



**AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
ENGINEER-OWNER AGREEMENT
(Doc. No. AE-6)**

AMENDMENT No. 1

Date: October 14, 2025

THIS AMENDMENT modifies the Agreement dated 3/08/24 made by and between **Burns & McDonnell Engineering Company, Inc.**, (hereinafter called **ENGINEER**), and Village of Homewood, Illinois (hereinafter called **OWNER**) for the following Project: Development of Lead Service Line Replacement Plan and IEPA SRF Loan Application. For good and valuable consideration, the sufficiency of which is acknowledged, the parties agree to make the following changes to their Agreement.

1. The parties agree that the **ENGINEER's** Scope of Services is amended as follows:
See Exhibit A

2. The following adjustments are made to the **ENGINEER's** compensation:
\$0.00, see Exhibit A for more detail.

3. The time for completion of **ENGINEER's** Services is adjusted as follows:
None

4. Other changes to the Agreement, if any, are stated below:
See Exhibit A for more detail.

5. The terms of this **AMENDMENT** supersede any contrary terms of the Agreement. This **AMENDMENT** will be deemed a part of, and be subject to, all other terms and conditions of the Agreement. Except as modified above, the Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this **AMENDMENT** the day and year first written above.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION, WHICH MAY BE ENFORCED BY THE PARTIES.

OWNER: Village of Homewood

ENGINEER: Burns & McDonnell Engineering Company, Inc.

By: _____

By:  _____

Name: _____

Name: Patrick Clifford

Title: _____

Title: Global Practice Manager



**EXHIBIT A – SCOPE OF WORK
AMENDMENT 1**

Date: October 14, 2025

1. The parties agree that the **Development of Lead Service Line Replacement Plan and IEPA SRF Loan** is amended as follows:

a. PROJECT

OWNER requests ENGINEER to provide Services set out in this scope.

b. AGREEMENT

Add the following Clauses to the **Exhibit B Scope of Work**:

Certification Regarding Debarment, Suspension, and Other Responsibility Matters (compliance with Executive Order 12549):

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public: (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default. I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Audit and Access to Records Clause:

1. Books, records, documents and other evidence directly pertinent to performance of PWSLP/WPCLP loan work under this agreement shall be maintained in accordance with generally accepted Accounting Principles. The Agency or any of its authorized representatives shall have access to the books, records, documents and other evidence for the purpose of inspection, audit and copying. Facilities shall be provided for access and inspection.
2. Audits conducted pursuant to this provision shall be in accordance with auditing standards generally accepted in the United States of America.
3. All information and reports resulting from access to records pursuant to the above shall be disclosed to the Agency. The auditing agency shall afford the engineer an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report.
4. The final audit report shall include the written comments, if any, of the audited parties.
5. Records shall be maintained and made available during performance of project services under this agreement and for three years after the final loan closing. In addition, those records that relate to any dispute pursuant to the Loan Rules Section 365.650 or Section 662.650 (Disputes) or litigation or the settlement of claims arising out of project performance or costs or items to which an audit exception has been taken, shall be maintained and made

available for three years after the resolution of the appeal, litigation, claim or exception.

Covenant Against Contingent Fees:

The Engineer warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees. For breach or violation of this warranty, the loan recipient shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

USEPA nondiscrimination clause:

The Engineer shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Engineer to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

USEPA fair share percentage clause:

The Engineer agrees to take affirmative steps to assure that disadvantaged business enterprises are utilized when possible as sources of supplies, equipment, construction and services in accordance with the PWS Loan Program rules. As required by the award conditions of USEPA's Assistance Agreement with Illinois EPA, the engineer acknowledges that the fair share percentages are 5% for MBEs & 12% for WBEs.

c. SCOPE OF SERVICES

Add the following Tasks. to the **Exhibit B Scope of Work**: Page 5:

None.



EXHIBIT B - ORIGINAL SCOPE OF WORK

March 8, 2024

John Schaefer
Director of Public Works
Village of Homewood
2020 Chestnut Road
Homewood, Illinois 60430

Re: Proposal for Development of Lead Service Line Replacement Plan and IEPA SRF Loan Application

Dear Mr. Schaefer:

Burns & McDonnell (BMCD) is pleased to provide this proposal for Engineering Services to assist the Village of Homewood (Village) in developing a Lead Service Line Replacement (LSLR) Plan in accordance with the United States Environmental Protection Agency (USEPA) and Illinois Environmental Protection Agency (IEPA) requirements.

