

AGREEMENT BETWEEN THE COUNTY OF DUPAGE, ILLINOIS AND
CHRISTOPHER B. BURKE ENGINEERING, LTD. FOR ON-CALL
PROFESSIONAL ENGINEERING SERVICES FOR WATER SYSTEMS AND LAKE
MICHIGAN ALLOCATION FOR VARIOUS REGIONS AROUND DUPAGE
COUNTY

THIS AGREEMENT is made this 14th day of March, 2023, between COUNTY OF DUPAGE, a body politic and corporate, with offices at 421 North County Farm Road, Wheaton, Illinois 60187(hereinafter referred to as the COUNTY) and CHRISTOPHER B. BURKE ENGINEERING, LTD, licensed to do business in the State of Illinois, with offices at 9575 W. Higgins Road, Suite 600, Rosemont, IL 60018 (hereinafter referred to as the CONSULTANT).

R E C I T A L S

WHEREAS, the Illinois General Assembly has granted the County of DuPage ("COUNTY") authority to operate and maintain sanitary sewer systems and potable water distribution systems (Illinois Compiled Statutes, Chapter 55, paragraphs 5/5-15001, et. seq.); and

WHEREAS, the Illinois State Constitution and Illinois General Assembly have authorized counties, including the County of DuPage (COUNTY), authority to perform various public functions, and to provide essential governmental services, for the benefit of its residents, property owners and businesses; and

WHEREAS, the Illinois General Assembly has further granted the County of DuPage ("COUNTY") authority to operate and maintain flood control, stormwater management, and drainage systems (*inter alia*, Illinois Compiled Statutes, Chapter 55, paragraphs 5/5-1062.3 and 5/5-15001 et seq.); and

WHEREAS, in accordance with the above referenced authority, the COUNTY maintains and operates water treatment facilities and water distribution systems; and

WHEREAS, the aforesaid systems periodically require on-call, as needed Professional Engineering Services related to Lake Michigan water allocation, evaluation of water sources and systems; and

WHEREAS, CHRISTOPHER B. BURKE ENGINEERING, LTD. (hereinafter the CONSULTANT) has experience and expertise in the allocation process and engineering and is willing to perform such services for the COUNTY for an amount not to exceed ninety-five thousand dollars and 00/100 (\$95,000.00); and

NOW, THEREFORE, in consideration of the premises, the mutual covenants, terms, and conditions herein set forth, and the understandings of each party to the other, the parties do hereby mutually covenant, promise and agree as follows:

1.0 INCORPORATION AND CONSTRUCTION.

- 1.1 All recitals set forth above are incorporated herein and made part thereof, the same constituting the factual basis for this AGREEMENT.
- 1.2 The headings of the paragraphs and subparagraphs of this AGREEMENT are inserted for convenience of reference only and shall not be deemed to constitute part of this AGREEMENT or to affect the construction hereof.
- 1.3 The exhibits referenced in this AGREEMENT shall be deemed incorporated herein and a part thereof.

2.0 SCOPE OF SERVICES.

- 2.1 Services are to be provided by the CONSULTANT according to the specifications in the scope of work, specified as Exhibit "A", attached hereto, which exhibit is hereby incorporated by reference. The CONSULTANT shall complete all of the work set forth in said exhibit for the compensation set forth in Paragraph 6.2, below, unless otherwise modified.
- 2.2 The COUNTY may, from time to time, request changes in the Scope of Services. Any such changes, including any increase or decrease in Consultant's compensation, shall be documented by an amendment to this AGREEMENT in accordance with Section 14.0 of this AGREEMENT.
- 2.3 The relationship of CONSULTANT to COUNTY is that of independent contractor, and nothing in this AGREEMENT is intended nor shall be construed to create an agency, employment, joint venture relationship, or any other relationship allowing COUNTY to exercise control or direction over the manner or method by which CONSULTANT or its subcontractors provide services hereunder.

- 2.4 Any work, assignments or services to be performed by professionals under this AGREEMENT shall be performed by individuals licensed to practice by the State of Illinois in the applicable professional discipline.

3.0 NOTICE TO PROCEED.

- 3.1 Authorization to proceed with tasks described in Exhibit "A" shall be given on behalf of the COUNTY by the Superintendent of the Public Works Department, (hereinafter referred to as the "SUPERINTENDENT" in the form of a written notice to proceed following execution of the AGREEMENT by the County Board Chairman.
- 3.2 In addition to the Notice to Proceed, the SUPERINTENDENT or his/her designee, may, on behalf of the COUNTY, approve, deny, receive, accept or reject any submission, notices or invoices from or by CONSULTANT, as provided for in this AGREEMENT, including, but not limited to, acts performed in accordance with Paragraphs 4.1, 5.2, 6.4, 7.1, 8.2, 8.3., 15.3 and 21.2.

