on March 13th. The Committee agreed with the Police Department's recommendation that parking be allowed only on the south side of the street. Following that meeting, staff visited each resident on Pine Tree to obtain their input. Of the six (6) affected residences, there was only one objection to prohibiting parking on the north side of the street.

At the suggestion of Village Attorney Keating, each of the residents on Pine Tree was sent a letter informing them that the proposed parking restrictions would be discussed at the Work Session on May 14, 2013.

RECOMMENDATION

Staff recommends that parking be prohibited on the north side of Pine Tree throughout its entire length because of the narrowness of the roadway. If consensus is reached on this issue at the May 14, 2013 Work Session, an ordinance will be developed and placed on the Board Meeting Agenda for May 28, 2013.

DOCUMENTATION

- TS&E Committee unapproved minutes from 3/13/13 meeting.
- Aerial photo of Pine Tree Lane
- Letter sent to Pine Tree Lane residents

Village of La Grange Park
Traffic, Safety & Engineering Committee
Minutes
March 13, 2013

A meeting of the La Grange Park Traffic, Safety & Engineering Committee was scheduled for 7:00 p.m. on March 13, 2013, in the Board Room of the La Grange Park Village Hall. Committee Chairman, Steve May called the meeting to order at 7:00 p.m. Clerk Seidel called the roll.

Members in attendance were:

Committee Chairman: Steve May
Committee Member: Paul Graham
Committee Member: James Seguin
Committee Member: Keith Krysa
Committee Member: David Bryant (arrived 7:08 pm)

Members absent were:

Committee Member: Eric Johnson
Committee Member: Brian Lisek

Also in attendance:

Deputy Police Chief: Phil Kubisztal
Village Engineer: Paul Flood
Village Attorney: Cathy Keating
Village Clerk: Amanda Seidel

Clerk Seidel informed the Chairman a quorum was present.

Chairman May began with the first item which was approval of minutes-February 13, 2013. Mr. Seguin brought a motion to approve the minutes of February 13, 2013. The motion was seconded by Mr. Krysa. The motion passed unanimously by voice vote.

Chairman May moved on to public comment. There was none.

Chairman May moved on to the next item, discussion and approval of Parking Restrictions on Pine Tree Lane. Deputy Chief Kubisztal summarized the Traffic, Safety and Engineering Committee Agenda Memo of March 5, 2013 regarding parking restrictions on Pine Tree Lane. Engineer Flood explained the reason behind the request. Parking would be restricted on the north side of the road allowing parking on the south side. Concerns were expressed and clarified by Engineer Flood. There were concerns over how residents would react. Attorney Keating recommended that letters be sent to residents before the ordinance is approved by the Village Board, inviting them to the Village Board Meeting.

Mr. Krysa brought a motion to approve an ordinance prohibiting parking on the north side of Pine Tree Lane as suggested in the letter by Jack W. Bone. The motion was seconded by Mr. Seguin. The motion passed unanimously by voice vote.

At the end of this discussion, there was no further business to be brought before the Traffic, Safety & Engineering Committee, so Chairman May said he would entertain a motion to adjourn. There was a motion by Mr. Bryant to adjourn the meeting. Mr. Graham seconded the motion and the motion to adjourn passed unanimously on a voice vote.

The meeting adjourned at 7:18 p.m.

Respectfully submitted,

Amanda G. Seidel
Village Clerk



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PRESIDENT
Dr. James L. Discipio

VILLAGE MANAGER
Julia A. Cedillo

VILLAGE CLERK
Amanda G. Seidel



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Marshall Seeder
Susan M. Storcel
LaVelle Topps

April 16, 2013

Mr.

Pine Tree Lane
La Grange Park, IL 60526

Dear Mr.

The Village of La Grange Park is reviewing the allowable parking on Pine Tree Lane. This review was prompted by a resident's concern about the width of the street, especially with new construction beginning on a housing development within the near future.

In light of the narrowness of the street, the Village Traffic Safety and Engineering Committee has recommended that parking be restricted to the south side of Pine Tree only. At the recommendation of Village Staff, prior to the matter being brought to the Village Board, all residents on Pine Tree were personally surveyed regarding the proposed parking restrictions.

On Tuesday May 14, 2013 at 7:30 p.m., the Village Board will meet to discuss the proposed parking restrictions. If you wish to appear and be heard, you should appear at the Village Hall, 447 N. Catherine Avenue on that date and time. In the alternative, if you wish to submit any written comments for the Board to consider, please feel free to do so.

If you have any questions regarding this letter, please feel free to contact me, Julia Cedillo, at 708-579-2374 ext. 107.

Very truly yours,

Julia Cedillo
Village Manager

Public Works Committee

Scott Mesick, Chairman

Michael Sheehan

Mario Fotino

Village Board Agenda Memo

Date: 5/06/13

To: President and Board of Trustees

From: Brendan McLaughlin, Public Works Director
Julia Cedillo, Village Manager

BSM



RE: 2013 Construction Projects – Edwin Hancock Engineering Agreements

PURPOSE: In accord with the Fiscal Year 2013/14 budget, Engineering Agreements for 2013 Construction Projects are being presented for Village Board approval.

GENERAL BACKGROUND:

This year's budget includes the following projects for which the Village Engineer, Edwin Hancock Engineering, will provide professional engineering services in amounts not to exceed:

1. \$35,000 for La Grange Road Water Main Improvements – Phase 2
2. \$62,950 for Beach Avenue Resurfacing Project
3. \$33,750 for 2013 Sewer Lining Project
4. \$7,500 for 2013 Sewer Cleaning and Televising Project
5. \$9,800 for Relocation of Water Main out of Oak Street Sewer Line

These projects are budgeted for in their respective funds.

MOTION/ACTION REQUESTED:

Motion authorizing the Village President to execute Professional Engineering Services Agreements in support of the 2013 Construction Projects.

STAFF RECOMMENDATION:

Staff recommends approval of these documents.

DOCUMENTATION:

- Professional Services Agreements for the Five Projects

AGREEMENT
between
THE VILLAGE OF LA GRANGE PARK
and
EDWIN HANCOCK ENGINEERING CO.
for the
FURNISHING OF PROFESSIONAL SERVICES
for

LA GRANGE ROAD WATER MAIN IMPROVEMENTS – Phase II

THIS AGREEMENT, made and entered into by and between THE VILLAGE OF LA GRANGE PARK, hereinafter referred to as the “VILLAGE”, and EDWIN HANCOCK ENGINEERING CO., hereinafter referred to as the “ENGINEER”, has been prepared and executed to provide Professional Engineering Services necessary to provide design and construction inspection and documentation services. The said project shall be designated as the “LaGrange Road Water Main Improvements – Phase II” hereinafter referred to as the “PROJECT”. The location of the project will be on LaGrange Road from Woodlawn Avenue to Oak Avenue, and Oak Avenue from La Grange Road through Ashland Avenue.

The general scope of the improvements involve a new water main on La Grange Road between Woodlawn Avenue and Oak Avenue and on Oak Avenue from La Grange Road to Ashland Avenue. The project will include the installation of approximately 1,375 feet of 10” ductile iron water main, new water services to adjacent properties, fire hydrants, new sidewalk on the west side of La Grange Road and under the south pavement on Oak Street, the abandonment of the existing 6” water main beneath the pavement, connections to the existing water main system at Woodlawn Avenue, Oka Street and Ashland Avenue, and other related restoration.

Design Engineering includes the preparation of plans, specifications and bidding documents for the proposed work, preparation and submittal of applications for permits required from various agencies, and performance of other necessary engineering services outlined in Section A.I (a-g). of this Agreement.

Construction Engineering includes providing line and grade staking of the proposed work, observation of the work to become familiar with the progress and quality of the work completed and to determine if the work when completed will be in accordance with the contract documents, attendance at meetings during construction as may be required, measurement of quantities and preparation of pay estimates as required, as well as other services outlined in Section A.II (a-j) of this Agreement.

WITNESSETH THAT, in consideration of these premises and of the mutual covenants herein 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, bid proposals, 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.
 - g. Assisting the VILLAGE in the tabulation and interpretation of contractors' bid proposals.

- II. To perform, or be responsible for the performance of, the following Construction Engineering services for the proposed improvement:
 - a. Consulting on interpretations of plans and specifications and any changes under consideration as construction proceeds, including attending such meetings as may be required to inform the VILLAGE on the progress of the work.
 - b. Checking of shop and equipment drawings.
 - c. Providing line-and-grade staking.
 - d. Providing resident observation of the construction work to become familiar with the progress and quality of the work completed and to determine if the work when completed will be in accordance with the contract documents.

- e. Making final measurement of quantities of work performed under the contract as required to be able to update Village records and atlas.
 - f. Maintaining a daily record of the contractor's activities throughout construction including sufficient information to permit verification of the nature and cost of changes in plans and authorized extra work.
 - g. Advising the VILLAGE of defects and deficiencies in the work of the contractor, but the ENGINEER does not guarantee the performance of the contract by the contractor.
 - h. Making any necessary changes in working plans as may be required after the award of the construction contract and during construction of the improvement.
 - i. Preparing contractor's partial and final payment estimates, change orders, and other records that may be required.
 - j. Performing final inspection of all improvements and preparing final "record drawings," one (1) copy of which shall be submitted to the VILLAGE.
- III. To cause to be furnished, when required, the following services by subletting the work to a firm or firms qualified to provide the services, the selection of the firm and their fee schedule being first subject to the approval of the VILLAGE:
- a. Investigations and analysis reports of surface and subsurface ground conditions.
 - b. Proportioning and testing of Portland cement concrete and bituminous concrete mixtures in accordance with project specifications.
 - c. All compaction or density tests as required by the specifications.
- IV. That the ENGINEER will save harmless the VILLAGE and any representative of the VILLAGE from all claims and liabilities due to activities of the ENGINEER, its agents, or its employees and that the ENGINEER will carry adequate insurance at its own expense to provide such protection. Such insurance shall remain in force until this PROJECT is complete; reports have been made and accepted by the VILLAGE.
- V. That the ENGINEER will comply with all applicable Federal Statutes, State of Illinois Statutes, and local laws or ordinances of the municipality in which the

work is to be done and shall operate within and uphold the rules and regulations of the VILLAGE.

- VI. That payment by the VILLAGE shall be as hereinafter provided. The ENGINEER shall submit invoices to the VILLAGE, not more frequently than once per month, for partial payment on account for its work completed to date.
- VII. That this AGREEMENT may be terminated by the VILLAGE upon written notice to the ENGINEER, at its last known post office address, with the understanding that should this AGREEMENT be terminated by the VILLAGE, the ENGINEER shall be paid for any services completed and any services partially completed up to the date of termination.
- VIII. That the ENGINEER is qualified technically and is entirely conversant with the policies applicable to this PROJECT and that it has, and will furnish at the request of the VILLAGE, sufficient, properly trained, and experienced personnel to perform the services enumerated herein.
- IX. That the ENGINEER will maintain all books, documents, papers, accounting records, and other evidence pertaining to cost incurred and to make such materials available at its office at all reasonable times during the agreement period and for three (3) years from the date of final payment under this AGREEMENT.
- X. The ENGINEER warrants that they has not employed or retained any company or person, other than an employee working solely for the ENGINEER, to secure this AGREEMENT and that 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 this AGREEMENT price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

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. The cost of the engineering services rendered shall be determined by the following Schedule of Service Fees:

PERSONNEL CLASSIFICATION

HOURLY RATES

Principal Engineer	\$117.00
Senior Engineer	117.00
Project Engineer	109.00
Engineer IV	102.00
Engineer III	95.00
Engineer II	90.00
Engineer I	85.00
CADD Technician III	93.00
CADD Technician II	87.00
Administrative	55.00

The hourly rates for each classification of personnel are based upon the background of experience and the current salary of the personnel being assigned to a project. In the billing process the hourly invoicing rate of the personnel assigned to the PROJECT will be consistent with the above Schedule of Service Fees.

- b. The Lump Sum Fee of \$10,000 for engineering services stipulated in above A.I and the maximum total amount payable for the engineering services performed as stipulated in above Section A.II "Fees" shall not exceed \$35,000.00, 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.

- c. To pay for the subletted services as stipulated in above Section A.II at the actual cost to the ENGINEER; "Cost to ENGINEER" shall be validated by the ENGINEER furnishing the VILLAGE copies of such invoices from the party doing the work. The cost for the subletted services in Section A.II shall not be subject to the maximum total amount payable defined above, but must be agreed upon in writing in advance of the work.

- d. 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.b of this AGREEMENT shall be due and payable to the ENGINEER.

C. IT IS MUTUALLY AGREED:

- I. That any difference between the ENGINEER and the VILLAGE concerning the interpretation of the provisions of this AGREEMENT shall first be referred to a committee of disinterested parties consisting of one (1) member appointed by the ENGINEER, one (1) member appointed by the VILLAGE, and the third (3rd) member appointed by the two (2) other members (“Committee”) for a determination if the matter can be resolved within seven (7) days of it being referred to the committee. If the parties cannot resolve the matter within 30 days after being referred to the Committee, the Parties may proceed as specified in paragraph IV below.
- II. That this AGREEMENT may be terminated by either party for cause upon thirty (30) days written notice (“Notice Period”) that the other party is failing to substantially perform in accordance with the terms of this AGREEMENT through no fault of the other. If the defaulting party fails to cure the defect within the Notice Period, the party providing notice may terminate this AGREEMENT. Upon such termination the VILLAGE shall make payment to the ENGINEER of all sums due and owing it less any amounts necessary to satisfy any breach. The ENGINEER shall cause to be delivered to the VILLAGE, copies of partially completed drawings, specifications, partial and completed estimates, and data, if any, from soil surface and subsurface investigations with the understanding that all such materials become the property of the VILLAGE. The VILLAGE assumes all responsibility and releases the ENGINEER from any liability arising from the VILLAGE’s use of partially completed drawings, specifications or other work product prepared by the ENGINEER or for any reuse of ENGINEER’s work product on another project.
- III. The 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.

- IV. Except for any emergency or equitable claim, 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.
- V. 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.
- VI. 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 _____, 2013.

