

ENGINEERING AGREEMENT
For
PROFESSIONAL ENGINEERING SERVICES

This Agreement is made this 6th day of December, 2018, by and between the Village of Westmont, a municipal corporation organized and existing under and by virtue of the laws of the State of Illinois (hereinafter called VILLAGE), and Burns & McDonnell Engineering Company, Inc., a Missouri corporation specializing in consulting engineering services (hereinafter called ENGINEER).

WHEREAS, VILLAGE requires professional engineering services in conjunction with the issuance of Engineering and Stormwater Permits for proposed developments within the municipal limits of the Village of Westmont, Illinois;

WHEREAS, prior to issuance of such permits, plans and specifications for said developments (hereinafter called PROJECT) must be reviewed to ensure compliance with both Village of Westmont requirements and the DuPage County Countywide Stormwater and Flood Plain Ordinance (hereinafter called ORDINANCE), as amended from time to time; and

WHEREAS, ENGINEER is generally familiar with requirements of the Village of Westmont and the ORDINANCE and is willing to assist VILLAGE in determining if said developments are in compliance.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained in this Agreement, VILLAGE and ENGINEER agree as follows:

SECTION 1 – GENERAL DESCRIPTION OF SERVICES

1.1 ENGINEER shall serve as VILLAGE's non-exclusive professional engineering consultant in those assignments to which this Agreement applies, and shall give consultation and advice to VILLAGE during the performance of ENGINEER'S services.

1.2 All services shall be performed under the direction of a professional engineer registered in the State of Illinois and qualified in the particular field.

SECTION 2 - AUTHORIZATION OF SERVICES

2.1 Services on any assignment shall be undertaken and shall be considered authorized by the VILLAGE when requested in a manner consistent with the terms as set forth in Exhibit A to this Agreement.

2.2 Assignments may include services described hereafter as Basic Services or as Additional Services of ENGINEER.

2.3 The Village will be relying upon the professional expertise of ENGINEER regarding all services provided under this Agreement by ENGINEER, and the VILLAGE shall have no independent obligation to verify the accuracy or completeness of ENGINEER's work and services.

SECTION 3 - BASIC SERVICES OF ENGINEER

3.1 General.

3.1.1 Perform professional engineering services in connection with the PROJECT as more fully described in EXHIBIT A to this Agreement. Said services shall include normal civil, structural, mechanical, and electrical engineering services and normal architectural design services incidental thereto.

3.1.2 Advise VILLAGE as to the necessity of VILLAGE providing or obtaining services or data from others of types described in paragraph 5.3, make recommendations as to the possible sources of such services, and act as VILLAGE's representative in connection with any such services.

3.1.3 Prepare and furnish to VILLAGE a Report summarizing studies performed, including findings and recommendations for the PROJECT.

SECTION 4 – ADDITIONAL SERVICES OF ENGINEER

4.1 General. If authorized in writing by VILLAGE and agreed to in writing by ENGINEER, ENGINEER shall furnish or obtain from others Additional Services of the following types which are not considered normal or customary Basic Services. The scope of Additional Services may include:

4.1.1 Grant and Loan Assistance. Prepare applications and supporting documents for governmental grants, loans, or advances, other than as required under the scope of Exhibit A to this Agreement.

4.1.2 Financial Consultation. Consult with VILLAGE's fiscal agents and bond attorneys and provide such engineering data as required for any bond prospectus or other financing requirements.

4.1.3 Property Procurement Assistance. Determine land and easement requirements and provide consultation and assistance on property procurement as related to professional engineering services being performed.

4.1.4 Administrative Assistance. Provide Contract and PROJECT administration to the degree authorized by VILLAGE.

4.1.5 Obtaining Services of Others. Provide through subcontract the services or data set forth in paragraph 5.3.

4.1.6 Miscellaneous Studies. Investigations involving detailed consideration of operations, maintenance, and overhead expenses, and the preparation of rate schedules, earnings, and expense statements; feasibility studies; appraisals and valuations; detailed quantity surveys of material, equipment, and labor; and audits or inventories required in connection with construction performed by VILLAGE.

4.1.7 General Building and Engineering Plan Review and Inspection. Review building/engineering design permit applications and supporting documents under designated building permit numbers and perform inspections of work constructed by the permittees in the VILLAGE as required under the scope of Exhibit C of this Agreement.

4.2 Contingent Additional Services.

4.2.1 If services needed to provide the information described in Paragraph 5.3 are required due to circumstances beyond the ENGINEER'S control, the ENGINEER shall notify the VILLAGE prior to commencing such services. If the VILLAGE deems that such services described in 5.3 are not required, the VILLAGE shall give prompt written notice to the ENGINEER. If the VILLAGE indicates in writing that all, or part of such services, are not required, the ENGINEER shall have no obligation or provide those services.