4.0 TECHNICAL SUBCONSULTANTS.

- 4.1 The prior written approval of the COUNTY shall be required before CONSULTANT hires any subconsultant(s) to complete COUNTY-ordered technical or professional tasks or work.
- 4.2 The CONSULTANT shall supervise any subconsultant(s) hired by the CONSULTANT and the CONSULTANT shall be solely responsible for any and all work performed by said subconsultant, or subconsultants, in the same manner and with the same liability as if performed by the CONSULTANT.
- 4.3 The CONSULTANT shall require any subconsultant hired for the performance of any work or activity in connection to this AGREEMENT to agree and covenant that he/she/they/it (the subconsultant) also meets the terms of Sections 8.0 and 13.0 of this AGREEMENT and shall fully comply therewith while engaged by CONSULTANT in County-related work.

5.0 TIME FOR PERFORMANCE

- 5.1 The CONSULTANT shall commence work within five (5) working days after the COUNTY issues its Written Notice to Proceed. The COUNTY is

not liable and will not pay the CONSULTANT for any work performed before the date of the Notice to Proceed.

- 5.2 Unless otherwise defined in the Scope of Services, the CONSULTANT shall submit a schedule for completion of the project within ten (10) days of the written Notice to Proceed. The schedule is subject to approval by the COUNTY. All of the services required hereunder shall be completed by December 31, 2025 unless the term of this AGREEMENT is extended.
- 5.3 If the CONSULTANT is delayed at any time in the progress of the work by any act or neglect of the COUNTY or by any employee of COUNTY or by changes ordered by the COUNTY, or any other causes beyond the CONSULTANT'S control then the sole remedy and allowance made shall be an extension of time for completion. Such extension shall be that which is determined reasonable by the COUNTY upon consultation with CONSULTANT.

6.0 COMPENSATION.

- 6.1 The COUNTY shall pay the CONSULTANT for services rendered and shall only pay in accordance with the provisions of this AGREEMENT. The COUNTY shall not be obligated to pay for any services not in compliance with this AGREEMENT.
- 6.2 Total payments to the CONSULTANT under the terms of this AGREEMENT shall not under any circumstances exceed Ninety-five Thousand Dollars and 00/100 (\$95,000.00). This amount is a "not to exceed" amount. In the event the COUNTY directs CONSULTANT to do work which would cause the stated amount to be exceeded, the CONSULTANT shall not be responsible for such work until this AGREEMENT is modified pursuant to Article 14.0.
- 6.3 For work performed, the COUNTY will pay on a basis at a 2.8 direct labor multiplier applied to the actual hourly rates of CONSULTANT'S staff. The multiplier includes the CONSULTANT'S cost of overhead, profit and incidental costs. A chart listing the hourly rates for CONSULTANT'S staff, and approved subconsultant's staff, identified by position or assignment, is attached and incorporated hereto as Exhibit "C."
- 6.4 Direct expenses are costs for supplies and materials to be paid for by the COUNTY for completion of all work defined in Exhibit "A". For direct expenses, including supplies, materials, postage/shipping, and other costs directly related to the specific reports and presentations as required by the

COUNTY, the COUNTY shall pay on an actual cost basis without any markup added.

6.4.a For all direct expenses more than \$25.00, the CONSULTANT shall include copies of receipts from suppliers for expendable materials with its invoice to the COUNTY.

6.4.b CONSULTANT shall only include direct expenses as outlined in Exhibit "C".

6.5 The CONSULTANT shall submit its invoices, for services rendered and allowable expenses, to the COUNTY on a not more often than monthly basis, and no later than sixty (60) days following completion of the work being invoiced. Each invoice shall summarize, as applicable, the tasks performed, the budgeted hours and money for the pay period per task, the actual hours and money spent during the pay period per task, personnel used per task, and the percentage complete for each task. The CONSULTANT shall provide the COUNTY with a valid taxpayer identification number prior to making any request for compensation.