PROJECT UNDERSTANDING

Both the USEPA and IEPA are requiring all municipalities in the state of Illinois to create an inventory of any existing lead service lines within their distribution system and develop a plan to replace them. It is our understanding that the Village has already submitted their initial lead service line inventory to the IEPA. The next steps include submitting a fully developed LSLR Plan to the IEPA to meet both IEPA and USEPA requirements. The LSLR plans will require the components listed below and be submitted to the IEPA by April 15, 2024.

LSLR Plan Component
Lead Service Line Inventory
Strategy for Determining Materials
Procedures for Full Replacement
Replacement Schedule
Customer Notification
Public Outreach Strategy
Prioritization Strategy
Funding Strategy
Flushing Procedure
Diversity Measures

In addition, the Village is looking for assistance in applying for an IEPA State Revolving Fund (SRF) loan to assist in funding their lead service line replacement program.

March 8, 2024
Proposal for LSLR Plan
Village of Homewood
Page 2

Task 1: LSLR Plan

This task involves the creation and compilation of documentation required for the USEPA Replacement Plan. BMcD will submit a draft version of the Plan to the Village for review prior to submission. It is assumed that no comments will be received from the IEPA. Monitoring requirements and future reporting efforts can be provided by BMcD but are not included in this scope.

Lead Service Line Inventory:

It is our understanding that the Village has almost completed the documenting of their service line inventory. The Village has currently documented approximately 3,800 LSLs with an additional 800 services still to be confirmed. It is assumed that the Village will complete the required investigations to categorize the service lines within the Village and document the findings in the existing database. Using the Village database, BMcD will export this information into GIS and format for submission. This task does not include assisting the Village in setting up and maintaining a public ArcGIS Online (AGOL) database of the progress of their lead service line replacement program. If needed, that will be a separate task.

Strategy for Determining Materials:

Per the USEPA requirements, all service lines within a system must be categorized as lead, galvanized requiring replacement, non-lead, or lead status unknown. The Village already has a strategy and method in place for determining service materials. BMcD will work with the Village to confirm the methodology and approach used for material determination and describe the strategy in the Replacement Plan.

Procedures for Full Replacement:

Based on input from the Village, BMcD will develop a standard procedure for lead service line replacement, which is assumed to include trenchless methods of construction. The procedure will cover acceptable installation methods, restoration guidelines, and other various elements that could arise during lead service line replacement. The replacement procedures will include a description of the proposed service line material (copper), as well as justification for meeting the Illinois Department of Public Health (IDPH) variance for meeting IEPA water/sewer separation requirements. Based on input from the IDPH, encasement of copper service lines is not required to meet water/sewer separation requirements, as long as the following conditions are met:

1. The new water service line material is copper.
2. Trenchless construction methods are used to install the new copper service line.
3. There are no known leaks, cracks, or damage to the existing sewer lateral.
4. The new water service cannot be located closer to the existing sewer lateral than existing conditions.

March 8, 2024
Proposal for LSLR Plan
Village of Homewood
Page 3

Replacement Schedule

Based on the number of lead service lines the Village has discovered thus far, the current regulation requires the Village to replace lead service lines at an annual rate of no less than 6% of the total lead service lines, with a timeline of up to 17 years for completion. However, in the event that the proposed Lead and Copper Rule Improvements (LCRI) is approved by the USEPA, then all lead service lines would need to be replaced in 10 years based on a 3-year rolling average replacement rate of 10%. BMcD will include both scenarios in the proposed replacement schedule.

Customer Notification

The IEPA requires a strategy for informing customers before lead service line replacement takes place. Based on input from the Village, BMcD will document the Village's public outreach and customer notification strategy. If additional customer notification documents are required per the IEPA, BMcD will assist in creating the necessary documents for the Village to post to their Lead Service Program website. At a minimum, this will include the following IDPH documents:

1. Notification of Partial Lead Service Line Replacement
2. Failure By Property Owner to Respond of Sign Waiver for Planned Replacement
3. Notification of Dangers Preventing Complete Lead Service Line Replacement
4. Waiver of Complete Lead Service Line Replacement

BMcD will also lead a single workshop to develop a strategy for performing work on private property.