4.2.2 Providing services in connection with a public hearing, arbitration proceeding, or legal proceeding except where the ENGINEER is party thereto.

SECTION 5 - RESPONSIBILITIES OF VILLAGE

VILLAGE shall, within a reasonable time, so as not to delay the services of ENGINEER:

5.1 Provide full information as to VILLAGE's requirements for the PROJECT.

5.2 Assist ENGINEER by placing at ENGINEER'S disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.

5.3 Furnish ENGINEER available data such as: core borings, probings and subsurface explorations, laboratory tests, inspection reports of samples, materials, and equipment; and appropriate professional interpretations of all of the foregoing; property, boundary, easement, rights-of-way, topographic, and utility surveys; zoning and deed restrictions; and other special data or consultations, all of which ENGINEER may rely upon in performing his services under this Agreement. However, this provision shall not obligate the VILLAGE to obtain such data at its own expense when not already available to the VILLAGE.

5.4 Guarantee access to and make all provisions for ENGINEER to enter upon public property and make reasonable efforts to obtain access to and make all provisions for ENGINEER to enter upon private property as required for ENGINEER to perform his services under this Agreement.

5.5 Examine all studies, reports, sketches, estimates, Bid Documents, Drawings, proposals, and other documents presented by ENGINEER and render in writing decisions, when required, pertaining thereto.

5.6 Provide such professional legal, accounting, financial, and insurance counseling services as may be required for the PROJECT.

5.7 Designate in writing a person or persons to act as VILLAGE's representative(s) with respect to the services to be performed under this Agreement. Such person(s) shall have complete authority to transmit instructions, receive information, interpret and define VILLAGE's policies and decisions with respect to materials, equipment, elements and systems to be used in the PROJECT, and other matters pertinent to the services covered by this Agreement.

5.8 Give prompt written notice to ENGINEER whenever VILLAGE observes or otherwise becomes aware of any defect in the PROJECT.

5.9 Furnish approvals and permits from all governmental authorities having jurisdiction over the PROJECT and such approvals and consents from others as may be necessary for completion of the PROJECT.

5.10 Furnish, or direct ENGINEER to provide, necessary Additional Services as stipulated in Section 4 of this Agreement or other services as required.

SECTION 6 - PERIOD OF SERVICE

6.1 This Agreement will become effective upon the first written notice by VILLAGE authorizing services hereunder.

6.2 This Agreement shall be applicable to the PROJECT and shall be completed within the time frame specified in Exhibit A to this Agreement. All assignments authorized prior to the execution of this document, even if performed in whole or in part before the execution date, shall be governed by the terms and conditions of this Agreement.

6.3 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 Agreement. ENGINEER'S obligation to render services hereunder will extend for a period which may reasonably be required for the completion of said services.

SECTION 7 - PAYMENTS TO ENGINEER

7.1 Compensation. The ENGINEER shall be compensated on an hourly rate basis plus reimbursable expenses based upon the schedule of hourly rates attached as Exhibit B or on a flat fee basis upon the schedule attached as Exhibit C to this Agreement. It is understood that the VILLAGE is solely responsible to provide payment to the ENGINEER and may not rely upon lack of reimbursement from a third party as sufficient reason to delay or withhold payment due the ENGINEER.

7.2 Statements. Monthly statements, in ENGINEER'S standard format, will be submitted by the ENGINEER to the VILLAGE. Statements will be based on the ENGINEER'S estimated percent of services completed at the end of the preceding month.

7.3 Payments. Statements are payable within thirty (30) days upon receipt. Time is of the essence in payment of statements, and timely payment is a material part of the consideration of this Agreement. Costs, including reasonable attorney's fees, incurred by the ENGINEER in successfully collecting any delinquent amount through litigation, arbitration or mediation shall be reimbursed by the VILLAGE. If a portion of ENGINEER'S statement is disputed by VILLAGE, the undisputed portion shall be paid by VILLAGE by the due date. The VILLAGE shall advise the ENGINEER in writing of the basis for any disputed portion of any statement.