VILLAGE OF LA GRANGE PARK
447 Catherine Avenue
La Grange Park, Illinois 60526

By: _____

Dr. James L Discipio, Village President

ATTEST:

By: _____
Amanda G. Seidel, Village Clerk

Executed by the ENGINEER, this

_____ day of _____, 2013.

EDWIN HANCOCK ENGINEERING CO.
9933 ROOSEVELT ROAD
WESTCHESTER, ILLINOIS 60154

By: _____

Derek S. Treichel, P.E., President

ATTEST:

By: _____
Paul E Flood, Senior 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 in anyway accrue against the VILLAGE, its officials, employees and volunteers, arising in whole or in part in consequence of the negligent or willful performance of this work by the ENGINEER, its employees, or subcontractors, or which may in anyway result therefore, except that arising out of the negligence or willful act of the VILLAGE, its officials, employees and volunteers. The ENGINEER shall, at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefore or incurred in conjunction therewith, and, if any judgment shall be rendered against the VILLAGE, its officials, agents, employees and volunteers, in any such action, the ENGINEER shall, at its own expense, satisfy and discharge the same.
- 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 resumptions of the services upon expiration of the Suspension of Services Order.
7. This AGREEMENT may be terminated by the VILLAGE upon thirty (30) days 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 and all costs 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 will maintain all books, documents, papers, accounting records, and other evidence pertaining to its costs incurred and to make such materials available at the ENGINEER's office at all reasonable times during the AGREEMENT period and retain such records for a period of three (3) years from the date of final payment under this AGREEMENT.
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. In the event of breach of the confidentiality provisions of this AGREEMENT, it shall be conclusively presumed that irreparable injury would result to the VILLAGE and there would be no an adequate remedy at law. The VILLAGE shall be entitled to obtain temporary and permanent injunctions, without bond and without proving damages, to enforce this AGREEMENT. The VILLAGE is entitled to damages for any breach of the injunction, including but not limited to compensatory, incidental, consequential, exemplary and punitive damages. The confidentiality provisions of this AGREEMENT survive the termination or performance of this AGREEMENT.
- 21. The ENGINEER will comply all laws, codes, ordinances and regulations which are in effect as of the date of this AGREEMENT.
- 22. 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.
- 23. 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.).
- 24. This AGREEMENT may be terminated by the 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.

25. 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.
26. 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 LA GRANGE PARK
447 North Catherine Avenue
La Grange Park, Illinois 60526
Attn: Ms. Julia Cedillo, Village Manager
 - b. If to the ENGINEER:
EDWIN HANCOCK ENGINEERING COMPANY.
9930 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.
27. 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.
28. The terms of this AGREEMENT shall be binding upon and inure to the benefit of the parties and their respective successors.
29. 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.
30. 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.
31. 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.

AGREEMENT
between
THE VILLAGE OF LA GRANGE PARK
and
EDWIN HANCOCK ENGINEERING CO.
for the
FURNISHING OF PROFESSIONAL SERVICES
for

BEACH AVENUE RESURFACING PROJECT

THIS AGREEMENT, made and entered into by and between THE VILLAGE OF LA GRANGE PARK, hereinafter referred to as the "VILLAGE", and EDWIN HANCOCK ENGINEERING CO., hereinafter referred to as the "ENGINEER", has been prepared and executed to document the Professional Engineering Services provided by the ENGINEER, set forth below. The said project shall be designated as the "Beach Avenue Resurfacing Project" hereinafter referred to as the "PROJECT". The PROJECT will be located on Beach Avenue from 31st Street to 29th Avenue.

The specific scope of the improvement is the resurfacing of the roadway including curb and gutter removal and replacement, removal and replacement of driveways and sidewalks, sewer and drainage improvements, landscape restoration and other appurtenant work thereto. A portion of construction is to be funded with MFT funds and as such the plans, specifications and estimates will require the approval of the Illinois Department of Transportation.

Preliminary Engineering includes the preparation of any necessary plans, specifications and bidding documents for the proposed work; preparation and submittal of applications for permits required from various agencies; and performance of other necessary engineering services outlined in Section I.A. of this agreement.

Construction Engineering includes line and grade staking of the proposed work, observation of the work as it progresses to verify its compliance with the plans and specifications, attendance at meetings during construction as may be required, measurement of quantities and preparation of pay estimates as required, as well as other services outlined in Section I.B. of this AGREEMENT.

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

A. THE ENGINEER AGREES;

I. In consideration of these premises and of the mutual covenants herein set forth to perform, or be responsible for the performance of, the following Preliminary Engineering Services for the proposed PROJECT.

- a. Preparing preliminary design criteria.
- b. Preparing preliminary plans as necessary.
- 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 improvements.
- e. Preparing necessary plans, specifications, bid proposals, 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.
- g. Assisting the VILLAGE in the tabulation and interpretation of contractors' bid proposals.
- h. In consideration of these premises and of the mutual covenants herein set forth to perform, or be responsible for the performance of, the following Engineering Services for the proposed PROJECT.

II. In consideration of these premises and of the mutual covenants herein set forth to perform, or be responsible for the performance of, the following Construction Engineering Services for the proposed PROJECT.

- a. Consulting on interpretations of plans and specifications and any changes under consideration as construction proceeds, including attending such

meetings as may be required to inform the VILLAGE on the progress of the work.

- b. Checking of shop and equipment drawings.
 - c. Providing line-and-grade staking.
 - d. Providing observation of the construction work to become familiar with the progress and quality of the work completed and to determine if the work when completed will be in accordance with the contract documents.
 - e. Making final measurement of quantities of work performed under the contract as required to be able to update Village records and atlas.
 - f. Maintaining a daily record of the contractor's activities throughout construction including sufficient information to permit verification of the nature and cost of changes in plans and authorized extra work.
 - g. Coordination of materials testing engineers and review of materials inspection reports.
 - h. Advising the VILLAGE of defects and deficiencies in the work of the contractor; provided, however, that the ENGINEER does not guarantee the performance of the contract by the contractor.
 - i. Making any necessary changes in working plans as may be required after the award of the construction contract and during construction of the improvement.
 - j. Reviewing contractor's partial and final payment estimates, change orders, and other records that may be required.
 - k. Performing final inspection of all improvements.
- III. To cause to be furnished, when required, the following services, the actual costs for which are to be paid for by the VILLAGE, with approval first being obtained from the VILLAGE of the firms selected to provide these services and their charges for such services:
- a. Investigations and analysis reports of surface and subsurface ground conditions, if required.
- IV. That the ENGINEER will save harmless the VILLAGE and any representative of the VILLAGE from all claims and liabilities due to activities of the ENGINEER, its agents, or its employees and that the ENGINEER will carry adequate insurance at its own expense to provide such protection. Such insurance shall remain in force until this PROJECT is complete; reports have been made and accepted by the VILLAGE.

- V. That the ENGINEER will comply with all applicable Federal Statutes, State of Illinois Statutes, and local laws or ordinances of the municipality in which the work is to be done and shall operate within and uphold the rules and regulations of the VILLAGE.
- VI. That payment by the VILLAGE shall be as hereinafter provided. The ENGINEER shall submit invoices to the VILLAGE, not more frequently than once per month, for partial payment on account for its work completed to date.
- VII. That this AGREEMENT may be terminated by the VILLAGE upon written notice to the ENGINEER, at its last known post office address, with the understanding that should this AGREEMENT be terminated by the VILLAGE, the ENGINEER shall be paid for any services completed and any services partially completed up to the date of termination.
- VIII. That the ENGINEER is qualified technically and is entirely conversant with the policies applicable to this PROJECT and that it has, and will furnish at the request of the VILLAGE, sufficient, properly trained, and experienced personnel to perform the services enumerated herein.
- IX. That the ENGINEER will maintain all books, documents, papers, accounting records, and other evidence pertaining to cost incurred and to make such materials available at its office at all reasonable times during the agreement period and for three (3) years from the date of final payment under this AGREEMENT.
- X. 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 that 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 this AGREEMENT price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

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 Engineering services performed as stipulated in above Section A.1 a sum of money not to exceed Twenty Six Thousand Seven Hundred and no/100 Dollars

(\$26,700.00), 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. To pay the Engineer as compensation for all Construction Engineering services performed as stipulated in above Section A.2 a sum of money not to exceed Thirty Six Thousand Two Hundred Fifty and no/100 Dollars (\$36,250.00), 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.
- c. To pay for the subletted services as stipulated in above Section A.3 at the actual cost to the ENGINEER; "Cost to ENGINEER" shall be validated by the ENGINEER furnishing the VILLAGE copies of such invoices from the party doing the work. The cost for the subletted services in Section A.3 shall not be subject to the maximum total amount payable defined above, but must be agreed upon in writing in advance of the work.
- d. 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.l.c. (1) of this AGREEMENT shall be due and payable to the ENGINEER.

C. IT IS MUTUALLY AGREED:

- I. That any difference between the ENGINEER and the VILLAGE concerning the interpretation of the provisions of this AGREEMENT shall first be referred to a committee of disinterested parties consisting of one (1) member appointed by the ENGINEER, one (1) member appointed by the VILLAGE, and the third (3rd) member appointed by the two (2) other members ("Committee") for a determination if the matter can be resolved within seven (7) days of it being referred to the committee. If the parties cannot resolve the matter within 30 days after being referred to the Committee, the Parties may proceed as specified in paragraph IIID below.
- II. That this AGREEMENT may be terminated by either party for cause upon thirty (30) days written notice ("Notice Period") that the other party is failing to substantially perform in accordance with the terms of this AGREEMENT through no fault of the other. If the defaulting party fails to cure the defect within the Notice Period, the party providing notice may terminate this AGREEMENT. Upon such termination the VILLAGE shall make payment to the ENGINEER of all sums due and owing it less any amounts necessary to satisfy any breach. The ENGINEER shall cause to be delivered to the VILLAGE, copies of partially completed drawings, specifications, partial and completed estimates, and data, if any, from soil surface and subsurface investigations with the understanding that all such materials become the property of the VILLAGE. The VILLAGE assumes all responsibility and releases the ENGINEER from any liability arising from the VILLAGE's use of partially completed drawings, specifications or other work product prepared by the ENGINEER or for any reuse of ENGINEER's work product on another project.
- III. The 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.
- IV. Except for any emergency or equitable claim, 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.

- V. 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.

- VI. 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 _____, 2013.

VILLAGE OF LA GRANGE PARK
447 Catherine Avenue
La Grange Park, Illinois 60526

By: _____
Dr. James L Discipio, Village President

ATTEST:

By: _____
Amanda G. Seidel, Village Clerk

Executed by the ENGINEER, this

_____ day of _____, 2013.

EDWIN HANCOCK ENGINEERING CO.
9933 ROOSEVELT ROAD
WESTCHESTER, ILLINOIS 60154

By: _____
Derek Treichel, P.E., President

ATTEST:

By: _____
Paul E Flood, Senior 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 in anyway accrue against the VILLAGE, its officials, employees and volunteers, arising in whole or in part in consequence of the negligent or willful performance of this work by the ENGINEER, its employees, or subcontractors, or which may in anyway result therefore, except that arising out of the negligence or willful act of the VILLAGE, its officials, employees and volunteers. The ENGINEER shall, at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefore or incurred in conjunction therewith, and, if any judgment shall be rendered against the VILLAGE, its officials, agents, employees and volunteers, in any such action, the ENGINEER shall, at its own expense, satisfy and discharge the same.
- 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 upon thirty (30) days 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 and all costs 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 will maintain all books, documents, papers, accounting records, and other evidence pertaining to its costs incurred and to make such materials available at the ENGINEER's office at all reasonable times during the AGREEMENT period and retain such records for a period of three (3) years from the date of final payment under this AGREEMENT.
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. In the event of breach of the confidentiality provisions of this AGREEMENT, it shall be conclusively presumed that irreparable injury would result to the VILLAGE and there would be no an adequate remedy at law. The VILLAGE shall be entitled to obtain temporary and permanent injunctions, without bond and without proving damages, to enforce this AGREEMENT. The VILLAGE is entitled to damages for any breach of the injunction, including but not limited to compensatory, incidental, consequential, exemplary and punitive damages. The confidentiality provisions of this AGREEMENT survive the termination or performance of this AGREEMENT.
- 21. The ENGINEER will comply all laws, codes, ordinances and regulations which are in effect as of the date of this AGREEMENT.
- 22. 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.
- 23. 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.).
- 24. This AGREEMENT may be terminated by the 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.

25. 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.
26. 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 LA GRANGE PARK
447 North Catherine Avenue
La Grange Park, Illinois 60526
Attn: Ms. Julia Cedillo, Village Manager
 - b. If to the ENGINEER:
EDWIN HANCOCK ENGINEERING COMPANY.
9930 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.
27. 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.
28. The terms of this AGREEMENT shall be binding upon and inure to the benefit of the parties and their respective successors.
29. 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.
30. 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.
31. 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 or 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.

AGREEMENT
between
THE VILLAGE OF LA GRANGE PARK
and
EDWIN HANCOCK ENGINEERING CO.
for the
FURNISHING OF PROFESSIONAL SERVICES
for

2013 SEWER LINING PROJECT

THIS AGREEMENT, made and entered into by and between THE VILLAGE OF LA GRANGE PARK, hereinafter referred to as the "VILLAGE", and EDWIN HANCOCK ENGINEERING CO., hereinafter referred to as the "ENGINEER", has been prepared and executed to document the Professional Engineering Services provided by the ENGINEER, set forth below. The said project shall be designated as the "2013 Sewer Lining Project" hereinafter referred to as the "PROJECT". The PROJECT will be located at various locations throughout the Village.

The specific scope of the improvement is the inversion lining of existing combined sewer lines and the reinstatement of service laterals.

Preliminary Engineering includes the preparation of any necessary plans, specifications and bidding documents for the proposed work; preparation and submittal of applications for permits required from various agencies; and performance of other necessary engineering services outlined in Section I.A. of this agreement.

Construction Engineering includes line and grade staking of the proposed work, observation of the work as it progresses to verify its compliance with the plans and specifications, attendance at meetings during construction as may be required, measurement of quantities and preparation of pay estimates as required, as well as other services outlined in Section I.B. of this AGREEMENT.

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

A. THE ENGINEER AGREES;

I. In consideration of these premises and of the mutual covenants herein set forth to perform, or be responsible for the performance of, the following Preliminary Engineering Services for the proposed PROJECT.

- a. Preparing preliminary design criteria.
- b. Preparing preliminary plans as necessary.
- 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 improvements.
- e. Preparing necessary plans, specifications, bid proposals, 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.
- g. Assisting the VILLAGE in the tabulation and interpretation of contractors' bid proposals.
- h. In consideration of these premises and of the mutual covenants herein set forth to perform, or be responsible for the performance of, the following Engineering Services for the proposed PROJECT.

II. In consideration of these premises and of the mutual covenants herein set forth to perform, or be responsible for the performance of, the following Construction Engineering Services for the proposed PROJECT.

- a. Consulting on interpretations of plans and specifications and any changes under consideration as construction proceeds, including attending such meetings as may be required to inform the VILLAGE on the progress of the work.