Public Outreach Strategy

The IEPA requires the Village to inform the public of the replacement plan and provide opportunity for public comment. Based on input from the Village, BMcD will document the Village's public outreach strategy. If additional customer notification documents are required per the IEPA, BMcD will assist in reviewing the necessary documents for the Village to post to their Lead Service Program website. Included in the public outreach strategy will be a review of existing messaging on the Village's webpage and recommendations for revisions of content. BMcD can assist with organizing and facilitating a public meeting and/or developing a webpage for the Village, but that effort is not included in this task.

Prioritization Strategy:

BMcD will work with the Village to develop a strategy for prioritizing high-risk facilities for replacement. It is assumed that the Village will provide input on areas and facilities that could be considered "high-risk" in addition to those listed by IEPA, including schools, day cares, parks, playgrounds, hospitals, etc. Included in the prioritization strategy will be maps of the areas where lead service lines are expected to be found and sequencing for how those areas LSLR will be

March 8, 2024
Proposal for LSLR Plan
Village of Homewood
Page 4

conducted in those areas. If desired, the prioritization can also be based on census tract and/or income demographics. It should be noted that census tract information will also be required for the IEPA LSL Funding Nomination Form that is required as part of the SRF loan application process.

Funding Strategy:

BMcD will work with the Village to develop a summary of costs and financing options for replacing the Village's lead service lines, measures that could be implemented to address affordability and prevent service shut-offs for customers, and considerations of different scenarios for structuring payments between the utility and its customers over time. This will include an evaluation of spreading the replacement across the entire distribution system, charging individual households, adjusted costs for low/moderate income households, etc. This does not include rate study. If needed, that will be a separate task.

Flushing Procedure:

BMcD will develop a standard procedure for customers to flush service lines and premise plumbing of particulate lead using USEPA and IEPA recommendations and best practices. Special attention will be given to AWWA C-810 – Replacement and Flushing of Lead Service Lines.

Diversity Measures

BMcD will work with the Village to identify and document measures that could be incorporated to encourage diversity in hiring in the workforce required to implement the replacement plan. Any current diversity measures the Village has in place will be considered. At this time, our understanding is that only standard Equal Employment Opportunity requirements, in accordance with Federal and State laws and regulations, are included in Village requirements.

Other

As a result of the SRF loan that will be used to help fund the project, the lead service replacement plan will also include a summary of Federal Build America, Buy America Act (BABA) requirements, as well as the Illinois Works Jobs Program Act Apprenticeship Initiative requirements. Given that work will be performed on private property, temporary construction easement agreements and the requirement for licensed plumbers will need to be addressed.

Meetings and Deliverables:

- One (1) in-person kickoff meeting with the Village to discuss project scope and schedule
- One (1) virtual meeting to discuss the draft lead service line replacement plan
- One (1) in-person private property workshop meeting

March 8, 2024
Proposal for LSLR Plan
Village of Homewood
Page 5

- One (1) Draft Lead Services Line Replacement Plan delivered electronically in .pdf format
- One (1) Final Lead Services Line Replacement Plan delivered electronically in .pdf format

Task 2: IEPA Project Plan and SRF Loan Application

In order to help fund the Village's lead service replacement plan, BMcD will assist the Village in applying for an IEPA SRF loan. The first step is to submit a Project Plan, which generally consists of the following items:

1. Existing System Summary
2. Proposed Project Summary
 - a. Regulatory Requirements and Project Benefits
 - b. Basis of Design
 - c. Cost Analysis
 - d. Exhibits
 - e. Schedule
3. Financial Summary
 - a. Estimated Loan Terms
 - b. Financial Arrangements, including annual debt service and Operations, Maintenance, and Replacement (O, M, & R coverage)
 - c. Proposed rate changes and analysis of average monthly residential bill
4. Sustainability Analysis
 - a. Environmental Impact Analysis
 - b. Summary of "Green" Components
5. Lead Service Line Funding Nomination Form (FNF), due annually on March 31st.