SECTION 8 - GENERAL CONSIDERATIONS

8.1 Insurance.

8.1.1 During the course of performance of any of the services or additional services included in this agreement, the ENGINEER will procure and maintain (in United States Dollars) the following minimum insurance coverages for itself and for any subcontractors employed by the ENGINEER to assist the ENGINEER in providing the services or additional services to the VILLAGE which are included in this agreement:

<u>Type of Coverage</u>	<u>Limits of Liability</u>
Workers' Compensation	Statutory
Employers' Liability	\$500,000 Each Accident
<u>Commercial General Liability:</u> Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
<u>Automobile Liability:</u> Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Professional Liability:	\$1,000,000 per Claim
Umbrella Liability:	No less than \$3,000,000 but not more than \$5,000,000 Aggregate for all coverages, excluding Workers' Compensation

ENGINEER will include the VILLAGE, its officers, employees and agents as additional insured on any of the policies listed above and will provide to the VILLAGE a Certificate of Insurance as evidence of the specified insurance for each year of the Agreement.

8.1.2. VILLAGE and ENGINEER waive all rights against each other and their officers, directors, agents, or employees for property damage covered by property insurance during and after the completion of ENGINEER'S services. If the services result in a Construction Phase, a provision similar to this shall be incorporated into all Construction Contracts entered into by VILLAGE, and all construction Contractors shall be required to provide waivers of subrogation in favor of VILLAGE and ENGINEER for property damage or liability covered by any construction Contractor's policy of insurance.

8.2 Professional Responsibility.

8.2.1. ENGINEER will exercise reasonable skill, care, and diligence in the performance of ENGINEER'S services and will carry out its responsibilities in accordance with customarily accepted professional engineering practices. If the ENGINEER fails to meet the foregoing standard, ENGINEER will diligently and immediately perform at its own cost, and without reimbursement from VILLAGE, the professional engineering services necessary to correct errors and omissions which are caused by ENGINEER'S failure to comply with above standard, and which are reported to ENGINEER within one year from the completion of ENGINEER'S services for the PROJECT. Except as otherwise provided herein, the obligations and representations contained in this Article are Engineer's sole obligation and VILLAGE's exclusive remedy with respect to the quality and provision of services. VILLAGE's failure to allow Engineer to perform such remedial services as Engineer may deem appropriate shall relieve Engineer of its obligation relative to such improper operation or maintenance. However, in the event ENGINEER fails or refuses to correct its errors and omissions as stated above and the VILLAGE is

required to correct such errors and omissions in-house or through the use of another engineer, ENGINEER shall be responsible to the VILLAGE for all reasonable costs and expenses incurred by the VILLAGE in making such corrections.

8.2.2. In addition, subject to the limitation stated in Section 8.2.4 below, ENGINEER will be responsible to VILLAGE for damages caused by its negligent and/or willful conduct during its activities at the PROJECT Site.

8.2.3. In no event will ENGINEER 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 VILLAGE, or governmental fines or penalties, except in instances of gross negligence and/or willful and wanton conduct.

8.2.4. The ENGINEER'S aggregate liability for all damages connected with its services for the PROJECT not excluded by the preceding subparagraph will not exceed the greater of the Professional Liability Insurance limit stated in Paragraph 8.1.1 or the compensation paid under this Agreement.

8.2.5. The obligations and remedies stated in this Paragraph 8.2, Professional Responsibility, and Paragraph 8.6, Termination, are the sole and exclusive obligations of ENGINEER and remedies of VILLAGE, regardless of the cause of action pled including, without limitation, negligence of every character.

8.3 Estimates and Projections. Estimates and projections prepared by ENGINEER relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on ENGINEER'S experience, qualifications, and judgment as a design professional. Since ENGINEER has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction Contractors' procedures and methods, unavoidable delays, construction Contractors' methods of determining prices, economic conditions, competitive bidding or market conditions, and other factors affecting such estimates or projections, ENGINEER does not guarantee that actual rates, costs, performance, schedules, and related items, will not vary from estimates and projections prepared by ENGINEER.

8.4 Changes. VILLAGE shall have the right to make changes within the general scope of ENGINEER'S services, with an appropriate change in compensation and schedule, upon execution of a mutually acceptable amendment or change order signed by an authorized representative of the VILLAGE and the President or any Vice President of the ENGINEER.

8.5 Suspension of Services. Should VILLAGE fail to fulfill its responsibilities as provided under Section 5 to the extent that ENGINEER is unduly hindered in ENGINEER'S services or if VILLAGE fails to make any payment to ENGINEER on account of ENGINEER'S services and expenses within 90 days after receipt of ENGINEER'S bill therefor, ENGINEER may, after giving fourteen (14) days' written notice to VILLAGE, suspend services under this Agreement until VILLAGE has satisfied VILLAGE's obligations under this Agreement.

8.6 Termination.

8.6.1. Services may be terminated by the VILLAGE or ENGINEER by fourteen (14) 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. Failure on the part of the VILLAGE to make payments to ENGINEER when due shall be considered substantial nonperformance and cause for termination. If so terminated, VILLAGE shall pay ENGINEER all amounts due ENGINEER for all services properly rendered and expenses incurred to the date of receipt of notice of termination.