- b. Checking of shop and equipment drawings.
 - c. Providing line-and-grade staking.
 - d. Providing observation of the construction work to become familiar with the progress and quality of the work completed and to determine if the work when completed will be in accordance with the contract documents.
 - e. Making final measurement of quantities of work performed under the contract as required to be able to update Village records and atlas.
 - f. Maintaining a daily record of the contractor's activities throughout construction including sufficient information to permit verification of the nature and cost of changes in plans and authorized extra work.
 - g. Coordination of materials testing engineers and review of materials inspection reports.
 - h. Advising the VILLAGE of defects and deficiencies in the work of the contractor; provided, however, that the ENGINEER does not guarantee the performance of the contract by the contractor.
 - i. Making any necessary changes in working plans as may be required after the award of the construction contract and during construction of the improvement.
 - j. Reviewing contractor's partial and final payment estimates, change orders, and other records that may be required.
 - k. Performing final inspection of all improvements.
- III. To cause to be furnished, when required, the following services, the actual costs for which are to be paid for by the VILLAGE, with approval first being obtained from the VILLAGE of the firms selected to provide these services and their charges for such services:
- a. Investigations and analysis reports of surface and subsurface ground conditions, if required.
- IV. That the ENGINEER will save harmless the VILLAGE and any representative of the VILLAGE from all claims and liabilities due to activities of the ENGINEER, its agents, or its employees and that the ENGINEER will carry adequate insurance at its own expense to provide such protection. Such insurance shall remain in force until this PROJECT is complete; reports have been made and accepted by the VILLAGE.
- V. That the ENGINEER will comply with all applicable Federal Statutes, State of Illinois Statutes, and local laws or ordinances of the municipality in which the work is to be done and shall operate within and uphold the rules and regulations of the VILLAGE.

- VI. That payment by the VILLAGE shall be as hereinafter provided. The ENGINEER shall submit invoices to the VILLAGE, not more frequently than once per month, for partial payment on account for its work completed to date.
- VII. That this AGREEMENT may be terminated by the VILLAGE upon written notice to the ENGINEER, at its last known post office address, with the understanding that should this AGREEMENT be terminated by the VILLAGE, the ENGINEER shall be paid for any services completed and any services partially completed up to the date of termination.
- VIII. That the ENGINEER is qualified technically and is entirely conversant with the policies applicable to this PROJECT and that it has, and will furnish at the request of the VILLAGE, sufficient, properly trained, and experienced personnel to perform the services enumerated herein.
- IX. That the ENGINEER will maintain all books, documents, papers, accounting records, and other evidence pertaining to cost incurred and to make such materials available at its office at all reasonable times during the agreement period and for three (3) years from the date of final payment under this AGREEMENT.
- X. 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 that 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 this AGREEMENT price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

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 Engineering services performed as stipulated in above Section A.1 a sum of money not to exceed Thirteen Thousand Five Hundred and no/100 Dollars (\$13,500.00), 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. To pay the Engineer as compensation for all Construction Engineering services performed as stipulated in above Section A.2 a sum of money not to exceed Twenty Thousand Two Hundred Fifty and no/100 Dollars (\$20,250.00), 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.
- c. To pay for the subletted services as stipulated in above Section A.3 at the actual cost to the ENGINEER; "Cost to ENGINEER" shall be validated by the ENGINEER furnishing the VILLAGE copies of such invoices from the party doing the work. The cost for the subletted services in Section A.3 shall not be subject to the maximum total amount payable defined above, but must be agreed upon in writing in advance of the work.
- d. 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.c. (1) of this AGREEMENT shall be due and payable to the ENGINEER.

C. IT IS MUTUALLY AGREED;

- I. That any difference between the ENGINEER and the VILLAGE concerning the interpretation of the provisions of this AGREEMENT shall first be referred to a committee of disinterested parties consisting of one (1) member appointed by the ENGINEER, one (1) member appointed by the VILLAGE, and the third (3rd) member appointed by the two (2) other members ("Committee") for a determination if the matter can be resolved within seven (7) days of it being referred to the committee. If the parties cannot resolve the matter within 30 days after being referred to the Committee, the Parties may proceed as specified in paragraph IIID below.
- II. That this AGREEMENT may be terminated by either party for cause upon thirty (30) days written notice ("Notice Period") that the other party is failing to substantially perform in accordance with the terms of this AGREEMENT through no fault of the other. If the defaulting party fails to cure the defect within the Notice Period, the party providing notice may terminate this AGREEMENT. Upon such termination the VILLAGE shall make payment to the ENGINEER of all sums due and owing it less any amounts necessary to satisfy any breach. The ENGINEER shall cause to be delivered to the VILLAGE, copies of partially completed drawings, specifications, partial and completed estimates, and data, if any, from soil surface and subsurface investigations with the understanding that all such materials become the property of the VILLAGE. The VILLAGE assumes all responsibility and releases the ENGINEER from any liability arising from the VILLAGE's use of partially completed drawings, specifications or other work product prepared by the ENGINEER or for any reuse of ENGINEER's work product on another project.
- III. The 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.
- IV. Except for any emergency or equitable claim, 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.

- V. 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.

- VI. 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 _____, 2013.

VILLAGE OF LA GRANGE PARK
447 Catherine Avenue
La Grange Park, Illinois 60526

By: _____
Dr. James L Discipio, Village President

ATTEST:

By: _____
Amanda G. Seidel, Village Clerk

Executed by the ENGINEER, this

_____ day of _____, 2013.

EDWIN HANCOCK ENGINEERING CO.
9933 ROOSEVELT ROAD
WESTCHESTER, ILLINOIS 60154

By: _____
Derek Treichel, P.E., President

ATTEST:

By: _____
Paul E Flood, Senior 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 in anyway accrue against the VILLAGE, its officials, employees and volunteers, arising in whole or in part in consequence of the negligent or willful performance of this work by the ENGINEER, its employees, or subcontractors, or which may in anyway result therefore, except that arising out of the negligence or willful act of the VILLAGE, its officials, employees and volunteers. The ENGINEER shall, at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefore or incurred in conjunction therewith, and, if any judgment shall be rendered against the VILLAGE, its officials, agents, employees and volunteers, in any such action, the ENGINEER shall, at its own expense, satisfy and discharge the same.
- 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 upon thirty (30) days 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 and all costs 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 will maintain all books, documents, papers, accounting records, and other evidence pertaining to its costs incurred and to make such materials available at the ENGINEER's office at all reasonable times during the AGREEMENT period and retain such records for a period of three (3) years from the date of final payment under this AGREEMENT.
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. In the event of breach of the confidentiality provisions of this AGREEMENT, it shall be conclusively presumed that irreparable injury would result to the VILLAGE and there would be no an adequate remedy at law. The VILLAGE shall be entitled to obtain temporary and permanent injunctions, without bond and without proving damages, to enforce this AGREEMENT. The VILLAGE is entitled to damages for any breach of the injunction, including but not limited to compensatory, incidental, consequential, exemplary and punitive damages. The confidentiality provisions of this AGREEMENT survive the termination or performance of this AGREEMENT.
- 21. The ENGINEER will comply all laws, codes, ordinances and regulations which are in effect as of the date of this AGREEMENT.
- 22. 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.
- 23. 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.).
- 24. This AGREEMENT may be terminated by the 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.

25. 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.
26. 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 LA GRANGE PARK
447 North Catherine Avenue
La Grange Park, Illinois 60526
Attn: Ms. Julia Cedillo, Village Manager
 - b. If to the ENGINEER:
EDWIN HANCOCK ENGINEERING COMPANY.
9930 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.
27. 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.
28. The terms of this AGREEMENT shall be binding upon and inure to the benefit of the parties and their respective successors.
29. 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.
30. 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.
31. 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 or 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.

AGREEMENT
between
THE VILLAGE OF LA GRANGE PARK
and
EDWIN HANCOCK ENGINEERING CO.
for the
FURNISHING OF PROFESSIONAL SERVICES
for

2013 SEWER CLEANING AND TELEVISIONING PROJECT

THIS AGREEMENT, made and entered into by and between THE VILLAGE OF LA GRANGE PARK, hereinafter referred to as the "VILLAGE", and EDWIN HANCOCK ENGINEERING CO., hereinafter referred to as the "ENGINEER", has been prepared and executed to document the Professional Engineering Services provided by the ENGINEER, set forth below. The said project shall be designated as the "2013 Sewer Cleaning and Televisioning Project" hereinafter referred to as the "PROJECT". The PROJECT will be located at various locations throughout the Village.

The specific scope of the improvement is the cleaning and televising of combined sewer lines at various locations.

Preliminary Engineering includes the preparation of any necessary plans, specifications and bidding documents for the proposed work; preparation and submittal of applications for permits required from various agencies; and performance of other necessary engineering services outlined in Section I.A. of this agreement.

Construction Engineering includes line and grade staking of the proposed work, observation of the work as it progresses to verify its compliance with the plans and specifications, attendance at meetings during construction as may be required, measurement of quantities and preparation of pay estimates as required, as well as other services outlined in Section I.B. of this AGREEMENT.

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

A. THE ENGINEER AGREES:

I. In consideration of these premises and of the mutual covenants herein set forth to perform, or be responsible for the performance of, the following Preliminary Engineering Services for the proposed PROJECT.

- a. Preparing preliminary design criteria.
- b. Preparing preliminary plans as necessary.
- 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 improvements.
- e. Preparing necessary plans, specifications, bid proposals, 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.
- g. Assisting the VILLAGE in the tabulation and interpretation of contractors' bid proposals.
- h. In consideration of these premises and of the mutual covenants herein set forth to perform, or be responsible for the performance of, the following Engineering Services for the proposed PROJECT.

II. In consideration of these premises and of the mutual covenants herein set forth to perform, or be responsible for the performance of, the following Construction Engineering Services for the proposed PROJECT.

- a. Consulting on interpretations of plans and specifications and any changes under consideration as construction proceeds, including attending such meetings as may be required to inform the VILLAGE on the progress of the work.

- b. Checking of shop and equipment drawings.
 - c. Providing line-and-grade staking.
 - d. Providing observation of the construction work to become familiar with the progress and quality of the work completed and to determine if the work when completed will be in accordance with the contract documents.
 - e. Making final measurement of quantities of work performed under the contract as required to be able to update Village records and atlas.
 - f. Maintaining a daily record of the contractor's activities throughout construction including sufficient information to permit verification of the nature and cost of changes in plans and authorized extra work.
 - g. Coordination of materials testing engineers and review of materials inspection reports.
 - h. Advising the VILLAGE of defects and deficiencies in the work of the contractor; provided, however, that the ENGINEER does not guarantee the performance of the contract by the contractor.
 - i. Making any necessary changes in working plans as may be required after the award of the construction contract and during construction of the improvement.
 - j. Reviewing contractor's partial and final payment estimates, change orders, and other records that may be required.
 - k. Performing final inspection of all improvements.
- III. To cause to be furnished, when required, the following services, the actual costs for which are to be paid for by the VILLAGE, with approval first being obtained from the VILLAGE of the firms selected to provide these services and their charges for such services:
- a. Investigations and analysis reports of surface and subsurface ground conditions, if required.
- IV. That the ENGINEER will save harmless the VILLAGE and any representative of the VILLAGE from all claims and liabilities due to activities of the ENGINEER, its agents, or its employees and that the ENGINEER will carry adequate insurance at its own expense to provide such protection. Such insurance shall remain in force until this PROJECT is complete; reports have been made and accepted by the VILLAGE.
- V. That the ENGINEER will comply with all applicable Federal Statutes, State of Illinois Statutes, and local laws or ordinances of the municipality in which the work is to be done and shall operate within and uphold the rules and regulations of the VILLAGE.

- VI. That payment by the VILLAGE shall be as hereinafter provided. The ENGINEER shall submit invoices to the VILLAGE, not more frequently than once per month, for partial payment on account for its work completed to date.
- VII. That this AGREEMENT may be terminated by the VILLAGE upon written notice to the ENGINEER, at its last known post office address, with the understanding that should this AGREEMENT be terminated by the VILLAGE, the ENGINEER shall be paid for any services completed and any services partially completed up to the date of termination.
- VIII. That the ENGINEER is qualified technically and is entirely conversant with the policies applicable to this PROJECT and that it has, and will furnish at the request of the VILLAGE, sufficient, properly trained, and experienced personnel to perform the services enumerated herein.
- IX. That the ENGINEER will maintain all books, documents, papers, accounting records, and other evidence pertaining to cost incurred and to make such materials available at its office at all reasonable times during the agreement period and for three (3) years from the date of final payment under this AGREEMENT.
- X. 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 that 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 this AGREEMENT price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

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 Engineering services performed as stipulated in above Section A.1 a sum of money not to exceed Two Thousand and no/100 Dollars (\$2,000.00), 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. To pay the Engineer as compensation for all Construction Engineering services performed as stipulated in above Section A.2 a sum of money not to exceed Five Thousand Five Hundred and no/100 Dollars (\$5,500.00), 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.
- c. To pay for the subletted services as stipulated in above Section A.3 at the actual cost to the ENGINEER; "Cost to ENGINEER" shall be validated by the ENGINEER furnishing the VILLAGE copies of such invoices from the party doing the work. The cost for the subletted services in Section A.3 shall not be subject to the maximum total amount payable defined above, but must be agreed upon in writing in advance of the work.
- d. 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.l.c. (1) of this AGREEMENT shall be due and payable to the ENGINEER.

C. IT IS MUTUALLY AGREED:

- I. That any difference between the ENGINEER and the VILLAGE concerning the interpretation of the provisions of this AGREEMENT shall first be referred to a committee of disinterested parties consisting of one (1) member appointed by the ENGINEER, one (1) member appointed by the VILLAGE, and the third (3rd) member appointed by the two (2) other members ("Committee") for a determination if the matter can be resolved within seven (7) days of it being referred to the committee. If the parties cannot resolve the matter within 30 days after being referred to the Committee, the Parties may proceed as specified in paragraph IIID below.
- II. That this AGREEMENT may be terminated by either party for cause upon thirty (30) days written notice ("Notice Period") that the other party is failing to substantially perform in accordance with the terms of this AGREEMENT through no fault of the other. If the defaulting party fails to cure the defect within the Notice Period, the party providing notice may terminate this AGREEMENT. Upon such termination the VILLAGE shall make payment to the ENGINEER of all sums due and owing it less any amounts necessary to satisfy any breach. The ENGINEER shall cause to be delivered to the VILLAGE, copies of partially completed drawings, specifications, partial and completed estimates, and data, if any, from soil surface and subsurface investigations with the understanding that all such materials become the property of the VILLAGE. The VILLAGE assumes all responsibility and releases the ENGINEER from any liability arising from the VILLAGE's use of partially completed drawings, specifications or other work product prepared by the ENGINEER or for any reuse of ENGINEER's work product on another project.
- III. The 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.
- IV. Except for any emergency or equitable claim, 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.
- V. 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.

- VI. 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 _____, 2013.

