

**VILLAGE OF ORLAND PARK
PROFESSIONAL ENGINEERING SERVICES
GENERAL TERMS AND CONDITIONS**

1. **Relationship Between Engineer and Village:** The Engineer shall serve as the Village's professional engineer consultant in those Projects, or phases of the Project, to which this Agreement applies. This relationship is that of a buyer and seller of professional services and as such the Engineer is an independent contractor in the performance of this Agreement and it is understood that the parties have not entered into any joint venture or partnership with the other. The Engineer shall not be considered to be the agent of the 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.
2. **Responsibility of the Engineer:** Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any Agreement between the Village and any other party concerning the Project, the Engineer shall not have control or be in charge of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction, or the safety, safety precautions or programs of the Village, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. The Engineer shall not be responsible for the acts or omissions of the Village, or for the failure of the Village, any architect, another engineer, consultant, contractor or subcontractor to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project. Any provision which purports to amend this provision shall be without effect unless it contains a reference that the content of this condition is expressly amended for the purposes described in such amendment and is signed by the Engineer.

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 the Village shall negotiate appropriate contract adjustments acceptable to both parties to accommodate any changes. The Engineer will be responsible for correctly laying out the design data shown on the contract documents where construction staking services are a part of this Agreement. The Engineer is not responsible for, and Village agrees herewith to hold Engineer harmless from any and all errors which may be contained within the Contract Documents, unless such errors are the result of the work of the Engineer. It is expressly understood that the uncovering of errors in the plans and specifications, unless such errors should have been uncovered by the Engineer in the exercise of its professional service, is not the responsibility of the Engineer and any and all costs associated with such errors shall be borne by others.

3. **Changes:** 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 any such changes, if commercially possible.
4. **Suspension of Services:** 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. Engineer will not be obligated to provide the same personnel employed prior to suspension, when the services are resumed, in the event that the period of suspension is greater than thirty (30) days.
5. **Documents Delivered to Village:** 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. Engineer shall have the right to retain originals of all Project Documents and drawings for its files. Furthermore, it is understood and agreed that the Project Documents such as, but not limited to reports, calculations, drawings, and specifications prepared for the Project, whether in hard copy or machine readable form, are instruments of professional service intended for one-time use in the construction of this Project. These Project Documents are and shall remain the property of the Engineer to the extent permitted by law. 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.

It is also understood and agreed that because of the possibility that information and data delivered in machine readable form may be altered, whether inadvertently or otherwise, the Engineer reserves the right, upon prior written notice to the Village, to retain the original tapes/disks and to remove from copies provided to the Village all identification reflecting the involvement of the Engineer in their preparation. The Engineer also reserves the right to retain hard copy originals of all Project Documentation delivered to the Village in machine readable form, which originals shall be referred to and shall govern in the event of any inconsistency between the two.

6. **Reuse of Documents:** All Project Documents including but not limited to reports, opinions of probable costs, drawings and specifications furnished by Engineer pursuant to this Agreement are intended for use on the Project only. They cannot be used by Village or others on extensions of the Project or any other project. Any reuse, without specific written verification or adaptation by Engineer, shall be at Village's sole risk, and Village shall indemnify and hold harmless Engineer from all claims, damages, losses, and expenses including attorney's 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.

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 if the Village has previously advised the Engineer in writing of the specific information considered by the Village to be confidential and proprietary.

7. **Opinions of Probable Cost:** Since Engineer has no control over the cost of labor, materials or equipment, or over the Contractor(s) method of determining prices, or over competitive bidding or market conditions, Engineer's opinions of probable Project Construction Cost provided for herein are to be made on the basis of Engineer's experience and qualifications and represent Engineer's judgment as a design professional familiar with the construction industry, but Engineer cannot and does not guarantee that proposal, bids or the Construction Cost will not vary from opinions of probable construction cost prepared by Engineer. If prior to the Bidding or Negotiating Phase, Village wishes greater accuracy as to the Construction Cost, the Village shall employ an independent cost estimator consultant for the purpose of obtaining a second construction cost opinion independent from Engineer.
8. **Successors and Assigns:** The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and authorized assigns.
9. **Waiver of Contract Breach:** 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.
10. **Entire Understanding of Agreement:** This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Village and the Engineer hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of the Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.
11. **Amendment:** This Agreement shall not be subject to amendment unless another instrument is duly executed by duly authorized representatives of each of the parties and entitled "Amendment of Agreement".