Once the Project Plan has been approved by the IEPA, the next step is to prepare and submit the Environmental Review Checklist and the Categorical Exclusion comments from the public to attain the Unconditional Approval of the Project Plan. When the project is included on the IEPA's Intended Funding List in June, then the next step is to submit the SRF Loan application, which generally consists of the following items:

1. Applicant Information
2. Front end bidding documents¹
3. Project Information

¹ Note that "shovel ready" bidding documents are encouraged, but not required.

March 8, 2024
Proposal for LSLR Plan
Village of Homewood
Page 6

4. Contact Information
5. Project Schedule
6. Estimated Project Costs and Requested Financing
7. Loan Repayment Period and Pledged Revenues
8. System Information
9. Current and Future Debt, including approved ordinance
10. Legal Opinion from the Village's legal counsel
11. Property and Sales Tax Information
12. Financial Projections

Funding can be applied for now without the LSL replacement plan. However, the LSL inventory must be on-file with the IEPA, and the loan amount cannot exceed the number of LSLs in the inventory. However, the IEPA has already confirmed that there is not sufficient time for the Village to obtain funding for the IEPA 2025 FY (July 1, 2024 to June 30, 2025). We recommend that the Project Plan and Funding Nomination Form be submitted not later than July 26, 2024 in order to receive funding for the 2026 FY (July 1, 2025 to June 30, 2026) with the goal of attaining Loan Approval by September 2025.

Meetings and Deliverables:

- One (1) Draft Project Plan delivered electronically in .pdf format
- One (1) Final Project Plan delivered electronically in .pdf format for the Village to Submit to IEPA
- One (1) Funding Nomination Form delivered electronically in .pdf format for the Village to Submit to IEPA
- One (1) Environmental Review Checklist electronically in .pdf format for the Village to Submit to IEPA
- One (1) SRF Loan Application Package in .pdf format for the Village to Submit to IEPA

Task 3: Project Management and Coordination

This task includes project management, coordination with the Village, and internal coordination with Burns & McDonnell staff for Tasks 1 and 2.

PROJECT EXCLUSIONS

1. Topographic survey
2. Permitting
3. Specialty, site-specific lead service line replacement design (e.g. for residences located on IDOT and/or County streets)
4. Private property inspections



March 8, 2024
Proposal for LSLR Plan
Village of Homewood
Page 7

5. Private property coordination
6. Temporary construction easements or easement coordination
7. LSL general contracting services and construction
8. Bidding and construction engineering services
9. Developing and maintaining a website
10. Rate study
11. Community engagement meetings
12. Attendance, presentations, and memos related to Board meetings
13. Engineering plans, specifications, and details

SCHEDULE

IEPA LSL Replacement (Plan Draft) – April 8, 2024 (Village comments to be received back by close of business on April 10, 2024)

IEPA LSL Replacement Plan Final – April 15, 2024 (to be submitted to the IEPA by the Village not later than April 15, 2024)

IEPA Project (Draft) – June 28, 2024*

IEPA Project Plan (Final) – July 26, 2024*

IEPA SRF Loan Application (Draft and Final) – TBD (contingent upon IEPA plan approval)

*If desired, these submittals can be expedited and submitted earlier.

COMPENSATION

Burns & McDonnell proposes to perform Tasks 1 through 3 on a lump sum basis of **\$66,983**. See summary table below.

<u>Task Description</u>	<u>Task Total</u>
Task 1 - LSLR Plan	\$ 35,550
Task 2 - IEPA Project Plan and SRF Loan Application	\$ 23,440
Task 3 - Project Management and Coordination	\$ 7,993
Scope Total	\$ 66,983



March 8, 2024
Proposal for LSLR Plan
Village of Homewood
Page 8

GENERAL CONSIDERATIONS

If this proposal is satisfactory, please sign and date this document and the attached Terms and Conditions Professional Services and return one signed copy of each to us to effect an Agreement. The attached Terms and Conditions Professional Services are incorporated in and made a part of the Agreement. Should you have any questions or require additional information, please feel free to contact me at screde@burnsmcd.com or (630) 710-8667.

Sincerely,
Burns & McDonnell

A handwritten signature in black ink, appearing to read "Stephen T. Crede", written over a horizontal line.