VILLAGE OF LA GRANGE PARK
447 Catherine Avenue
La Grange Park, Illinois 60526

By: _____
Dr. James L Discipio, Village President

ATTEST:

By: _____
Amanda G. Seidel, Village Clerk

Executed by the ENGINEER, this

_____ day of _____, 2013.

EDWIN HANCOCK ENGINEERING CO.
9933 ROOSEVELT ROAD
WESTCHESTER, ILLINOIS 60154

By: _____
Derek Treichel, P.E., President

ATTEST:

By: _____
Paul E Flood, Senior 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 in anyway accrue against the VILLAGE, its officials, employees and volunteers, arising in whole or in part in consequence of the negligent or willful performance of this work by the ENGINEER, its employees, or subcontractors, or which may in anyway result therefore, except that arising out of the negligence or willful act of the VILLAGE, its officials, employees and volunteers. The ENGINEER shall, at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefore or incurred in conjunction therewith, and, if any judgment shall be rendered against the VILLAGE, its officials, agents, employees and volunteers, in any such action, the ENGINEER shall, at its own expense, satisfy and discharge the same.
- 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 upon thirty (30) days 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 and all costs 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 will maintain all books, documents, papers, accounting records, and other evidence pertaining to its costs incurred and to make such materials available at the ENGINEER's office at all reasonable times during the AGREEMENT period and retain such records for a period of three (3) years from the date of final payment under this AGREEMENT.
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. In the event of breach of the confidentiality provisions of this AGREEMENT, it shall be conclusively presumed that irreparable injury would result to the VILLAGE and there would be no adequate remedy at law. The VILLAGE shall be entitled to obtain temporary and permanent injunctions, without bond and without proving damages, to enforce this AGREEMENT. The VILLAGE is entitled to damages for any breach of the injunction, including but not limited to compensatory, incidental, consequential, exemplary and punitive damages. The confidentiality provisions of this AGREEMENT survive the termination or performance of this AGREEMENT.
- 21. The ENGINEER will comply all laws, codes, ordinances and regulations which are in effect as of the date of this AGREEMENT.
- 22. 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.
- 23. 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.).
- 24. This AGREEMENT may be terminated by the 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.

25. 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.
26. 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 LA GRANGE PARK
447 North Catherine Avenue
La Grange Park, Illinois 60526
Attn: Ms. Julia Cedillo, Village Manager
 - b. If to the ENGINEER:
EDWIN HANCOCK ENGINEERING COMPANY.
9930 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.
27. 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.
28. The terms of this AGREEMENT shall be binding upon and inure to the benefit of the parties and their respective successors.
29. 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.
30. 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.
31. 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.

AGREEMENT
between
THE VILLAGE OF LA GRANGE PARK
and
EDWIN HANCOCK ENGINEERING CO.
for the
FURNISHING OF PROFESSIONAL SERVICES
for

RELOCATION OF WATER MAIN OUT OF OAK STREET SEWER LINE

THIS AGREEMENT, made and entered into by and between THE VILLAGE OF LA GRANGE PARK, hereinafter referred to as the "VILLAGE", and EDWIN HANCOCK ENGINEERING CO., hereinafter referred to as the "ENGINEER", has been prepared and executed to document the Professional Engineering Services provided by the ENGINEER, set forth below. The said project shall be designated as the "Relocation of Water Main Out of Oak Street Sewer Line" hereinafter referred to as the "PROJECT". The PROJECT will be located at the intersection of Oak Street and Kemman and Oak Street and Newberry in the Village of La Grange Park.

The specific scope of the improvement is the relocation of the existing water main that crosses through the existing sewer line on Oak Street at Kemman and at Newberry which are causing obstructions in the sewer line.

Preliminary Engineering includes the preparation of any necessary plans, specifications and bidding documents for the proposed work; preparation and submittal of applications for permits required from various agencies; and performance of other necessary engineering services outlined in Section I.A. of this agreement.

Construction Engineering includes line and grade staking of the proposed work, observation of the work as it progresses to verify its compliance with the plans and specifications, attendance at meetings during construction as may be required, measurement of quantities and preparation of pay estimates as required, as well as other services outlined in Section I.B. of this AGREEMENT.

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

A. THE ENGINEER AGREES;

I. In consideration of these premises and of the mutual covenants herein set forth to perform, or be responsible for the performance of, the following Preliminary Engineering Services for the proposed PROJECT.

- a. Preparing preliminary design criteria.
- b. Preparing preliminary plans as necessary.
- 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 improvements.
- e. Preparing necessary plans, specifications, bid proposals, 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.
- g. Assisting the VILLAGE in the tabulation and interpretation of contractors' bid proposals.
- h. In consideration of these premises and of the mutual covenants herein set forth to perform, or be responsible for the performance of, the following Engineering Services for the proposed PROJECT.

II. In consideration of these premises and of the mutual covenants herein set forth to perform, or be responsible for the performance of, the following Construction Engineering Services for the proposed PROJECT.

- a. Consulting on interpretations of plans and specifications and any changes under consideration as construction proceeds; including attending such meetings as may be required to inform the VILLAGE on the progress of

work is to be done and shall operate within and uphold the rules and regulations of the VILLAGE.

- VI. That payment by the VILLAGE shall be as hereinafter provided. The ENGINEER shall submit invoices to the VILLAGE, not more frequently than once per month, for partial payment on account for its work completed to date.
- VII. That this AGREEMENT may be terminated by the VILLAGE upon written notice to the ENGINEER, at its last known post office address, with the understanding that should this AGREEMENT be terminated by the VILLAGE, the ENGINEER shall be paid for any services completed and any services partially completed up to the date of termination.
- VIII. That the ENGINEER is qualified technically and is entirely conversant with the policies applicable to this PROJECT and that it has, and will furnish at the request of the VILLAGE, sufficient, properly trained, and experienced personnel to perform the services enumerated herein.
- IX. That the ENGINEER will maintain all books, documents, papers, accounting records, and other evidence pertaining to cost incurred and to make such materials available at its office at all reasonable times during the agreement period and for three (3) years from the date of final payment under this AGREEMENT.
- X. 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 that 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 this AGREEMENT price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

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 Engineering services performed as stipulated in above Section A.1 a sum of money not to exceed Four Thousand Three Hundred and no/100 Dollars (\$4,300.00), 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. To pay the Engineer as compensation for all Construction Engineering services performed as stipulated in above Section A.2 a sum of money not to exceed Five Thousand Five Hundred and no/100 Dollars (\$5,500.00), 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.
- c. To pay for the subletted services as stipulated in above Section A.3 at the actual cost to the ENGINEER; "Cost to ENGINEER" shall be validated by the ENGINEER furnishing the VILLAGE copies of such invoices from the party doing the work. The cost for the subletted services in Section A.3 shall not be subject to the maximum total amount payable defined above, but must be agreed upon in writing in advance of the work.
- d. 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.c. (1) of this AGREEMENT shall be due and payable to the ENGINEER.

C. IT IS MUTUALLY AGREED:

- I. That any difference between the ENGINEER and the VILLAGE concerning the interpretation of the provisions of this AGREEMENT shall first be referred to a committee of disinterested parties consisting of one (1) member appointed by the ENGINEER, one (1) member appointed by the VILLAGE, and the third (3rd) member appointed by the two (2) other members ("Committee") for a determination if the matter can be resolved within seven (7) days of it being referred to the committee. If the parties cannot resolve the matter within 30 days after being referred to the Committee, the Parties may proceed as specified in paragraph IIID below.
- II. That this AGREEMENT may be terminated by either party for cause upon thirty (30) days written notice ("Notice Period") that the other party is failing to substantially perform in accordance with the terms of this AGREEMENT through no fault of the other. If the defaulting party fails to cure the defect within the Notice Period, the party providing notice may terminate this AGREEMENT. Upon such termination the VILLAGE shall make payment to the ENGINEER of all sums due and owing it less any amounts necessary to satisfy any breach. The ENGINEER shall cause to be delivered to the VILLAGE, copies of partially completed drawings, specifications, partial and completed estimates, and data, if any, from soil surface and subsurface investigations with the understanding that all such materials become the property of the VILLAGE. The VILLAGE assumes all responsibility and releases the ENGINEER from any liability arising from the VILLAGE's use of partially completed drawings, specifications or other work product prepared by the ENGINEER or for any reuse of ENGINEER's work product on another project.
- III. The 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.
- IV. Except for any emergency or equitable claim, 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.

- V. 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.

- VI. 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 _____, 2013.

VILLAGE OF LA GRANGE PARK
447 Catherine Avenue
La Grange Park, Illinois 60526

By: _____

Dr. James L Discipio, Village President

ATTEST:

By: _____
Amanda G. Seidel, Village Clerk

Executed by the ENGINEER, this

_____ day of _____, 2013.

EDWIN HANCOCK ENGINEERING CO.
9933 ROOSEVELT ROAD
WESTCHESTER, ILLINOIS 60154

By: _____

Derek Treichel, P.E., President

ATTEST:

By: _____
Paul E Flood, Senior 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 in anyway accrue against the VILLAGE, its officials, employees and volunteers, arising in whole or in part in consequence of the negligent or willful performance of this work by the ENGINEER, its employees, or subcontractors, or which may in anyway result therefore, except that arising out of the negligence or willful act of the VILLAGE, its officials, employees and volunteers. The ENGINEER shall, at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefore or incurred in conjunction therewith, and, if any judgment shall be rendered against the VILLAGE, its officials, agents, employees and volunteers, in any such action, the ENGINEER shall, at its own expense, satisfy and discharge the same.
- 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 resumptions of the services upon expiration of the Suspension of Services Order.
7. This AGREEMENT may be terminated by the VILLAGE upon thirty (30) days 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 and all costs 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 will maintain all books, documents, papers, accounting records, and other evidence pertaining to its costs incurred and to make such materials available at the ENGINEER's office at all reasonable times during the AGREEMENT period and retain such records for a period of three (3) years from the date of final payment under this AGREEMENT.
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. In the event of breach of the confidentiality provisions of this AGREEMENT, it shall be conclusively presumed that irreparable injury would result to the VILLAGE and there would be no an adequate remedy at law. The VILLAGE shall be entitled to obtain temporary and permanent injunctions, without bond and without proving damages, to enforce this AGREEMENT. The VILLAGE is entitled to damages for any breach of the injunction, including but not limited to compensatory, incidental, consequential, exemplary and punitive damages. The confidentiality provisions of this AGREEMENT survive the termination or performance of this AGREEMENT.
- 21. The ENGINEER will comply all laws, codes, ordinances and regulations which are in effect as of the date of this AGREEMENT.
- 22. 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.
- 23. 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.).
- 24. This AGREEMENT may be terminated by the 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.

25. 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.
26. 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 LA GRANGE PARK
447 North Catherine Avenue
La Grange Park, Illinois 60526
Attn: Ms. Julia Cedillo, Village Manager
 - b. If to the ENGINEER:
EDWIN HANCOCK ENGINEERING COMPANY.
9930 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.
27. 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.
28. The terms of this AGREEMENT shall be binding upon and inure to the benefit of the parties and their respective successors.
29. 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.
30. 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.
31. 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 or **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.

Village Board Agenda Memo

Date: 5/06/13

To: President and Board of Trustees

From: Brendan McLaughlin, Public Works Director *BJM*
Julia Cedillo, Village Manager *JC*

RE: **2013 Beach Avenue Paving – Phase 3 (IDOT Resolution)**

PURPOSE: The Beach Avenue paving program will soon be submitted to IDOT for approval to spend \$235,000 of Motor Fuel Tax Funds.

GENERAL BACKGROUND:

This year's budget includes the paving and replacement of sewer/water main as needed on Beach, from 29th to 31st. In addition to MFT funds, money has also been budgeted in the Sewer, Water and Capital Improvement Projects funds for this project.

Hancock Engineering has prepared a "Resolution for Improvement by Municipality Under the Illinois Highway Code" for this paving project. The total amount budgeted for this project (inclusive of engineering) is \$717,910. The MFT portion is \$235,000 or 33%.

MOTION/ACTION REQUESTED:

Motion approving a "Resolution for Improvement by Municipality Under the Illinois Highway Code" for the expenditure of \$235,000 in MFT funds.

STAFF RECOMMENDATION:

Staff recommends approval of this document.

DOCUMENTATION:

- Resolution for Improvement by Municipality Under the Illinois Highway Code



BE IT RESOLVED, by the President and Board of Trustees of the Village of LaGrange Park of Illinois

that the following described street(s) be improved under the Illinois Highway Code:

Table with 4 columns: Name of Thoroughfare, Route, From, To. Row 1: Beach Avenue, 31st Street, 29th Street

BE IT FURTHER RESOLVED,

1. That the proposed improvement shall consist of the resurfacing of the roadway including curb and gutter replacement, sidewalk improvements, removal and replacement of driveways landscape restoration and other related improvements

and shall be constructed 25' E-E wide and be designated as Section 13-00073-00-RS

2. That there is hereby appropriated the (additional Yes No) sum of Two Hundred Thirty Five Thousand and no/100 Dollars (\$235,000.00) for the improvement of said section from the municipality's allotment of Motor Fuel Tax funds.

3. That work shall be done by Contract ; and, Specify Contract or Day Labor

BE IT FURTHER RESOLVED, that the Clerk is hereby directed to transmit two certified copies of this resolution to the district office of the Department of Transportation.

Approved
Date
Department of Transportation
Regional Engineer

I, Amanda G. Seidel Clerk in and for the Village of LaGrange Park of Cook County, hereby certify the foregoing to be a true, perfect and complete copy of a resolution adopted by the President and Board of Trustees at a meeting on May 28, 2013 IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this day of May, 2013 (SEAL) City, Town, or Village Clerk

Village Board Agenda Memo

Date: 5/06/13

To: President and Board of Trustees

From: Brendan McLaughlin, Public Works Director *BJM*
Julia Cedillo, Village Manager *JC*

RE: **Sale of Surplus Vehicles and Equipment at WCMC Spring Auction**

PURPOSE: Sale of surplus vehicles and equipment at the WCMC Spring Auction.

GENERAL BACKGROUND:

The WCMC Spring 2013 Vehicle & Equipment Auction is scheduled for Saturday, June 29, 2013 at Triton College. All WCMC communities are eligible to participate in this Auction.

The Department of Public Works has the following items which have been determined to be surplus:

1998 Dodge Durango	1B4HS28YWF216283
1993 Chevrolet Pickup	1GCFK24C9PE139464
1978 Mouldin Steel Wheeled Roller	ID# 247713

Minimum bids that must be paid to purchase the items at auction will be set as follows:

1998 Dodge Durango	\$1,000
1993 Chevrolet Pickup	\$2,000
1978 Mouldin Steel Wheeled Roller	\$500

MOTION / ACTION REQUESTED:

Motion approving an Ordinance Authorizing the Sale by Public Auction of Personal Property Owned by the Village of La Grange Park.