8.6.2. In the event of premature termination of the PROJECT by the VILLAGE and through no fault of the ENGINEER, the ENGINEER shall be entitled to: 1) recover all reasonable costs and expenses incurred to date of termination plus all reasonable costs incurred to assemble and close PROJECT files and documents; 2) termination penalties/expenses related to third parties retained by ENGINEER in regard to his obligations under this contract.

8.6.3 In the event of premature termination of the PROJECT by ENGINEER through no fault of the VILLAGE, the VILLAGE shall be entitled to recover all reasonable costs and expenses incurred to complete ENGINEER's services for the PROJECT, whether performed in-house by the VILLAGE or performed by another engineer.

8.7 (Note: Subparagraph intentionally deleted.)

8.8 Disputes. In the event that a dispute should arise relating to the performance of the services to be provided and should that dispute result in litigation, it is agreed that the prevailing party shall be entitled to recover all reasonable costs of litigation, including staff time, court costs, attorneys' fees, and other related expenses.

8.9 Rights and Benefits. ENGINEER'S services will be performed solely for the benefit of the VILLAGE and not for the benefit of any other persons or entities.

8.10 Dispute Resolution.

8.10.1 Scope of Paragraph. The procedures of this Paragraph shall apply to any and all disputes between VILLAGE and ENGINEER which arise from, or in any way are related to, this Agreement, including, but not limited to the interpretation of this Agreement, the enforcement of its terms, any acts, errors, or omissions of VILLAGE or ENGINEER in the performance of this Agreement, and disputes concerning payment.

8.10.2 Exhaustion of Remedies Required. No action may be filed unless the parties first negotiate and , if necessary, mediate their disputes as set forth in this Paragraph. If timely Notice is given under Paragraph 8.10.3, but an action is initiated prior to exhaustion of these procedures, such action shall be stayed, upon application by either party to a court of proper jurisdiction, until the procedures in Paragraphs 8.10.3 and 8.10.4 have been complied with, unless the VILLAGE reasonably determines that an emergency to public safety exists requiring immediate action and/or immediate court intervention.

8.10.3 Notice of Dispute.

8.10.3.1 For disputes arising prior to the making of final payment promptly after the occurrence of any incident, action, or failure to act upon which a claim is based, the party seeking relief shall serve the other party with a written Notice;

8.10.3.2 For disputes arising after the making of final payment, VILLAGE shall give ENGINEER written Notice at the address listed in Paragraph 8.18 within ninety (90) days after occurrence of any incident, accident, or first observance of defect or damage. In both instances, the Notice shall specify the nature and amount of relief sought, the reason relief should be granted, and the appropriate portions of this Agreement that authorize the relief requested.

8.10.4 Negotiation. Within seven days of receipt of the Notice, the PROJECT Managers for the VILLAGE and ENGINEER shall confer in an effort to resolve the dispute. If the dispute cannot be resolved at that level, then, upon written request of either side, the matter shall be referred to the President of the ENGINEER and the Village Manager of VILLAGE. These officers shall meet at the individual Project Site or such other location as is agreed upon within thirty (30) days of the written request to resolve the dispute.

8.10.5 Mediation. If the VILLAGE's and ENGINEER'S said officers are unable to resolve the dispute, then either side may request that the matter be submitted to mediation before a mediator mutually agreed upon. If the parties cannot agree on a mediator, then the American Arbitration Association shall appoint one upon request. Any administrative or mediator's fees shall be split equally between the parties.

8.10.6 Waiver Upon Final Payment. The making of final payment by VILLAGE and the acceptance of same by ENGINEER and ENGINEER'S subconsultants shall constitute a waiver of existing claims by the VILLAGE and such payee except those previously made in writing and identified as unsettled by VILLAGE at the time of payment, or by the payee at the time of such payee's final invoice. Except for those claims waived under Paragraph 8.1.3, final payment shall not constitute a waiver of claims by the VILLAGE relating to liens unsettled, or subsequent discovery of services not in compliance with this Agreement. The waivers contained in Paragraph 8.1.3 shall continue to apply after final payment is made.

8.10.7 Waiver Due to Untimely Notice. Claims arising after the making of final payment shall be barred, and no suit or demand may be filed if Notice as stated in Paragraph 8.10.3.2 is not given. Nothing in this Paragraph shall be construed as directly or indirectly limiting the time to institute suit, but rather to give the responding party timely notice and prompt opportunity to investigate the allegations of the dispute.