Stephen T. Crede
Department Manager

Accepted for the Village of Homewood, Illinois

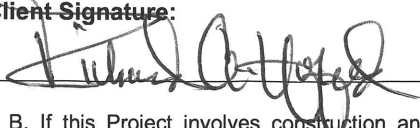
A handwritten signature in black ink, written over a horizontal line. The signature is stylized and appears to be "Richard A. Hayes".
(Signature)

Village President
(Title)

3/12/24
(Date)



TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

Project: Development of Lead Service Line Replacement Plan and IEPA SRF Loan Application	Date of Letter, Proposal, or Agreement: March 8, 2024
Client: Village of Homewood, IL	Client Signature: 

1. SCOPE OF SERVICES

For the above-referenced Project, Burns & McDonnell Engineering Company, Inc. (BMcD) will perform the services set forth in the above-referenced Letter, Proposal, or Agreement, in accordance with these Terms and Conditions. BMcD has relied upon the information provided by Client in the preparation of the Proposal, and shall rely on the information provided by or through Client during the execution of this Project as complete and accurate without independent verification.

2. PAYMENTS TO BMcD

A. Compensation will be as stated in the above-referenced Letter, Proposal, or Agreement. Statements will be in BMcD's standard format and are payable upon receipt. Time is of the essence in payment of statements, and timely payment is a material part of the consideration of this Agreement. A late payment charge will be added to all amounts not paid within 30 days of statement date and shall be calculated at 1.5 percent per month from statement date. Client shall reimburse any costs incurred by BMcD in collecting any delinquent amount, including reasonable attorney's fees. If a portion of BMcD's statement is disputed, Client shall pay the undisputed portion by the due date. Client shall advise BMcD in writing of the basis for any disputed portion of any statement.

B. Taxes as may be imposed on professional consulting services by state or local authorities shall be in addition to the payment stated in the above-referenced Letter, Proposal, or Agreement.

3. INSURANCE

A. During the course of performance of its services, BMcD will maintain Worker's Compensation insurance with limits as required by statute, Employer's Liability insurance with limits of \$1,000,000, Commercial General Liability with limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate, and Automobile Liability insurance with combined single limit of \$1,000,000 per accident.

B. If the Project involves on-site construction, construction contractors shall be required to provide (or Client may provide) Owner's Protective Liability Insurance naming Client as a Named Insured and BMcD as an Additional Insured or to endorse Client and BMcD using ISO forms CG 20 10 0704 & CG 20 37 0704 endorsements or their equivalents as Additional Insureds on all construction contractor's liability insurance policies covering claims for personal injuries and property damage in at least the amounts required of BMcD in 3A above. Construction contractors shall be required to provide certificates evidencing such insurance to Client and BMcD. Contractor's compensation shall include the cost of such insurance including coverage for contractual and indemnification obligations herein.

C. Client and BMcD release each other and waive all rights of subrogation against each other and their officers, directors, agents, or employees for damage covered by property insurance and self-insurance during and after the completion of BMcD's services. A provision similar to this shall be incorporated into all construction contracts entered into by Client, and all construction contractors shall be required to provide additional insured coverage and waivers of subrogation in favor of Client and BMcD for damage covered by any construction contractor's policies of insurance.

4. INDEMNIFICATION

A. To the extent allowed by law, Client will require all construction contractors to indemnify, defend, and hold harmless Client and BMcD from any and all loss where loss is caused or alleged to be caused in whole or in part by the construction contractors, their employees, agents, subcontractors or suppliers.

B. If this Project involves construction and BMcD does not provide consulting services during construction including, but not limited to, on-site monitoring, site visits, site observation, shop drawing review, and/or design clarifications, Client agrees to indemnify and hold harmless BMcD from any liability arising from this Project or Agreement, except to the extent caused by BMcD's negligence.

C. OWNER agrees to indemnify ENGINEER for damages, costs and expenses (including reasonable attorney's fees) but only to the extent caused by the negligent acts, errors or omissions of OWNER, its officers, directors, shareholders, Contractors, employees, agents, and consultants, and any of them.