12. **Severability of Invalid Provisions:** If any provision of the Agreement shall be held to contravene or to be invalid under the laws of any particular state, county or jurisdiction where used, such contravention shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provisions held to be invalid in the particular state, country or jurisdiction and the rights or obligations of the parties hereto shall be construed and enforced accordingly.
13. **Force Majeure:** Neither Village nor Engineer shall be liable for any fault or delay caused by any contingency beyond their control including but not limited to acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
14. **Subcontracts:** Engineer may subcontract portions of the work, but each subcontractor must be approved by Village in writing in advance.
15. **Access and Permits:** Village shall arrange for Engineer to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project. Village shall pay costs (including Engineer's employee salaries, overhead and fee) incident to any effort by Engineer toward assisting Village in such access, permits or approvals, if Engineer performed such services.
16. **Designation of Authorized Representative:** Each party to this Agreement shall designate one or more persons to act with authority in its behalf with respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the other party.
17. **Village's Responsibilities:** The Village agrees to provide full information regarding requirements for and about the Project, including a program which shall set forth the Village's objectives, schedule, constraints, criteria, special equipment, systems and site requirements.

The Village agrees to furnish and pay for all legal, accounting and insurance counseling services as the Village may require at any time for the Project, including auditing services which the Village may require to verify the Contractor's Application for Payment or to ascertain how or for what purpose the Contractor has used the money paid by or on behalf of the Village. In addition, Village shall give prompt written notice to the Engineer whenever the Village observes or otherwise becomes aware of any development that affects the scope or timing of the Engineer's services, or any defect or non-conformance of the work of any Contractor.
18. **Information Provided by Others:** The Engineer shall indicate to the Village the information needed for rendering of the services of this Agreement. The Village shall provide to the Engineer such information as is available to the Village and the Village's consultants and contractors, and the Engineer shall be entitled to rely upon the accuracy and completeness thereof unless, in the exercise of his professional skill, Engineer

determined inaccuracies or incompleteness. The Village recognizes that it is impossible for the Engineer to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors or omissions which may have occurred in assembling the information the Village is providing.

19. **Terms of Payment:** Engineer shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred, based upon Engineer's estimate of the proportion of the total services actually completed at the time of billing or based upon actual hours expended during the billing period. In the event the Village has not paid amounts properly due the Engineer, Engineer may after giving seven days written notice to Village, suspend services under this Agreement until Engineer has been paid in full all amounts properly due for services, expenses and charges. Engineer shall have no liability whatsoever to Village for any costs or damages as a result of such suspension.
20. **Hazardous Materials/Pollutants:** Unless otherwise provided by this Agreement, the Engineer and Engineer's consultants shall have no responsibility for the discovery (unless such discovery should have been made by the Engineer in the exercise of its professional skill), presence, handling, removal or disposal of or exposure of persons to hazardous materials/pollutants in any form at the Project site, including but not limited to mold/mildew, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic/hazardous/pollutant type substances unless undertaken at the direction of the Engineer or Engineer's consultants.
21. **Attorney's Fees:** In the event of any dispute that leads to litigation arising from or related to the services provided under this agreement, the substantially prevailing party will be entitled to recovery of all reasonable costs incurred, including court costs, attorney's fees and other related expenses.
22. **Insurance:** The Engineer shall provide the Village with certificates of insurance evidencing all coverages held by the Engineer, with coverage minimums and from insurance providers in compliance with Village requirements.
23. **Facsimile Transmissions:** The parties agree that each may rely, without investigation, upon the genuineness and authenticity of any document, including any signature or purported signature, transmitted by facsimile machine, without reviewing or requiring receipt of the original document. Each document or signature so transmitted shall be deemed an enforceable original. Upon request, the transmitting party agrees to provide the receiving party with the original document transmitted by facsimile machine; however, the parties agree that the failure of either party to comply with such a request shall in no way affect the genuineness, authenticity or enforceability of the document. Each party waives and relinquishes as a defense to the formation or enforceability of any contract between the parties, or provision thereof the fact that a facsimile transmission was used.