STAFF RECOMMENDATION:

In order to participate in the auction, a signed Ordinance must be presented to the WCMC by June 28, 2013. Staff is recommending adoption of this Ordinance.

DOCUMENTATION:

- Ordinance Authorizing the Sale by Public Auction of Property Owned by the Village of La Grange Park.

Ordinance No. _____

**An Ordinance
Authorizing the Sale by Public Auction
of Personal Property Owned by the
Village of La Grange Park**

WHEREAS, Article 7, Section 10 of the Constitution of the State of Illinois encourages intergovernmental cooperation and authorizes units of local government to contract and associate among themselves to obtain or share services and to exercise, combine or transfer any power or function, in any manner not prohibited by law or ordinance; and

WHEREAS, the Intergovernmental Cooperation Act, 5 ILCS 220/1, et seq., and the Illinois Municipal Code 65 ILCS 5/1-1-5, et seq., and 5/11-15.1-1, et seq., authorize units of local government to exercise their powers, privileges and authority for the purposes of intergovernmental cooperation; and

WHEREAS, the West Central Municipal Conference is a not-for-profit corporation comprised of municipal members dedicated to fostering intergovernmental cooperation; and

WHEREAS, units of local government have joined together in cooperation with the West Central Municipal Conference for the purpose of auctioning or otherwise disposing of surplus vehicles, equipment, and materials; and

NOW, THEREFORE, THE AFORESAID IS HEREBY INCORPORATED BY REFERENCE AND IT IS ORDAINED BY THE VILLAGE BOARD AS FOLLOWS:

Section 1: Pursuant to 65 ILCS, 5/11-76-4 or 65 ILCS 5/11-76-4.2, the following personal property is hereby declared to be surplus and not needed and it is hereby found that it would be best served by the sale of the described personal property:

<u>Vehicle ID Number</u>	<u>Unit Number</u>	<u>Year</u>	<u>Make</u>	<u>Minimum Value</u>
1B4HS28YWF216283		1998	Dodge Durango	\$1,000
1GCFK24C9PE139464		1993	Chevrolet 2500 Pickup	\$2,000
ID# 247713		1978	Mouldin Steel Wheeled Roller	\$500

Section 2: MANNER OF DISPOSAL: The Village Manager is hereby authorized and directed to enter into an agreement with the West Central Municipal Conference for the sale of said surplus equipment described in Section 1 above. The sales shall be advertised and the auction conducted by an auctioneer compensated in the manner prescribed by the Conference. Participation is on a first come, first served basis. The auction has been scheduled for Saturday, June 29, 2013, at Triton College in River Grove, Illinois.

The WCMC has entered into an agreement with Obenauf Auction Service, Inc. to conduct its Spring 2013 auction. Obenauf Auction Service, Inc. shall accept the highest bid on each surplus item auctioned, provided same is no less than the minimum value individually set forth in Section 1 (unless a lower bid is approved by an authorized on-site Village representative). Upon verifiable payment of the auction price, the Village Manager is hereby authorized and directed to convey and transfer title of the aforementioned personal property to the successful bidder.

Section 3: Brendan McLaughlin, or his designee, is hereby authorized to direct the sale of the aforesaid personal property at the next scheduled West Central Municipal Conference Auction.

Section 4: This ordinance shall be in full force and effect from its passage.

AYES:

NAYS:

ABSTENTIONS:

PASSED AND APPROVED this 28th day of May, 2013.

James L. Discipio, Village President

ATTEST:

Amanda Siedel, Village Clerk

Village Board Agenda Memo

Date: 5/06/13

To: President and Board of Trustees

From: Brendan McLaughlin, Public Works Director *BTM*
Julia Cedillo, Village Manager *JC*

RE: Purchase of Replacement Vehicle

PURPOSE: Purchase of vehicle to replace the 1998 Dodge Durango.

GENERAL BACKGROUND:

The 2013/14 Village of La Grange Park Budget includes funds to purchase a replacement vehicle for the 1998 Dodge Durango. The Suburban Purchasing Cooperative has awarded a contract to Freeway Ford for F150 Pick-Up trucks. A pick-up truck is proposed in lieu of a SUV, as it is more functional as a Public Works vehicle. The specifications for this vehicle were prepared based on the truck's forecasted use in the fleet.

\$35,000 is budgeted for this vehicle. The actual price is \$26,898.

A portion of the remaining balance will be used for the purchase of an equipment box, radio and appurtenance installation.

MOTION/ACTION REQUESTED:

Motion authorizing the purchase of a F150 Pick-Up Truck as specified from Freeway Ford in the amount of \$26,898.

STAFF RECOMMENDATION:

Staff is recommending the purchase of a F150 pick-up truck as specified from Freeway Ford, for a total amount of \$26,898 be approved.

DOCUMENTATION:

- Quote from Freeway Ford



FREEWAY



"Chicagoland's Truck Professionals"

**LaGrange Park
Att: Brendan McLaughlin**

We are pleased to do your quote on the 2013 Ford F-150 Super Cab XLT:

- *Exterior to be determined**
- *Gray Cloth Interior**
- *Trailer Tow**
- *4X4**
- *V6**
- *Rear View Camera**
- *Vinyl Floor**
- *Spray in Bed Liner**
- *XLT Convenience Package**
- *XLT Plus Package**
- *Undercoating**
- *4 Corner LEDs**

Total Price \$26,898.00

Thank you and if you have any questions please call.

Sincerely,

**Peter DeMeis
Freeway Ford**

Village Board Agenda Memo

Date: 5/06/13

To: President and Board of Trustees

From: Brendan McLaughlin, Public Works Director *BTM*
Julia Cedillo, Village Manager *JMC*

RE: 2013 Concrete Restoration Program

PURPOSE: To present a recommendation to award a contract in an amount not to exceed \$30,000 to complete sidewalk removal and replacement work, along with miscellaneous concrete restoration work.

GENERAL BACKGROUND:

The sidewalk removal and replacement program was approved by the Village Board in the 2013-14 Budget, and continues to focus on the elimination of potential "trip" hazards to provide safe public sidewalks. The sidewalks that are determined to be a potential trip hazard will be removed and replaced at no cost to residents. Some curb and driveway approaches removed from utility repairs will also be replaced as part of this project.

In an attempt to secure competitive pricing, staff worked with the Villages of Countryside, La Grange, North Riverside, Riverside and Western Springs, and put together a bid packet. A legal notice was published in the Suburban Life Newspaper on April 17, 2013, and the bid opening was held on May 6, 2013 at 9:30a.m. The results from the bid opening are attached. Both vendors submitted identical bids for the Village of La Grange Park. Staff is evaluating references and will determine a recommended contractor for the Village Board Meeting on May 28th.

The Village has budgeted \$20,000 for concrete repairs, and \$10,000 for slab-jacking. At this time, we have identified all locations requested by residents and all locations impacted by utility repairs. It is requested that the funds budgeted for slab-jacking be made available for this contract. While the bid came in below \$30,000, staff anticipates that the Village may need field changes and are requesting authorization up to the total \$30,000 budgeted.

MOTION / ACTION REQUESTED:

Motion to award a contract to *(the selected vendor)* in the amount not to exceed \$30,000 for completion of sidewalk removal and restoration and other concrete work to be performed in the Village of La Grange Park.

RECOMMENDATION:

Staff recommends awarding a contract to the selected contractor in an amount not to exceed \$30,000.

DOCUMENTATION:

- Bid Tabulation Sheet

BID TABULATION

BID DATE & TIME: Monday, MAY 6, 2013 @ 9:30a.m.

PROJECT: 2013 Sidewalk Program for the Villages of Countryside, La Grange, La Grange Park, North Riverside, Riverside & Western Springs

BASE BID	TOTAL QUANTITY	UNIT	SCHROEDER & SCHROEDER		GLOBE CONSTRUCTION	
			UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
1. Item #01-A						
P.C.C. Removal (5-6") and Replacement (5-6")						
Village of North Riverside		**				
Village of La Grange	2,000	SF	\$8.00	\$16,000.00	\$8.00	\$16,000.00
Village of La Grange Park	3,000	SF	\$8.00	\$24,000.00	\$8.00	\$24,000.00
Village of Countryside	2,500	SF	\$8.00	\$20,000.00	\$8.00	\$20,000.00
Village of Western Springs	5,775	SF	\$8.00	\$46,200.00	\$7.00	\$40,425.00
2. Item #01-B (Village of Riverside)						
Pea Gravel Mix						
P.C.C. Removal (5") /Replacement (5")	4550	SF	\$12.00	\$54,600.00	\$7.00	\$31,850.00
P.C.C. Removal (6") /Replacement (6")	400	SF	\$12.50	\$5,000.00	\$7.00	\$2,800.00
P.C.C. Removal (7") /Replacement (7") at Commerical Driveways	125	SF	\$13.00	\$1,625.00	\$8.00	\$1,000.00
3. Item #01-C (Village of Western Springs)						
P.C.C. Sidewalk Removal (7") /Replacement (7") at Commerical Driveways						
	810	SF	\$9.00	\$7,290.00	\$8.00	\$6,480.00
4. Item #02						
Combination Curb & Gutter Removal and Replacement (M3.12, B6.12, B6.18)						
Village of North Riverside		**				
Village of Riverside	0	LF	\$35.00	\$0.00		\$0.00
Village of La Grange	100	LF	\$35.00	\$3,500.00	\$25.00	\$2,500.00
Village of La Grange Park	50	LF	\$35.00	\$1,750.00	\$35.00	\$1,750.00
Village of Countryside	100	LF	\$35.00	\$3,500.00	\$25.00	\$2,500.00
Village of Western Springs	100	LF	\$35.00	\$3,500.00	\$25.00	\$2,500.00
TOTALS:				\$186,865.00		\$151,805.00
SUPPLEMENTAL UNIT PRICES						
1. Item #03						
5" Detectable Warnings (if needed)						
Village of Western Springs	150	SF	\$45.00	\$6,750.00	\$20.00	\$3,000.00
Village of Countryside	60	SF	\$45.00	\$2,700.00	\$20.00	\$1,200.00
2. Item #04						
ADA Panels (if needed)						
	1	EA	\$325.00	\$325.00	\$200.00	\$200.00

**North Riverside's Budget will not be approved until June 2013. Upon budget approval, they would like to participate in the unit prices for this bid.

TOTALS BY VILLAGE: (does not include supplemental)

	SCHROEDER	GLOBE
Village of North Riverside		
Village of Riverside	\$61,225.00	\$35,650.00
Village of La Grange	\$19,500.00	\$18,500.00
Village of La Grange Park	\$25,750.00	\$25,750.00
Village of Countryside	\$23,500.00	\$22,500.00
Village of Western Springs	\$56,990.00	\$49,405.00
	<u>\$186,965.00</u>	<u>\$151,805.00</u>

Finance Committee

Patricia Rocco, Chairwoman

Scott Mesick

James Kucera

Village Board Agenda Memo

Date: May 6, 2013

To: Finance Committee Chair Patricia Rocco
President & Board of Trustees

From: Pierre Garesché, Finance Director *P.G.*
Julia Cedillo, Village Manager *J.C.*

Re: **Motor Fuel Tax Appropriation**

GENERAL BACKGROUND:

The Village President and Board of Trustees authorized a bond issue in the spring of 2004 to finance the paving of numerous streets. The intent was to retire the bonds using primarily Motor Fuel Tax revenue, with smaller contributions from the Water Fund and the Sewer Fund for that portion of the project related to water and sewer infrastructure respectively.

If we are to use Motor Fuel Tax funds to pay principal and interest to the bondholders, the Board needs to pass a resolution each year appropriating the necessary funds. The Illinois Department of Transportation uses a standard form for this purpose entitled "Obligation Retirement Resolution". The resolution accompanies this memo.

One might note the resolution appropriates a smaller sum [\$223,203.48] than is needed to make the principal and interest payments [\$268,435.00]. The difference between the two amounts is the sum to be paid from Water Fund and Sewer Fund monies. The Water Fund will pay \$12,462.87 and the Sewer Fund \$32,768.65.

MOTION/ACTION REQUESTED:

"I move that the Board approve the accompanying Obligation Retirement Resolution appropriating \$223,203.48 of Motor Fuel Tax funds for the purpose of paying bond principal and interest."

STAFF RECOMMENDATION:

We recommend the resolution be approved at the May 28, 2013 board meeting.

DOCUMENTATION:

Obligation Retirement Resolution



A resolution providing for the retirement of certain municipal indebtedness by the use of motor fuel tax funds

WHEREAS, the Village of La Grange Park has outstanding
(County or Municipality)

indebtedness described as follows:
\$2,260,000 General Obligation Bonds, Series 2004
(Title of bond issue or paving district and municipal motor fuel tax section number)

Bonds or Public Benefit Assessments	Number of the Bonds or Assessments	Interest or Principal	Date Due	Amount
Bonds	9	Principal	12/1/2013	\$250,000.00
		Interest	6/1/2013	9,217.50
		Interest	12/1/2013	9,217.50
		Total		\$268,435.00

and.
WHEREAS, in the opinion of this body, the indebtedness described in the preceding paragraph may be retired with funds allotted to the municipality under the Motor Fuel Tax Law, and

WHEREAS, it appears that sufficient motor fuel tax funds are or will be available when the above indebtedness is due, and

WHEREAS, the President and Board of Trustees has, by resolution adopted 11/27/2012
(County Board, Council or President and Board of Trustees) Ord. # 961,

directed the Clerk of Cook County to cancel the 2012 tax levy (for taxes
(year)
collectable in 2013) which would have produced funds to pay this indebtedness. (Not applicable to special
(year)
assessment projects.)

NOW, THEREFORE, BE IT RESOLVED, that there is hereby appropriated the sum of Two Hundred Twenty-Three
Thousand, Two Hundred
Three and 48/100 dollars (\$ 223,203.48) from funds allotted to the county or municipality
under the Motor Fuel Tax Law for the payment of the above-described indebtedness, and

BE IT FURTHER RESOLVED, that the Clerk shall immediately transmit three (3) certified copies of this resolution to the
Regional Engineer, Department of Transportation, District 1, Schaumburg, Illinois.

I, Amanda G. Seidel Village Clerk in and
(County or Municipal)

for the Village of La Grange Park hereby certify
(County or Municipality)

the foregoing to be a true, perfect and complete copy of a resolution adopted by the
President and Board of Trustees at a meeting on May 28, 2013
(County Board, Council or President and Board of Trustees)

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this 28th day
of May, A.D. 2013.

Village Clerk.
(County or Municipal)

(Seal)

Public Works Garage Committee

Scott Mesick, Chairman

Michael Sheehan

Robert Lautner

Village Board Agenda Memo

Date: 5/06/13

To: President and Board of Trustees

From: Brendan McLaughlin, Public Works Director
Julia Cedillo, Village Manager

BSM



RE: Public Works Garage – Design Build Agreement

PURPOSE: To present to the Village Board for approval a Design Build Agreement with Leopardo Construction for the Public Works Garage Renovation.