8.11 The VILLAGE represents that it has sufficient funds or the means of obtaining funds to remit payment to the ENGINEER for services rendered by the ENGINEER.

8.12 Publications. Recognizing the importance of professional development on the part of ENGINEER'S employees and the importance of ENGINEER'S public relations, ENGINEER may prepare publications, such as technical papers, articles for periodicals, and press releases, pertaining to ENGINEER'S services for the PROJECT. Such publications will be provided to VILLAGE in draft form for VILLAGE's advance review. VILLAGE shall review such drafts promptly and provide VILLAGE's comments to ENGINEER. VILLAGE may require deletion of proprietary data or confidential information from such publications, but otherwise VILLAGE will not unreasonably withhold approval. The cost of ENGINEER'S activities pertaining to any such publication shall be for ENGINEER'S account.

8.13 Indemnification for Pollution Related Claims. For services involving or related to pollution, toxic substances, or hazardous wastes or asbestos abatement work, VILLAGE agrees to release, defend, indemnify, and hold harmless ENGINEER and its officers, directors, employees, agents, and consultants and from all liability, claims, demands, damages, losses, and expenses, direct, indirect or consequential, including, but not limited to, claims of VILLAGE and other persons and organizations, reasonable fees and expenses of attorneys and consultants, and court costs against ENGINEER which arise out of the actual, alleged, or threatened dispersal, escape, or release of chemicals, wastes, liquids, gases, or any other material, irritant, contaminant, or pollutant, or arising out of or resulting from asbestos abatement work, unless such dispersal, escape or release is caused by ENGINEER, its agents or subcontractors.

8.14 Indemnification.

8.14.1 VILLAGE agrees that it will require all construction Contractors retained by the VILLAGE to indemnify, defend, and hold harmless VILLAGE and ENGINEER from and against any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractors, or their employees, agents, Subcontractors, and Suppliers.

8.14.2 If this PROJECT involves construction, and ENGINEER does not provide engineering services during construction including, but not limited to, on-site observation, Site visits, submittals review, and design clarifications, VILLAGE agrees to indemnify and hold harmless ENGINEER from or against any liability arising from the PROJECT or this Agreement.

8.14.3 The VILLAGE agrees to indemnify, protect and hold ENGINEER harmless from and against any and all claims, demands and causes of action by any third party for personal injury, property damage, loss of business or other economic damages arising out of any act, error or omission caused by the VILLAGE. ENGINEER agrees to indemnify, protect and hold the VILLAGE harmless from and against any and all claims, demands and causes of action by any third party for personal injury, property damage, loss of business or other economic damages arising out of any act, error or omission caused by the ENGINEER performing its services under this Agreement.

8.15 Computer Models. ENGINEER may use or modify ENGINEER'S proprietary computer models in service of VILLAGE under this Agreement, or ENGINEER may develop computer models during ENGINEER'S service to VILLAGE under this Agreement. Such use, modification, or development by ENGINEER does not constitute a license to VILLAGE to use or modify ENGINEER'S computer models. Said proprietary computer models shall remain the sole property of the ENGINEER. VILLAGE and ENGINEER will enter into a separate license agreement if VILLAGE wishes to use ENGINEER'S computer models.

8.16 Reuse of Documents. All documents including Contract Drawings and Specifications prepared or furnished by ENGINEER (and ENGINEER'S independent professional associates and consultants) pursuant to this Agreement are instruments of service in respect of the PROJECT, and ENGINEER shall have the ownership and property interest therein whether or not the PROJECT is completed. VILLAGE may make and retain copies for information and reference in connection with the use and occupancy of the PROJECT by VILLAGE and others; however, such documents are not intended or represented to be suitable for reuse by VILLAGE or others on extensions of the PROJECT or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at VILLAGE'S sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER'S independent professional associates or consultants, and VILLAGE shall indemnify and hold harmless ENGINEER and ENGINEER'S independent professional associates and consultants from and against all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by VILLAGE and ENGINEER.

8.17 Electronic Media.

8.17.1 Any electronic media (computer disks, tapes, and similar items) furnished with respect to ENGINEER'S services are for VILLAGE's information and convenience only. Such media are not to be considered part of ENGINEER'S instruments of service. (Due to the potential that information contained in electronic media can be modified by VILLAGE or others, ENGINEER, at its option, may remove all indicia of ENGINEER'S ownership and involvement from each electronic display.)

8.17.2 ENGINEER shall not be liable for loss or damage directly or indirectly, arising out of use of electronic media including, but not limited to, any loss of business or incidental or consequential damage. VILLAGE shall assume all risk and release, indemnify, and hold harmless ENGINEER, its officers, directors, employees, servants, agents, successors, and assigns, from and against each and every claim or cause of action that VILLAGE or others may have or which may arise in the future respecting use of the electronic media.