5. PROFESSIONAL RESPONSIBILITY-- LIMITATION OF REMEDIES

A. BMcD will exercise reasonable skill, care, and diligence in the performance of its services and will carry out its responsibilities in accordance with customarily accepted professional practices. If BMcD fails to meet the foregoing standard, BMcD will perform at its own cost, the professional services necessary to correct errors and omissions reported to BMcD in writing within one year from the completion of BMcD's services for the Project. No warranty, express or implied, is included in this Agreement or regarding any drawing, specification, or other work product or instrument of service.

B. In no event will BMcD be liable for any special, indirect, or consequential damages including, without limitation, damages or losses in the nature of increased Project costs, loss of revenue or profit, lost production, claims by customers of Client, and/or governmental fines or penalties.

C. BMcD's aggregate liability for all damages connected with its services for the Project not excluded by the preceding subparagraph, whether or not covered by BMcD's insurance, will not exceed \$100,000.

D. These mutually negotiated obligations and remedies stated in this Paragraph 5, Professional Responsibility – Limitation of Remedies, are the sole and exclusive obligations of BMcD and remedies of Client, whether liability of BMcD is based on contract, warranty, strict liability, tort (including negligence), indemnity, or otherwise.

6. PERIOD OF SERVICE AND SCHEDULE

The provisions of this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the services stated in the Proposal. BMcD's obligation to render services hereunder will extend for a period that may reasonably be required for the completion of said services. BMcD shall make reasonable efforts to comply with deliverable schedules (if any) and consistent with BMcD's professional responsibility.

7. COMPUTER PROGRAMS OR MODELS

Any use, development, modification, or integration by BMcD of computer models or programs does not constitute ownership or a license to Client to use or modify such computer models or programs.

8. ELECTRONIC MEDIA AND DATA TRANSMISSIONS

A. Any electronic media (computer disks, tapes, etc.) or data transmissions furnished (including Project Web Sites or CAD file transmissions) are for Client information and convenience only. Such media or transmissions are not to be considered part of BMcD's instruments of service. BMcD, at its option, may remove all indicia of its ownership and involvement from each electronic display.

B. BMcD shall not be liable for loss or damage directly or indirectly, arising out of Client's use of electronic media or data transmissions.

9. DOCUMENTS

A. All documents prepared by BMcD pursuant to this Agreement are instruments of service in respect of the Project specified herein. They are not intended or represented to be suitable for reuse by Client or others in extensions of the Project beyond that now contemplated or on any other Project. Any reuse, extension, or completion by Client or others without written verification, adaptation, and permission by BMcD for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to BMcD.

B. In the event that BMcD is to reuse, copy or adapt all or portions of reports, plans, or specifications prepared by others, Client represents that Client either possesses or will obtain permission and necessary rights in copyright, patents, or other proprietary rights and will be responsible for any infringement claims by others. Client warrants the completeness, accuracy, and efficacy of the information, data, and design provided by or through Client (including prepared for Client by others), for which BMcD shall rely on to perform and complete its services.

10. ESTIMATES, SCHEDULES, FORECASTS, AND PROJECTIONS

Estimates, schedules, forecasts, and projections prepared by BMcD relating to loads, interest rates and other financial analysis parameters, construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are opinions based on BMcD's experience, qualifications, and judgment as a professional. Since BMcD has no control over weather, cost and availability of labor, cost and availability of material and equipment, cost of fuel or other utilities, labor productivity, construction contractor's procedures and methods, unavoidable delays, construction contractor's methods of determining prices, economic conditions, government regulations and laws (including the interpretation thereof), competitive bidding or market conditions, and other factors affecting such estimates or projections, BMcD does not guarantee that actual rates, costs, quantities, performance, schedules, etc., will not vary significantly from estimates and projections prepared by BMcD.

11. POLLUTION

In view of the uncertainty involved in investigating and recommending solutions to environmental problems and the abnormal degree of risk of claims imposed upon BMcD in performing such services, notwithstanding the responsibility of BMcD set forth in Paragraph 5A to the maximum extent allowed by law, Client agrees to release, defend, indemnify and hold harmless BMcD and its officers, directors, employees, agents, consultants and subcontractors from all liability, claims, demands, damages, losses, and expenses including, but not limited to, claims of Client and other persons and organizations, reasonable fees and expenses of attorneys and consultants, and court costs, except where there has been a final adjudication that the damages were caused by BMcD's willful disregard of its obligations under this Agreement. Such indemnification includes claims arising out of, or in any way relating to, the actual, alleged, or threatened dispersal, escape, or release of, or failure to detect or contain, chemicals, wastes, liquids, gases, or any other material, irritant, contaminant, or pollutant.