GENERAL BACKGROUND:

In December 2013, the Village Board entered into a Letter of Agreement with Leopardo Construction to complete design and bidding documents for the Public Works Garage Renovation. That work has been completed and bids were received on Wednesday, May 8th. Leopardo reviewed the bids and will brief the Village Board at the Work Session Meeting on May 14th.

Based on the amounts included in the bids, it is recommended that the Village Board approve a Design Build Agreement (Cost Plus Fee) with a Guaranteed Maximum Price between the Village of La Grange Park and Leopardo Construction. The Guaranteed Maximum Price will be finalized for the May 28th Village Board Meeting.

The Public Works Garage Committee received a briefing on the project at their May 7th Meeting. They indicated that they were satisfied with this approach. The contract has been reviewed and approved by the Village Attorney.

It is also requested that the Village Board grant approval for the environmental abatement work so that it can start immediately, thereby saving time later in the project. The cost for the environmental cleanup is a not to exceed figure of \$40,000, and this amount will be applied against the Guaranteed Maximum Price.

MOTION/ACTION REQUESTED:

For the May 14th meeting: Motion to authorize environmental mitigation work to begin in advance of the renovation work at the Public Works Garage, in an amount not to exceed \$40,000.

For the May 28th meeting: Motion authorizing the Village President to execute a Design Build Agreement with Leopardo Construction in an amount not to exceed (amount to be determined).

STAFF RECOMMENDATION:

Staff recommends approval of these two motions.

DOCUMENTATION:

- Standard Form of Agreement Between Owner and Design-Builder Cost Plus Fee with an Option for a Guaranteed Maximum Price

DBIA



**DESIGN-BUILD
INSTITUTE OF AMERICA**

Standard Form of Agreement Between Owner and Design-Builder Cost Plus Fee with an Option for a Guaranteed Maximum Price

*This document has important legal consequences. Consultation with
an attorney is recommended with respect to its completion or modification.*

This **AGREEMENT** is made as of the _____ day of _____
in the year of _____, by and between the following parties, for services in connection with the Project
identified below:

OWNER:

Village of LaGrange Park
*447 N. Catherine
La Grange Park, IL 60526*

DESIGN-BUILDER:

Leopardo Companies, Inc.
*5200 Prairie Stone Parkway
Hoffman Estates, IL 60192*

PROJECT:

Village of LaGrange Park – Public Works Building Renovation
*937 N. Barnsdale Road
LaGrange Park, IL 60526*

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder
agree as set forth herein.

Article 1
Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and in accordance with the Contract Documents.

Article 2
Contract Documents

2.1 The Contract Documents are comprised of the following:

- .1 This contract and all written modifications, amendments (including, as applicable, the Guaranteed Maximum Price (GMP) Exhibit referenced in Section 6.5.1.1 hereof or the GMP Proposal accepted by Owner in accordance with Section 6.5.2 hereof) and change orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (1998 Edition) ("General Conditions of Contract") as modified;
- .2 The construction documents shall also include the construction documents as approved by Owner, the required Certificate of Insurance, the required Performance and Payment Bonds (if deemed necessary by Owner), the Certification of Eligibility to enter into public contracts and other certifications required by the Village, the Agreement as defined herein, the General Conditions of the Contract (DBIA Document no. 535, 1998 Edition, as modified)
- .3
- .4 The General Conditions of Contract;
- .5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract;
- .6 Owner's Project Criteria; and
 - 2.1.6.1 In Owner's Project Criteria, Owner shall set forth in detail Owner's program requirements and objectives for the Project including use, space, target price, target time, space requirements and relationships, site information (including subsurface investigations), flexibility/expandability, operation and maintenance and special systems or equipment requirements.
- .7 The following other documents, if any: Construction Schedule, Unit Price Schedule, and Allowance Schedule.
 - .1 Design-Builder's Proposal (but any provision of Design-Builder's Proposal expressly excluded by Article 11 of this Agreement shall not be a part of the Contract Documents) attached as Exhibit A.

Article 3

Interpretation and Intent

3.1 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price subject to adjustments for the reasons and in the amounts set forth elsewhere in this Agreement and the Contract Documents. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof, except that Design-Builder's Proposal shall have the highest priority.

3.2 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.3 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including the copyrights thereto.

4.2 Owner's Limited License Upon Payment in Full. Upon Design-Builder's written affirmation of Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its use of the Work Product is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties").

4.3 N/A

4.4 Owner's Limited License Upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract and (i) it is determined by a court of competent jurisdiction or, if arbitration is the parties' selected dispute resolution, upon confirmation of any arbitration award in which it was determined that Design-Builder was in default and (ii) Owner has fully satisfied all of its obligations under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's completion and occupancy of the Project. This limited license is conditioned on Owner's express understanding that its use of the Work Product is at Owner's sole risk and without liability or legal exposure to any Indemnified Party.

4.5 Owner's Indemnification for Use of Work Product. If Owner uses the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use of the Work Product.

Article 5

Contract Time

5.1 Date of Commencement. The Work shall commence within five (5) days after the last of Design-Builder's receipt of ("Date of Commencement").

(a) Owner's Project Criteria setting forth in detail Owner's program requirements and objectives for the Project including use, space, target price, target time, space requirements and relationships, site information (including subsurface investigations), flexibility/expandability, operation and maintenance and special systems or equipment requirements; (b) written confirmation that project financing is in place sufficient to ensure payment of the entire Contract Sum timely and in full accordance with the payment terms of this Agreement to the reasonable satisfaction of Design-Builder; (c) Owner's payment of Pre-Construction Services, if any; and (d) an original of this Agreement and the other Contract Documents executed by Owner.

5.2 Substantial Completion and Final Completion

5.2.1 Design-Builder shall use Design-Builder's best efforts to achieve Substantial Completion of the entire Work no later than (120) calendar days after the Date of Commencement.

5.2.2 Substantial Completion is the stage in the progress of the Work of the earliest when (a) the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, or (b) any of a temporary, conditional or permanent certificate of occupancy is issued by the governing authorities, or (c) the final governmental inspection to issue a temporary, conditional or permanent certificate of occupancy occurs where the certificate is not issued as a result of an event or occurrence other than Design-Builder's failure to design in accordance with applicable law or to install Work in accordance with the Contract Documents.

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable.

5.2.4 All of the dates set forth in this Article 5 ("Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract, and subparagraph 5.2.4.1 of this Agreement.

5.2.4.1 If Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a separate contractor employed by the Owner, or by changes ordered in the Work or by delays in the approval of changes in the Work, or by the encountering of hazardous substances, or by concealed, unforeseen or subsurface conditions, adverse weather, actions or inactions of governing authorities, or by delay or failure to act of utility services (telephone, cable, electrical, **gas**, etc.), or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other **causes** beyond Design-Builder's control, or by delay authorized by the Owner pending any mediation and any arbitration, or by other causes not caused by Design-Builder, then the Contract Time and Bonus Date each shall be extended by change order.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages.

N/A

5.5 Early Completion Bonus.

N/A

Article 6
Contract Price

6.1 Contract Price

6.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") equal to Design-Builder's Fee (as defined in Section 6.2 hereof) plus the Cost of the Work (as defined in Section 6.3 hereof), subject to any GMP established in Section 6.5 hereof and any adjustments made in accordance with the General Conditions of Contract.

6.1.2 For the specific Work set forth below, Owner agrees to pay Design-Builder, distinct from and in addition to the Contract Price, on the following basis:

Pre-Contractual services, including programming and design, will be included as part of overall GMP and has been contracted between owner and design-builder per the "Letter Agreement Pending Formal Contract" dated 12/6/2012.

6.2 Design-Builder's Fee

6.2.1 Five percent (5%) of the Cost of the Work, as adjusted in accordance with Section 6.2.2 below. (less amounts previously paid for design work)

6.2.2 Design-Builder's Fee will be adjusted as follows for any changes in the Work:

In case of an increase in the Guaranteed Maximum Price, to the sum of the Cost of the Work and the 1.2% Design-Builder's general liability insurance mark-up, add an additional mark-up of 5% and, if applicable, add a bond mark-up of 1% on the sum of the above. In case of a decrease in the Guaranteed Maximum Price, from the sum of the Cost of the Work and the 1.2% Design-Builder's general liability insurance mark-up, subtract 3.5% and, if applicable, subtract an additional 1 % on the sum of the above for bond credit, if applicable.

6.3 Cost of the Work. The term Cost of the Work shall mean costs reasonably incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the following:

- .1 Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's written agreement, at locations off the Site, provided, however, that the costs for those employees of Design-Builder performing design services shall be paid in accordance with "Letter Agreement Pending Formal Contract" dated December 6, 2012
- .2 Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.
- .3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices and performing the following functions. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall include a zero percent (0 %) markup to compensate Design-Builder for the Project-related overhead associated with such personnel.

<u>Project Manager</u>	<u>\$96.00/hour</u>
<u>Superintendent</u>	<u>\$108.00/hour</u>

Project Assistant \$37.00/hour

- .4 Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.3.1 through 6.3.3 hereof.
- .5 N/A
- .6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants or amounts expended by Design-Builder and deducted from Subcontractors or Design Consultants in accordance with the Subcontracts.
- .7 Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work, provided that such defective, damaged or nonconforming Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the gross negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such defective, damaged or nonconforming Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise best efforts to obtain recovery from the appropriate source and credit Owner if recovery is obtained.
- .8 Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work or those not used as a result of Owner's changes in the Work.
- .9 Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.
- .10 Costs of removal of debris and waste from the Site.
- .11 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.
- .12 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work at the rental costs incurred by Design-Builder or, in the case of equipment owned by or leased from Design-Builder, in accordance with Design-Builder's equipment schedule.
- .13 Premiums for insurance and bonds required by this Agreement or the performance of the Work and, in the case of adjustments in the Guaranteed Maximum Price, in accordance with subparagraph 6.2.2 above.

- .14 All fuel and utility costs incurred in the performance of the Work.
- .15 This project is exempt from local sales tax.
- .16 Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder.
- .17 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.
- .18 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, including, without limitation, attorneys', consultants', experts' fees, costs and expenses of Design-Build personnel paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.
- .19 Deposits which are lost, except to the extent caused by Design-Builder's negligence.
- .20 Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.
- .21 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

6.4 Non-Reimbursable Costs

The following shall be excluded from the Cost of the Work:

- .1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.3.1, 6.3.2 and 6.3.3 hereof.
- .2 Home Office Overhead and general expenses, except as provided for in Section 6.3 hereof, or which may be recoverable for changes to the Work.
- .3 The cost of Design-Builder's capital used in the performance of the Work.
- .4 If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

6.5 The Guaranteed Maximum Price

6.5.1 GMP Established Upon Execution of this Agreement

6.5.1.1 Design-Builder guarantees that it shall not exceed the GMP of One Million Dollars & 00/100 Dollars (\$ 1,000,000). Design-Builder does not guarantee any specific line item provided as part of the GMP, but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents. Documents used as a basis for the GMP shall be identified in an exhibit to this Agreement ("GMP Exhibit").

6.5.1.2 The GMP includes a Contingency in the amount of To Be Determined Dollars

(\$ _____) which is available for Design-Builder's exclusive use for costs that are incurred in performing the Work that are not included in a specific line item or the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs include trade buy-out differentials, overtime, acceleration, costs in correcting defective, damaged or nonconforming Work, design errors or omissions and Subcontractor defaults. The Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner with a listing of all anticipated charges against the Contingency.

6.5.2 GMP Established after Execution of this Agreement

N/A

6.5.2.1 GMP Proposal. If requested by Owner, Design-Builder shall submit a GMP Proposal to Owner which shall include the following, unless the parties mutually agree otherwise:

- .1 A proposed GMP, which shall be the sum of:
 - i. Design-Builder's Fee as defined in Section 6.2.1 hereof;
 - ii. the estimated Cost of the Work as defined in Section 6.3 hereof, inclusive of any Design-Builder's Contingency as defined in Section 6.5.1.2 hereof; and
 - iii. if applicable, any prices established under Section 6.1.2 hereof.
- .2 A list of the drawings and specifications, including all addenda, used as the basis for the GMP proposal;
- .3 A list of the assumptions and clarifications made by Design-Builder in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications;
- .4 The Scheduled Substantial Completion Date upon which the proposed GMP is based, to the extent said date has not already been established under Section 5.2 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based;
- .5 If applicable, a list of allowances and a statement of their basis;
- .6 If applicable, a schedule of alternate prices;

- .7 If applicable, a schedule of unit prices;
- .8 If applicable, a statement of Additional Services; and
- .9 The time limit for acceptance of the GMP Proposal.

6.5.2.2 Review and Adjustment to GMP Proposal. After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal.

6.5.2.3 Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, as may be amended by Design-Builder, the GMP and its basis shall be set forth in an amendment to this Agreement.

6.5.2.4 Failure to Accept the GMP Proposal. If Owner rejects the GMP Proposal, or fails to notify Design-Builder in writing on or before the date specified in the GMP Proposal that it accepts the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

- .1 Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 6.5.2.3 above;
- .2 Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.1 hereof without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or
- .3 Owner may terminate this Agreement for convenience in accordance with Article 8 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof except, if construction has proceeded at Owner's direction pending submission and acceptance of a GMP Proposal, then the payment of subparagraph 8.2.1 shall apply.

If Owner fails to exercise any of the above options, Design-Builder shall have the right to (i) continue with the Work as if Owner had elected to proceed in accordance with Item .2 above, and be paid by Owner accordingly, or (ii) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

6.5.3 Savings

6.5.3.1 If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Section 6.1.2 hereof) is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows:

_____ percent (____%) to Design-Builder and _____ percent (____100____%) to Owner.

6.5.3.2 Savings shall be calculated and paid as part of Final Payment under Section 7.3 hereof, with the understanding that to the extent Design-Builder incurs costs after Final Completion which would have been payable to Design-Builder as a Cost of the Work, Design-Builder shall be entitled to payment from Owner for that portion of such costs that were distributed to Owner as Savings.

Article 7

Procedure for Payment

7.1 Progress Payments

7.1.1 Design-Builder shall submit to Owner on the tenth (10th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with the provisions of the Local Government Prompt Payment Act, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.1.3 If Design-Builder's Fee under Section 6.2.1 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

7.1.4 In the case of changes in the Work, the 1.2% Design-Builder general liability insurance mark-up item and 1% bond mark-up item of subparagraph 6.2.2 above shall be payable in full in the Application for Payment for the month in which the change order adjusting the Guaranteed Maximum Price has been executed by Owner. In addition to any Work in place, Design-Builder's initial Application for Payment may include, and Owner shall pay, general conditions costs incurred or to be incurred by Design-Builder including, without limitation, costs for insurance, permits, any Subcontractor architectural or engineering, surveying, borings, trailer delivery and rental, safety, estimating, budgeting, purchasing, scheduling, preparation and reproduction of preliminary design documents or Contract Documents, pre-construction services, pre-commencement value engineering, shipping, mobilization, temporary signs and pre-contract legal.