8.17.3 If there is a discrepancy between the electronic media files and the signed and sealed hard copies, the hard copies shall govern.

8.18 Notices. Any Notice required under this Agreement will be in writing, addressed to the appropriate party at the following addresses:

VILLAGE:

Village Engineer
Village of Westmont
31 West Quincy Street
Westmont, Illinois 60559

ENGINEER:

James Patterson, P.E.
Burns & McDonnell Engineering
1431 Opus Place, Suite 400
Downers Grove, Illinois 60515

8.19 Successors and Assigns. VILLAGE and ENGINEER, each binds himself and his successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither VILLAGE nor ENGINEER shall assign, sublet, or transfer his interest in the Agreement without the written consent of the other.

8.20 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.

8.21 Entire Agreement. This Agreement represents the entire Agreement between the ENGINEER and VILLAGE relative to the Scope of Services herein. All previous or contemporaneous agreements, representations, promises, and conditions relating to ENGINEER'S services described herein are superseded. Since terms contained in purchase orders do not generally apply to professional services, in the event VILLAGE issues to ENGINEER a purchase order, no preprinted terms thereon shall become a part of this Agreement. Said purchase order document, whether or not signed by ENGINEER, shall be considered as a document for the VILLAGE's internal management of its operations.

8.22 Independent Contractor. ENGINEER acknowledges that all services provided to the VILLAGE under this Agreement shall be those of an independent contractor, and this Agreement shall not be construed to create a partnership, joint venture or employment relationship. ENGINEER shall be responsible for making all required deductions, contributions and payments to and for its employees. ENGINEER shall be responsible for controlling the work, hours and methods of work of its employees, agents and contractors under its direction. ENGINEER shall not be entitled to any insurance or other employee benefits from the VILLAGE. ENGINEER shall have no authority to bind the VILLAGE to any agreement, contract or obligation unless expressly consented to in advance by the VILLAGE.

8.23 Confidential Information. In the scope of performing services under this Agreement, ENGINEER or its agents and contractors may come into possession of or receive knowledge or information regarding confidential information of the VILLAGE or third parties seeking engineering and development approvals from the VILLAGE. Such confidential information may include, but is not limited to, architectural plans, engineering plans, processes, formulae, customer lists, marketing information, financial information, legal information, and business practices, whether protected by intellectual property rights or not, which the disclosing party considers confidential, whether or not specifically identified as such. ENGINEER agrees to treat and maintain such confidential information in confidence, shall protect it with the same degree of care which it uses to protect its own confidential information (which shall not be less than reasonable care), shall not disclose it to any third party and shall use it for the sole purpose of performing under this Agreement. For purposes of this Agreement, confidential information shall not include any information which (a) is in the public domain at the time of disclosure or enters the public domain following disclosure through no fault of ENGINEER; (b) ENGINEER can demonstrate was already in its possession prior to disclosure hereunder or is subsequently disclosed to ENGINEER with no obligation of confidentiality by a third party having the right to disclose it; or (c) is independently developed by ENGINEER without reference to the disclosing party's confidential information. ENGINEER may disclose such confidential information upon the order of any court of competent jurisdiction or as otherwise required by law or legal process, provided that prior to such disclosure ENGINEER shall inform the disclosing party of such order if permitted by law, in order to provide the disclosing party with an opportunity to contest such order or to seek such other protective action as the disclosing party may elect. ENGINEER's indemnification of the VILLAGE under this Agreement shall include indemnification for damages for any breach of this provision by ENGINEER, including the unauthorized use of any third party's protected intellectual property rights.

IN WITNESS WHEREOF, the Village of Westmont, by and through its Village Mayor, and _____ by its authorized officer, have each made and executed this Agreement as of the day and year first above written.

ENGINEER:

Company: Burns & McDonnell Engineering Company, Inc.

By: _____

Randall L. Patchett

Print Name: Randall L. Patchett, P.E.

Title: Water and Municipal Services Manager

Attest: _____

James Patterson

Name: _____

Senior Civil Engineer

Title: _____

VILLAGE:

Village of Westmont, Illinois

By: _____

Name: Ron Gunter
Title: Mayor

Attest: _____

Name: Virginia Szymiski
Title: Village Clerk

Exhibit A

Village of Westmont Stormwater Permit Review Services

BACKGROUND

In response to a petition from the Village of Westmont, partial-waiver status was granted to the Village on December 3, 2002 by the DuPage County Stormwater Management Committee with respect to the administration and enforcement of the DuPage County Countywide Stormwater and Floodplain Ordinance (hereinafter referred to as ORDINANCE). As a partial-waiver community, the Village of Westmont is obligated to issue all stormwater permits for work within its corporate limits that is required to secure a permit under the ORDINANCE. This includes both stormwater management permits and permits for activities within Special Management Areas. The Village has authority to issue Stormwater Management Permits, but may not issue permits for work within Special Management Areas without the approval of the DuPage County Division of Environmental Concerns (hereinafter referred to as DEC). As a result of its partial-waiver status, the Village has elected to engage the services of ENGINEER to assist it in fulfilling its responsibilities as a partial-waiver community.