12. ON-SITE SERVICES

A. Project site visits by BMcD during investigation, observation, construction or equipment installation, or the furnishing of Project representatives shall not make BMcD responsible for construction means, methods, techniques, sequences, or procedures; for construction safety precautions or programs; or for any construction contractor(s)' failure to perform its work in accordance with the contract documents.

B. Client shall disclose to BMcD the location and types of any known or suspected toxic, hazardous, or chemical materials or wastes existing on or near the premises upon which work is to be performed by BMcD's employees or subcontractors. If any hazardous wastes not identified by Client are discovered after a Project is undertaken, Client and BMcD agree that the scope of services, schedule, and compensation may be adjusted accordingly. Client agrees to release BMcD from all damages related to any pre-existing pollutant, contaminant, toxic, or hazardous substance at the site.

13. CHANGES

Client shall have the right to make changes within the general scope of BMcD's services, with an appropriate change in compensation and schedule, upon execution of a mutually acceptable amendment or

change order signed by authorized representatives of Client and BMcD.

14. TERMINATION

Services may be terminated by Client or BMcD by seven (7) days' written notice in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. If so terminated, Client shall pay BMcD all amounts due BMcD for all services properly rendered and expenses incurred to the date of receipt of notice of termination, plus reasonable costs incurred by BMcD in terminating the services. In addition, Client may terminate the services for Client's convenience upon payment of twenty percent of the yet unearned and unpaid estimated, lump sum, or not-to-exceed fee, as applicable.

15. DISPUTES, NEGOTIATIONS, MEDIATION

A. If a dispute arises relating to the performance of the services to be provided and, should that dispute result in litigation, it is agreed that the substantially prevailing party (as determined in equity by the court) shall be entitled to recover all reasonable costs of litigation, including staff time, court costs, attorney's fees and other related expenses.

B. The parties shall participate in good faith negotiations to resolve any and all disputes. Should negotiations fail, the parties agree to submit to and participate in a third party-facilitated mediation as a condition precedent to resolution by litigation. Unless otherwise agreed to, mediation shall be conducted under the rules of the American Arbitration Association.

C. Causes of action between the parties shall accrue, and applicable statutes of limitation shall commence to run the date BMcD's services are substantially complete.

16. WITNESS FEES

A. BMcD's employees shall not be retained as expert witnesses, except by separate written agreement.

B. Client agrees to pay BMcD pursuant to BMcD's then current schedule of hourly labor billing rates for time spent by any employee of BMcD responding to any subpoena by any party in any dispute as an occurrence witness or to assemble and produce documents resulting from BMcD's services under this Agreement.

17. CONTROLLING LAW

This Agreement shall be subject to, interpreted and enforced according to the laws of the State of Illinois, without regard to any conflicts of law provisions. Parties agree to submit to the exclusive venue and jurisdiction of the 18th Judicial Circuit Court, County of DuPage, Wheaton, Illinois, or the United States District Court, Northern District of Illinois.

18. RIGHTS AND BENEFITS – NO ASSIGNMENT

BMcD's services will be performed solely for the benefit of Client and not for the benefit of any other persons or entities. Neither Client nor BMcD shall assign or transfer interest in this Agreement without the written consent of the other.

19. ENTIRE CONTRACT

These Terms and Conditions and the above-referenced Letter, Proposal, or Agreement contain the entire agreement between BMcD and Client relative to BMcD's services for the Project herein. All previous or contemporaneous agreements, representations, promises, and conditions relating to BMcD's services for the Project are superseded. Since terms contained in purchase orders do not generally apply to professional services, in the event Client issues to BMcD a purchase order, no preprinted terms thereon shall become part of this Agreement. Said purchase order documents, whether or not signed by BMcD, shall be considered only as an internal document of Client to facilitate administrative requirements of Client's operations.

20. SEVERABILITY

Any unenforceable provision herein shall be amended to the extent necessary to make it enforceable; if not possible, it shall be deleted and all other provisions shall remain in full force and affect.

- END -