7.2 Retainage on Progress Payments

7.2.1 Owner will retain ten percent (10%) of each Application for Payment provided, however, (1) no retainage shall be held on any Pre-Contractual Services, any design services or any general conditions costs, and (2) that when fifty percent (50%) of the Work has been completed by Design-Builder, Owner will not retain any additional amounts from Design-Builder's subsequent Applications for Payment and shall release to Design-Builder 50% of the retainage held to that date.

7.2.1.2 When a subcontractor or supplier has achieved 100% completion of that subcontractor's or supplier's Work, Design-Builder may request in the succeeding Application for Payment, Architect shall certify if such completion has been achieved, and Owner shall pay to Contractor, all retainage held on account of such subcontractor's or supplier's Work.

7.2.2 Upon Substantial Completion of the entire Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to 100% of the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within ten (10) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest pursuant to the provisions of the Illinois Local Government Prompt Payment Act.

7.5 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access from time to time, upon reasonable notice, to Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Owner's right to audit in this Paragraph 7.5 shall not be deemed a condition precedent to or excuse of, Owner's obligation first to make progress payments or final payments despite any request to audit, any audit or the results of any audit.

Article 8

Termination for Convenience

8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

- .1 All Pre-Contractual Services, all Work executed and for proven loss, cost or expense in connection with the Work;
- .2 The reasonable costs and expenses attributable to such termination, as may be presented in writing to Owner for Owner's approval; and including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and
- .3 Overhead and profit in the amount of ten percent (10%) on the sum of items .1 and .2 above.

8.2 In addition to the amounts set forth in Section 8.1 above, Design-Builder shall be entitled to receive one of the following as applicable:

- .1 If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid one percent (1%) of the remaining balance of the Contract Price or, if a GMP has not been established, the remaining balance of the most recent estimated Contract Price.
- .2 If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid two percent (2%) of the remaining balance of the Contract Price or, if a GMP has not been established, the remaining balance of the most recent estimated Contract Price.

8.3 N/A

Article 9

Representatives of the Parties

9.1 Owner's Representatives

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Mr. Brendan McLaughlin
Director of Public Works
934 Barnsdale Road
LaGrange Park, IL 60526

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract:

Mr. Brendan McLaughlin
Director of Public Works
934 Barnsdale Road
LaGrange Park, IL 60526

9.2 Design-Builder's Representatives

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract:

Mr. Rick J DuPraw
Senior Vice President
Leopardo Companies, Inc.
333 W. Wacker Drive
Suite 250
Chicago, IL 60606

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:

Jason Steffen
Project Manager
Leopardo Companies, Inc.
333 W. Wacker Drive #250
Chicago, IL 60606

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder shall procure in accordance with Article 5 of the General Conditions of Contract the following insurance coverages:

SEE ATTACHED INSURANCE SCHEDULE AS EXHIBIT B

10.2 Bonds and Other Performance Security. Payment and performance bonds will not be required under this contract, and are not included.

Article 11

Other Provisions

11.1 Other provisions, if any, are as follows:

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

DESIGN-BUILDER:

Village of LaGrange Park

Leopardo Companies, Inc.

Mr. Brendan J. McLaughlin

Mr. Rick J. DuPraw

Director of Public Works

Senior Vice President

Date: _____

Date: _____

Caution: You should sign an original DBIA document which has this caution printed in blue. An original assures that changes will not be obscured as may occur when documents are reproduced.

DBIA



**DESIGN-BUILD
INSTITUTE OF AMERICA**

Standard Form of General Conditions of Contract Between Owner and Design-Builder

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Article 1

General

1.1 Mutual Obligations

1.1.1 Owner and Design-Builder commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder C Cost Plus Fee with an Option for a Guaranteed Maximum Price* (1998 Edition).

1.2.2 *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.3 *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder or Subcontractor, to furnish design services required under the Contract Documents.

1.2.4 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.5 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (1998 Edition).

1.2.6 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.7 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

1.2.8 *Site* is the land or premises on which the Project is located.

1.2.9 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

1.2.10 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

1.2.11 *Substantial Completion* is the earliest of (a) the date on which the Work, is sufficiently complete so that Owner can occupy and use the (Work) for its intended purposes, or (b) any of a temporary, conditional or permanent certificate of occupancy is issued by the governing authorities, or (c) the final governmental inspection to issue a temporary, conditional or permanent certificate of occupancy occurs where the certificate is not issued as a result other than for Design/Builder's design error or omission or failure to install Work in accordance with the Contract Documents.

1.2.12 *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor in accordance with the Contract Documents.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the

necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Design-Builder shall provide Owner with a (weekly) status report detailing the progress of the Work, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the Work, and (iv) other items require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

2.1.3 Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and approval. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be or should have been adjusted in accordance with the Contract Documents. Owner's review and approval of the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.3.1 Design-Builder shall not be obligated to meet interim or milestone dates set forth in Design-Builder's Schedules and shall be liable only for Design-Builder's failure, as a result of Design-Builder caused delays, to meet the agreed date of Substantial Completion, as modified pursuant to the Contract Documents.

2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures,

including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents. Such procedures shall include at a minimum a sworn Design-Builder's Affidavit attesting to the amount due or to become due to each vendor and provide a full or partial lien waiver.

2.2 Design Professional Services

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.3 Standard of Care for Design Professional Services

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Notwithstanding the preceding sentence, if the parties agree upon specific performance standards for any aspect of the Work, which standards are to be set forth in an exhibit to the Agreement entitled "Performance Standard Requirements," the design professional services shall be performed to achieve such standards.

2.4 Design Development Services

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. On or about the time of the

scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of Owner's Project Criteria and the Work. Neither Owner's review nor approval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner other than the design liability, if any, arising from the Owner's Project Criteria.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits

2.6.1 Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project to the extent of the "Permits and Fees" allowance in Design-Builder's Proposal. Once the actual cost to procure such permits and fees is known, the Guaranteed Maximum Price shall be adjusted by Change Order.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.7 Design-Builder's Construction Phase Services

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

2.7.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.7.5 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption provided that Design-Builder shall be entitled to an extension of time and increase to the Guaranteed Maximum Price if coordination with Owner's separate contractors will increase the cost or time of Design-Builder's performance of the Work.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions

thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.8 Design-Builder's Responsibility for Project Safety

2.8.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.8.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors

of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Warranty

2.9.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than Design-Builder or anyone for whose acts Design-Builder may be liable. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.9.2 Notwithstanding anything to the contrary contained herein, the Design-Builder's warranty as set forth in subparagraph 2.9.1 shall not apply to any system or equipment which is warranted to the Owner by a manufacturer or supplier. OTHER THAN THE WARRANTY PROVIDED IN SUBPARAGRAPH 2.9.1, DESIGN-BUILDER MAKES NO OTHER WARRANTIES BY THIS AGREEMENT AND DISCLAIMS ANY AND ALL IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES THAT THE PROJECT OR ITS COMPONENTS ARE MERCHANTABLE, HABITABLE, OR FIT FOR THE PURPOSES INTENDED BY OWNER.

2.10 Correction of Defective Work

2.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the

Work, or within such longer period to the extent required by the Contract Documents.

2.10.1.2 Owner's sole remedy for breach of the above warranty shall be to require Design-Builder to repair or replace defective workmanship or materials of which Design-Builder is notified in writing within a period of one year after the date of Substantial Completion.

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day periods identified herein shall be deemed inapplicable.

2.10.3 The one year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with

Design-Builder's performance of its obligations under the Contract Documents or the orderly progress of the Work.

3.1.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

3.1.3 Owner shall consider and not unreasonably deny reasonable actions as requested by Design-Builder to permit Design-Builder to perform this Agreement in an economical and timely manner, including consideration of design modifications and alternative materials or equipment that will permit the Work to be constructed within the Guaranteed Maximum Price (GMP) and by the Dates of Substantial Completion and Final Completion.

3.2 Furnishing of Services and Information

3.2.1 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

- .1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
- .2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
- .3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;
- .4** A legal description of the Site;

.5 To the extent available, as-built and record drawings of any existing structures at the Site; and

.6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

3.2.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information

3.3.1 At Design-Builder's request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations, or which give Design-Builder diminished rights and remedies, than Design-Builder has under the Contract Documents.

3.3.3 The Owner may, without consent of the Design-Builder, assign the Agreement to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment provided Design-Builder shall not

be obligated to execute any such consent which would require Design-Builder to do any of the following: (1) to perform absent cure by Owner's lender or lender's designee of any and all Owner breaches including, without limitation, payment in full of all amounts past due; (2) to perform absent commitment by Owner's lender or lender's designee to honor all of Owner's obligations hereunder after the date of Owner's Lender's assumption; (3) to give Owner's Lender prior notices of change orders increasing the Contract Sum unless an individual change exceeds ten percent (10%) of the Contract Sum before such change order, or if change orders in the aggregate would increase the Contract Sum by twenty percent (20%); (4) to require Design-Builder or any Subcontractor to subordinate its mechanics lien rights to Owner's Lender's mortgage or other security; or (5) otherwise to provide Design-Builder with rights or remedies against Lender which are less favorable than the rights and remedies which Design-Builder has against Owner under the Contract Documents or at law.

3.4 Owner's Representative

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.

3.5 Government Approvals and Permits

3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in the Owner's Permit List attached as an exhibit to the Agreement.

3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.5.3 Owner shall furnish water and utilities utilized by the Design-Builder, Subcontractors and Sub-subcontractors in connection with their

performance of the Work which shall be paid for by Design-Builder to the extent of the Utilities Allowance when utilized as temporary utilities but, at Design-Builder's option, the water and utilities, or any of them, can be converted to permanent utilities, which shall then be paid for by the Owner.

3.6 Owner's Separate Contractors

3.6.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents and without causing Design-Builder to incur any additional costs.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly for any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities subpoenae, citation, penalty and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal, threatened release, release or remediation of Hazardous Conditions at the Site or at any other location (including any further site to which a Hazardous Substance is moved or alleged to have been moved), except for those environmental abatements included in the JMS Environmental report, dated July 6, 2012.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.1.7 Owner shall at all times during the terms of this Agreement be responsible for ensuring compliance with all applicable federal, state, county or local environmental statutes,

regulations, orders or other laws with respect to any existing or suspected presence at the Project of a "hazardous substance," within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended and any implementing regulations or guidance issued pursuant to CERCLA ("Hazardous Substance"). Owner has provided notice to Design-Builder in writing of the presence or suspected presence of any Hazardous Substance, in the report dated July 6, 2012 as prepared by JMS Environmental Associates, Ltd. If thereafter either Owner or Design-Builder discovers an existing or suspected presence of any Hazardous Substance, they each shall have the duty to notify immediately the other in writing. Notwithstanding any right either party may have to order changes in the Work, Design-Builder, at Owner's expense, shall be responsible for, and make all necessary arrangements for, the prompt collection, accumulation, handling, storage, transportation, treatment and disposal of any Hazardous Substance (individually and collectively "Handling of Hazardous Substances").

4.1.8 The liabilities, damages, losses costs, penalties, expenses or responsibilities for which Owner indemnifies, defends and holds Design-Builder harmless shall include, but shall not be limited to: (1) liabilities relating to any environmental pollution, except for Design-builder's duties as stated in 4.1.7, (2) liabilities imposed under any federal, state, county or local environmental statutes, regulations, ordinances, administrative or judicial judgments or orders, including, but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act, the Resource Conservation and Recovery Act, the Clear Air Act, the Safe Drinking Water Act, the Federal Water Pollution Control Act, the Toxic Substances Control Act and any similar federal, state, or local laws and regulations, or (3) liabilities for contribution or indemnity. Design-Builder shall have the right to accept or decline any compromise or settlement of any claims or actions against Design-Builder.

4.2 Differing Site Conditions

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition, including without limitation, recovery of stand-by costs and extended general and winter conditions costs.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements

5.1.1 Design-Builder is responsible for procuring and maintaining from insurance companies authorized to do business in the state in which the Project is located, and with a minimum Best rating of A- or better subject to Owner's approval, the following insurance coverages for certain claims which may arise from or out of the performance of the Work and obligations under the Contract Documents:

- .1** Coverage for claims arising under workers' compensation, disability and other similar employee benefit laws applicable to the Work;
- .2** Coverage for claims by Design-Builder's employees for bodily injury, sickness, disease, or death;

- .3** Coverage for claims by any person other than Design-Builder's employees for bodily injury, sickness, disease, or death;
- .4** Coverage for usual personal injury liability claims for damages sustained by a person as a direct or indirect result of Design-Builder's employment of the person, or sustained by any other person;
- .5** Coverage for claims for damages (other than to the Work) because of injury to or destruction of tangible property, including loss of use;
- .6** Coverage for claims of damages because of personal injury or death, or property damage resulting from ownership, use and maintenance of any motor vehicle; and
- .7** Coverage for contractual liability claims arising out of Design-Builder's obligations under Section 7.4.1 hereof.

5.1.2 Design-Builder's liability insurance required by Section 5.1.1 above shall be written for the coverage amounts set forth in the Agreement and shall include completed operations insurance for the period of time set forth in the Agreement.

5.1.3 Design-Builder's liability insurance set forth in Sections 5.1.1.1 through 5.1.1.7 above shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.4 To the extent Owner requires Design-Builder or any Design Consultant to provide professional liability insurance for claims arising from the negligent performance of design services by Design-Builder or the Design Consultant, the coverage limits, duration and other specifics of such insurance shall be as set forth in the Agreement. Any professional liability shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the

Project. Such policies shall be provided prior to the commencement of any design services hereunder.

5.1.5 Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner.

5.2 Owner's Liability Insurance

5.2.1 Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

5.3 Owner's Property Insurance

5.3.1 Unless otherwise provided in the Contract Documents, Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located property insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Owner shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants, Subcontractors and Sub-Subcontractors, shall be on an "all risk" or equivalent policy form and shall insure against the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner and loss of use of Owner's property by insured perils, however caused.

5.3.2 Unless the Contract Documents provide otherwise, Owner shall procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, Subcontractors and Sub-Subcontractors.

5.3.3 As a condition precedent to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

5.3.3.1 N/A

5.3.4 Any loss covered under Owner's property insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof. Owner shall pay the costs not covered because of deductibles or self-insured retention.