RESPONSIBILITIES OF ENGINEER

Review Process and Meetings:

ENGINEER shall follow the Village of Westmont's process in reviewing and approving a permit application. This process accommodates customary Village of Westmont Engineering Division plan review policies and procedures as well as conforms to the requirements of the ORDINANCE. In addition, ENGINEER shall attend, when requested by the Village of Westmont, all meetings with developers, owners, consultants, and/or DEC staff. These services shall be provided on an as requested basis and shall be performed on an hourly rate basis plus reimbursable expenses in accordance with Exhibit B to this Agreement. ENGINEER shall review those permit applications assigned it by the Village of Westmont Engineering Division staff. This shall include the completion of all appropriate forms, checklists, and flowcharts.

Special Management Areas:

ENGINEER shall make a site visit to each site for which a permit is sought to determine whether the documents submitted by the applicant are accurate and that the proposed work will not affect a Special Management Area. Should the proposed work appear to affect a Special

Management Area, ENGINEER is to notify the DEC staff and request a site evaluation with respect to the suspected special management.

Review Time, Permit Certification, Statement of Charges:

The results of all permit reviews are to be communicated to the Village of Westmont Municipal Services staff by written memorandum. These services shall be provided on an as requested basis and shall be performed on an hourly rate basis plus reimbursable expenses in accordance with Exhibit B to this Agreement. Typically, permit reviews for individual single-family or duplex lots shall be completed within one (1) to two (2) weeks. Reviews for commercial projects or subdivisions shall be completed within two (2) to three (3) weeks. ENGINEER may request an extension in time where the volume of permit applications in progress at one time is large and the Village of Westmont shall not unreasonably deny such a request under those circumstances. ENGINEER will submit an estimated completion date for each review within one (1) day of receipt of a permit review request, such estimate based on the complexity of the tasks involved. A written summary shall be provided for each permit review. The report shall provide an itemization of any discrepancies, errors, or omissions found with regard to the permitting requirements of the ORDINANCE and/or the Village. If no discrepancies, errors, or omissions are found, a certification letter shall be submitted stating that the permit is in substantial compliance with said permitting requirements, along with an accounting of all charges associated with the completed review. The certification letter shall include a summary of all documents reviewed for such project.

RESPONSIBILITIES OF VILLAGE

Review Process:

From time to time, VILLAGE shall revise and refine the review process and standard forms to be used by ENGINEER. ENGINEER is encouraged to recommend changes that may be beneficial to the process. VILLAGE will provide copies of permit submittals for review. VILLAGE will also assist ENGINEER regarding interpretation of the ORDINANCE and Village requirements.

Field Visits:

VILLAGE will assist ENGINEER in gaining field access to project sites and affected areas as required to complete the reviews.

Exhibit B

**Schedule of Engineer's Hourly
Professional Service Billing Rates**

(Attached)

Schedule of Hourly Professional Service Billing Rates

<u>Position Classification</u>	<u>Classification Level</u>	<u>Hourly Billing Rate</u>
General Office *	5	\$53.00
Technician *	6	66.00
Assistant *	7	77.00
	8	101.00
	9	112.00
Staff *	10	121.00
	11	135.00
Senior	12	151.00
	13	170.00
Associate	14	183.00
	15	192.00
	16	201.00
	17	207.00

NOTES:

1. Position classifications listed above refer to the firm's internal classification system for employee compensation. For example, "Associate", "Senior", etc., refer to such positions as "Associate Engineer", "Senior Architect", etc.
2. For any nonexempt personnel in positions marked with an asterisk (*), overtime will be billed at 1.5 times the hourly labor billing rates shown.
3. Project time spent by corporate officers will be billed at the Level 17 rate plus 25 percent.
4. For outside expenses incurred by Burns & McDonnell, such as authorized travel and subsistence, and for services rendered by others such as subcontractors, the client shall pay the cost to Burns & McDonnell plus 10%.
5. The services of contract/agency and/or any personnel of a Burns & McDonnell subsidiary or affiliate shall be billed to Owner according to the rate sheet as if such personnel is a direct employee of Burns & McDonnell.
6. The rates shown above are effective for services through December 31, 2019 and are subject to revision thereafter.

Form: Westmont Professional Engineering Services

Exhibit C

Schedule of Engineer's Flat Rate and Hourly Professional Service Billing Rates

(Attached)

Engineering Firm Name: Burns & McDonnell

List of Flat Rate Plan Review/Inspections	Costs \$ Per Review/Inspection
S-F Residential Stormwater & Engineering Plan Review *	\$800.00
2 nd Plan Submittal)	\$300.00
All other Plan Submittals	\$150.00
<hr/>	
Residential Subdivision Stormwater & Engineering Plan Review *	DNA / Hourly Rate
2 nd Plan Submittal)	\$500.00
All other Plan Submittals	\$200.00
<hr/>	
Commercial Stormwater & Engineering Plan Review (site less than 40,000 square feet)*	\$900.00
2 nd Plan Submittal)	\$400.00
All other Plan Submittals	\$150.00
<hr/>	
Commercial Stormwater & Engineering Plan Review (site equal to or greater than 40,000 sf)*	DNA / Hourly Rate
2 nd Plan Submittal)	\$500.00
All other Plan Submittals	\$200.00
<hr/>	
S-F Residential Spot Survey Review	\$200.00
2 nd Survey Submittal	\$100.00
All other Survey submittals	\$500.00
<hr/>	
Commercial Spot Survey Review	\$225.00
2 nd Survey Submittal	\$125.00
All other Survey submittals	\$50.00
<hr/>	
S-F Residential Pre-Construction – Safety Inspection **	\$200.00
Re-inspection(s)	\$100.00
<hr/>	
Residential Subdivision Pre-Construction – Safety Inspection **	\$200.00
Re-inspection(s)	\$100.00
<hr/>	
Commercial Pre-Construction – Safety Inspection **	\$200.00
Re-inspection(s)	\$100.00
<hr/>	
S-F Residential Flatwork (Prepour or Basecourse)	\$200.00
Re-inspection(s)	\$100.00
<hr/>	
Commercial Flatwork (Prepour or Basecourse) (site less than 40,000 sf)	\$200.00
Re-inspection(s)	\$100.00
<hr/>	
Commercial Flatwork (Prepour or Basecourse) (site equal to or greater than 40,000 sf)	DNA / Hourly Rate
Re-inspection(s)	\$200.00
<hr/>	
S-F Residential Rough Grading	\$225.00
Re-inspection(s)	\$125.00
<hr/>	
Residential Subdivision Rough Grading	DNA / Hourly Rate
Re-inspection(s)	\$250.00
<hr/>	
Commercial Rough Grading (site less than 40,000 sf)	\$250.00
Re-inspection(s)	\$125.00
<hr/>	

Commercial Rough Grading (site greater than 40,000 sf)	DNA / Hourly Rate
Re-inspection(s)	\$250.00
S-F Residential Final Grading	\$225.00
Re-inspection(s)	\$125.00
Residential Subdivision Final Grading	DNA / Hourly Rate
Re-inspection(s)	\$275.00
Commercial Final Grading (site less than 40,000 sf)	\$300.00
Re-inspection(s)	\$150.00
Commercial Final Grading (site greater than 40,000 sf)	DNA / Hourly Rate
Re-inspection(s)	\$275.00
S-F Residential Underground Inspection ***	\$200.00
Re-Inspection(s)	\$100.00
Residential Subdivision Underground Inspection ***	DNA / Hourly Rate
Re-Inspection(s)	\$150.00
Commercial Underground Inspection (site less than 40,000 sf) ***	\$250.00
Re-Inspection(s)	\$100.00
Commercial Underground Inspection (site equal to or greater than 40,000 sf) ***	DNA / Hourly Rate
Re-Inspection(s)	\$275.00
S-F Residential Record Drawing (As-Built) Verification	\$250.00
Re-Inspection(s)	\$175.00
Residential Subdivision Record Drawing (As-Built) Verification	DNA / Hourly Rate
Re-Inspection(s)	\$300.00
Commercial Record Drawing (As-Built) Verification (site less than 40,000 sf)	\$325.00
Re-Inspection(s)	\$150.00
Commercial Record Drawing (As-Built) Verification (site equal to or greater than 40,000 sf)	DNA / Hourly Rate
Re-Inspection(s)	\$400.00

* For stormwater regulations from the Westmont Village Code and the DuPage County Code.

** For example; verification of required erosion control, tree protection, perimeter fencing and site address signage

*** For example; inspection of inverts, storm sewer manholes, slotted drains, drywells, and trenches