5.3.5 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by or which should have been covered if the insurance had been procured in accordance with these General Conditions, property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants

and Subcontractors and shall require each of them to include similar waivers in their contracts.

5.3.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Paragraph 5.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project.

5.4 Bonds and Other Performance Security

5.4.1 If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be as set forth in the Agreement.

Article 6

Payment

6.1 Schedule of Values

6.1.1 Within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

6.1.2 The schedule of values shall provide that general conditions costs incurred or to be incurred by Design-Builder including, without limitation, costs for insurance, permits, any Design Consultant or Subcontractor architectural or engineering, surveying, borings, trailer delivery and rental, safety, estimating, budgeting, purchasing, scheduling, reproduction of preliminary design documents or Contract Documents, pre-construction design or construction services, value engineering, shipping, mobilization, temporary signs and pre-contract legal are to be paid from the initial Application for Payment.

6.2 Monthly Progress Payments

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for

Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) the equipment and materials are suitably stored at either the Site or another acceptable location, or where a material or equipment supplier requires pre-payment in whole or in part as a condition to fabrication or delivery (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 The Application for Payment shall constitute Design-Builder's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.2.4 In addition to any Work in place, Design-Builder's initial Application for Payment may include, and Owner shall pay, general conditions costs incurred by Design-Builder including, without limitation, costs for insurance, permits, any Design Consultant or Subcontractor architectural or engineering, surveying, borings, trailer delivery and rental, safety, estimating, budgeting, purchasing, scheduling, reproduction of preliminary design documents or Contract Documents, shipping, pre-construction design or construction services, value engineering, mobilization, temporary signs and pre-contract legal. Payment of Design-Builder's Pre-Construction Services is a condition to Design-Builder's duty to commence or to continue construction Work. Design-Builder's commencement without such payment shall not be a waiver of this provision.

6.3 Withholding of Payments

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment, it will notify Design-Builder in writing as required by the Local Government Prompt Payment Act. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, pursuant to such times as is alluded by the Act, Design-Builder may pursue its rights under the Contract Documents

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Act.

6.4 Right to Stop Work and Interest

6.4.1 If Owner fails to pay Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Act.

6.5 Design-Builder's Payment Obligations

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.5.2 Design-Builder shall not be obligated to pay Subcontractors or Suppliers if Design-Builder determines that withholding payment is in the best interests of prosecuting the Work in accordance with the Contract Documents.

6.6 Substantial Completion

6.6.1 Design-Builder shall notify Owner when it believes the Work, , is substantially complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents. If such Work is substantially complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.6.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

6.6.3 Owner, at its option, may use a portion of the Work which has been determined to be substantially complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

6.7 Final Payment

6.7.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Act, provided that Design-Builder has completed all of

the Work in conformance with the Contract Documents.

6.7.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

- .1 an affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;
 - .2 a general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;
 - .3 consent of Design-Builder's surety, if any, to final payment;
 - .4 all operating manuals, warranties and other deliverables required by the Contract Documents; and
 - .5 certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.
- .6 As-Built Drawings**

6.7.3 Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents.

Article 7

Indemnification

7.1 Patent and Copyright Infringement

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement of violation of any patent or copyright.

7.2 Tax Claim Indemnification

7.2.1 If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner shall indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's directive.

7.3 Payment Claim Indemnification

7.3.1 Providing that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification

7.4.1 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, employees and agents from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone

employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.2 N/A

7.5 Owner's General Indemnification

7.5.1 Owner, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Design-Builder and any of Design-Builder's officers, directors, employees, or agents from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from the negligent acts or omissions of Owner's separate contractors or anyone for whose acts any of them may be liable.

Article 8

Time

8.1 Obligation to Achieve the Contract Times

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement subject to Design-Builder's right to time extensions in accordance with superparagraph 5.2.4.1 of the Agreement and paragraph 8.2 of these General Conditions.

8.2 Delays to the Work

8.2.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, wars, floods, labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, adverse weather conditions not reasonably anticipated, and other acts of God.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for those events set forth in Section 8.2.1 above that do not adversely effect the critical path of Design-Builder's most current project schedule.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

- .1 The scope of the change in the Work;
- .2 The amount of the adjustment to the Contract Price; and
- .3 The extent of the adjustment to the Contract Time(s).

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes. Design-Builder shall have no obligation to perform changed work absent agreement on adjustment to the Contractor Price and Contract Time in a written instrument signed by Owner.

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

9.1.4 A "change" which shall give rise to a Change Order is any change in scope, size, kind, quality or usage of system, materials, finishes, equipment or area of the Project from that set forth in approved the project scope and Construction documents.

9.2 Work Change Directives

9.2.1 A Work Change Directive is a written order prepared and signed by Owner, directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

- .1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;
- .2 A mutually accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

- .3 Costs, fees and any other markups set forth in the Agreement; and
- .4 If an increase or decrease cannot be agreed to as set forth in items .1 through .3 above and Design-Builder agrees to proceed with the changed work, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including overhead and profit, as set forth in the Agreement. Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes. For this agreement, Design-Builder cannot unilaterally proceed with changes that will incur a cost impact without owner's consent.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct

cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services with interest if Owner's order is deemed to be a change to the Work.

9.5 Emergencies

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested if possible to qualify and the basis of such request.

10.2 Dispute Avoidance and Resolution

10.2.1 The parties are fully committed to working with each other throughout the Project and agree

to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement. The foregoing shall not be a condition precedent to Design-Builder's remedies in the event of non-payment by Owner of Design-Builder's Payment Application.

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator.

10.3 Arbitration

10.3.1 N/A

10.3.2 N/A

10.3.3 N/A

10.3.4 N/A

10.4 Duty to Continue Performance

10.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 CONSEQUENTIAL DAMAGES

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner for some damages that might otherwise be deemed to be consequential or of Design-Builder's extended general or winter conditions.

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed fourteen (14) consecutive days or aggregate more than sixty (60) days during the duration of the Project.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of work by Owner including, without limitation, all stand-by demobilization, remobilization, extended general and winter conditions costs.

11.2 Owner's Right to Perform and Terminate for Cause

11.2.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, and, absent, posting of a lien indemnity bond or to obtain an endorsement to a title policy with respect to liens of Subcontractors (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period.

If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, of the Site and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other

items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents except to the extent amounts otherwise owing to Design-Builder exceed a good faith estimate of the cost to complete the Work. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

11.3 Design-Builder's Right to Stop Work

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop work for the following reasons:

- .1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or
- .2 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop work or terminate, at Design-Builder's option unless said event is cured

within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop work or terminate, at Design-Builder's option. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage or termination.

11.4 Design-Builder's Right to Terminate for Cause

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

- .1 The Work has been stopped for fourteen (14) consecutive days, or more than thirty (30) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.
- .2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for fourteen (14) consecutive days, or more than thirty (30) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.
- .3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven

(7) days of Owner's receipt of such notice. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.5 Bankruptcy of Owner or Design-Builder

11.5.1 If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

- .1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and
- .2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within thirty (30) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject be deemed to have consented to rejection of the Agreement, and the Agreement shall be deemed terminated. The Non-Bankrupt Party may pursue any other recourse available to the non-Bankrupt Party under this Article 11.

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other

rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

Article 12

Miscellaneous

12.1 Assignment

12.1.1 Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents but, Design-Builder shall be entitled to enter into Subcontracts for design and construction.

12.2 Successorship

12.2.1 Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

12.3 Governing Law

12.3.1 The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

12.4 Severability

12.4.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the

Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

12.5 No Waiver

12.5.1 The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

12.6 Headings

12.6.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

12.7 Notice

12.7.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement (iii) if sent by overnight courier, by the next business day with receipt from the courier service or (iv) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

12.8 Amendments

12.8.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

Village Manager's Report

Village Board Agenda Memo

Date: May 8, 2013

To: President & Board of Trustees

From: Julia Cedillo, Village Manager 

RE: April 17th – 18th Rain Event Follow Up

GENERAL BACKGROUND:

As a result of the heavy rains on April 17th and 18th, the Village Engineer prepared a memo outlining storm water issues affecting various areas throughout the Village. That memo is attached. Included in the memo, the Village Engineer provides two recommended actions the Village can take to mitigate the potential impacts of future significant rainfall events.

Mark Lucas of Hancock Engineering will be present at the Work Session to provide a brief overview of the memo. Mark Lucas previously worked with the Village through the Engineering and Capital Projects Committee, providing consultation on various components of the Flood Mitigation Plan.

MOTION/ACTION REQUESTED:

No action is requested at this time. In the coming days, Hancock Engineering will obtain a cost estimate for the flap gate measure, for Village Board consideration and discussion. Hancock anticipates that this estimate will be available for the May 28th Board Meeting, but no later than the June 11th Work Session.

DOCUMENTATION:

- Memo from Hancock Engineering, dated May 8, 2013

MEMO

Date: May 8, 2013

To: Village of La Grange Park

Attn: Ms. Julia Cedillo, Village Manager

From: Paul E. Flood, Senior Vice President
Mark D. Lucas, P.E., Vice President

Re: Storm Water Issues – April 2013 Event

This memo is prepared to discuss information regarding flooding experienced within the Village of LaGrange Park due to a rainfall event that occurred between April 17th and April 18th of this year. On April 17th a storm front moved across much of the Midwest with rainfalls beginning within our area in mid-afternoon, with accumulations of approximately 1.25" to 2.0" being experienced by mid-night. Rainfall continued through the night with heavier rains concentrated within a 3 hour period beginning shortly after 3:00 am and the tapering into lighter rains through 10:00 am. The total accumulation experienced around the Village varied from 4.5" to 7.05". The storm generated flooding from two causes within the Village.

The first issue was created by heavier intensity storm in the earlier morning of the April 18th generated runoff that exceeded the conveyance capacity of the sewer system. In areas not serviced by storm relief sewers, residents experienced sewer back-up on unprotected basements concentrated in the area primarily south of 31st Street. In addition, flooding related to the ability of the street drains to convey water into the sewer allowed overland flooding particularly in the area south of 31st between Kemman Avenue and LaGrange Road, and rear yard drainage areas to become overtaxed by the volume of runoff. This overland flooding resulted in cases of surface water entering buildings through lower level entrances (basement stairways and window wells). Lastly foundations throughout the area that were susceptible to seepage through foundations cracks also were affected. While these issues were existent throughout the day the occurrence was mostly limited to the morning hours of the April 18th.

The second issue that caused flooding was related to the Salt Creek, which experienced heavy rains throughout its watershed and resulted in a rapid rise in its water elevation (7.13 feet) between 3:00 pm on April 17th and the crest that occurred at 3:00 pm on April 18th. The water level was approximately 0.08 feet (one inch) higher than the record crest of August 1987, and

0.33 feet (four inches) higher than those experienced July 2010. The elevation of the creek allowed water to back-up through the storm relief system and exit drainage structures in the area north of 31st Street and east of rail road tracks in the later parts of the afternoon through the evening. The result in this area was that some reports of sewer back-up related to the combined sewer system not being able to convey water through the combined sewer overflow at 31st Street and Prairie Avenue, as this branch of the Deep Tunnel was also close due to it being at capacity. Additionally the area along Edgewood Drive experienced overland flooding due to the creek exceeding its banks. The residents along the west side of Edgewood between Harding and Woodlawn were primarily affected.

The intensity and overall volume of water from this event illustrated scenarios that have affected the western suburbs four times over the last five years. We recommend the following prioritization of immediate programs to address the issues experienced in the most recent event:

- 1) Installation of a backflow device on the storm sewer outlets. We suggest that the first outfall to be targeted be the Morgan Avenue storm relief sewer. A review of possible solutions would be to modify the existing headwall structure to accommodate a flap gate within the area or construct a structure on Morgan near 26th Street to allow for a flap gate/tide gate to be installed.
- 2) Refresh and implement an informational outreach program to the community indicating the benefits of improvements such as backflow prevention, overhead plumbing and downspout disconnection and relative costs of these items. The information could be distributed through the Village newsletter, mailings and/or other venues to ensure the residents are informed of strategies to protect their and neighbors' homes.

President's Report

PROCLAMATION

“EMERGENCY MEDICAL SERVICES (EMS) WEEK”

May 19-25, 2013

WHEREAS, Emergency Medical Services (EMS) is a vital public service; and

WHEREAS, access to quality emergency care dramatically improves the survival and recovery rate of those who experience sudden illness or injury; meaning the skills of highly trained individuals save lives every day throughout communities across our nation; and

WHEREAS, the Village of La Grange Park provides a community based EMS system comprised of well-equipped and dedicated Paramedics, Emergency Medical Technicians, Firefighters, and Police Officers; and

WHEREAS, the members of the La Grange Park Emergency Medical Services are ready to provide lifesaving care to those in need 24 hours a day, seven days a week; and

WHEREAS, Village of La Grange Park EMS responded to nearly 1,500 calls for assistance during the last calendar year; and

WHEREAS, this year’s national theme, “EMS: One Mission. One Team” underscores the life-saving importance of a community-wide EMS system;

NOW, THEREFORE BE IT PROCLAIMED THAT:

May 19-25, 2013 be identified as “Emergency Medical Services (EMS) Week”.

BE IT FURTHER RESOLVED THAT:

The members of the La Grange Park Village Board encourage all citizens to recognize the dedication and lifesaving work that the men and women of our Emergency Medical Service provide daily to the Village of La Grange Park.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the Village of La Grange Park to be affixed this 14th day of May, 2013.

Dr. James L. Discipio, Village President

ATTEST:

Amanda G. Seidel, Village Clerk

Items of Interest

VILLAGE OF LA GRANGE PARK
La Grange Park Village Hall, 447 N. Catherine Ave., La Grange Park, Illinois

2013 MEETINGS REMINDER

May 28, 2013	Village Board Meeting	7:30 p.m.	Village Hall
June 11, 2013	Work Session Meeting	7:30 p.m.	Village Hall
June 25, 2013	Village Board Meeting	7:30 p.m.	Village Hall
July 9, 2013	Work Session Meeting	7:30 p.m.	Village Hall
July 23, 2013	Village Board Meeting	7:30 p.m.	Village Hall
August 13, 2013	Work Session Meeting	7:30 p.m.	Village Hall
August 27, 2013	Village Board Meeting	7:30 p.m.	Village Hall
September 10 2013	Work Session Meeting	7:30 p.m.	Village Hall
September 24, 2013	Village Board Meeting	7:30 p.m.	Village Hall
October 8, 2013	Work Session Meeting	7:30 p.m.	Village Hall
October 22, 2013	Village Board Meeting	7:30 p.m.	Village Hall
November 12, 2013	Work Session Meeting	7:30 p.m.	Village Hall
November 26, 2013	Village Board Meeting	7:30 p.m.	Village Hall
December 10, 2013	Work Session Meeting	7:30 p.m.	Village Hall