6.6 Upon receipt, review and approval of properly documented invoices, the COUNTY shall pay, or cause to be paid, to the CONSULTANT the amounts invoiced, provided that the amount invoiced together with the amounts of previous partial payments do not exceed the total compensation specified in this AGREEMENT. The COUNTY may not deny a properly documented claim for compensation, in whole or in part, without cause. The COUNTY reserves the right to hold back a sum equal to not more than five percent (5%) of the total contract sum to ensure performance. The COUNTY shall not be required to pay CONSULTANT more often than monthly.

6.7 Upon receipt, review and acceptance of all deliverables specified in Exhibit "B" of this AGREEMENT, final payment shall be made to the CONSULTANT.

6.8 The COUNTY reserves the right to charge for additional processing of invoices received more than sixty (60) days following the date of the work invoiced. Payment will not be made on invoices submitted later than six months (180 days) after the expiration date of this AGREEMENT and any statute of limitations to the contrary is hereby waived.

6.9 Invoices containing charges for work subject to the Illinois Prevailing Wage Act (820 ILCS 130/) are required to be accompanied by the

applicable Certified Transcript of Payroll form(s) for acceptance. If the scope of work for this AGREEMENT includes the use of job classifications covered by the prevailing rate of wages, the prevailing rate must be reflected in the cost estimate for this AGREEMENT. The rates have been ascertained and certified by the Illinois Department of Labor for the locality in which work is to be performed. If the Illinois Department of Labor revises the prevailing rates of wages to be paid, as listed in the specification of rates, the CONSULTANT may not pay less than the revised rates of wages. Current wage rate information shall be obtained by visiting the Illinois Department of Labor website at <http://www.state.il.us/agency/idol/> or calling (312) 793-2814. It is the responsibility of the CONSULTANT to review the rates applicable to the work in this AGREEMENT, at regular intervals, in order to insure the timely payment of current rates. Provision of this information to the CONSULTANT, by means of the Illinois Department of Labor website, satisfies the notification of revisions by the COUNTY to the CONSULTANT, pursuant to the Act, and the CONSULTANT agrees that no additional notice is required. The CONSULTANT shall notify each of its subconsultants of the revised rates of wages.

7.0 DELIVERABLES

- 7.1 The CONSULTANT shall provide the COUNTY on or before the expiration of this AGREEMENT, or promptly after notice of termination, or when the SUPERINTENDENT directs, the deliverables specified in Exhibit "B" of this AGREEMENT, attached hereto, which is hereby incorporated by reference.

8.0 CONSULTANT'S INSURANCE

- 8.1 The CONSULTANT shall maintain, at its sole expense, insurance coverage including:
- 8.1.a **Worker's Compensation Insurance** in the statutory amounts.
 - 8.1.b **Employer's Liability Insurance** in an amount not less than one million dollars (\$1,000,000.00) each accident/injury and five hundred thousand dollars (\$500,000.00) each employee/disease.
 - 8.1.c **Commercial (Comprehensive) General Liability Insurance**, (including contractual liability) with a limit of not less than three million dollars (\$3,000,000) total; including limits of not

less than two million dollars (\$2,000,000) per occurrence, and one million dollars (\$1,000,000) excess liability in the annual aggregate injury/property damage combined single limit. **An Endorsement must also be provided naming the County of DuPage c/o Public Works Department, 421 N. County Farm Rd., Wheaton, IL 60187, as an additional insured. This additional insured is to be on a primary and noncontributory basis.**

8.1.d **Commercial (Comprehensive) Automobile Liability Insurance** with minimum limits of at least one million dollars (\$1,000,000) for any one person and one million dollars (\$1,000,000) for any one occurrence of death, bodily injury or property damage in the aggregate annually. **An Endorsement must also be provided naming the County of DuPage c/o Public Works Department, 421 N. County Farm Rd., Wheaton, IL 60187, as an additional insured. This additional insured is to be on a primary and noncontributory basis.**

8.1.e **Professional Liability Insurance (Errors and Omissions)** shall be provided with minimum limits of at least one million dollars (\$1,000,000) per incident/three million dollars (\$3,000,000) aggregate during the term of this AGREEMENT. In addition, coverage shall be provided in the minimum amount of one million dollars (\$1,000,000) and shall be maintained in the form of an additional endorsement for a period of four (4) years after the date of the final payment for this AGREEMENT. The CONSULTANT shall provide the COUNTY endorsements at the beginning of each year evidencing same.

8.2 It shall be the duty of the CONSULTANT to provide to the COUNTY, copies of the CONSULTANT'S Certificates of Insurance, as well as all applicable coverage and cancellation endorsements, before issuance of a Notice to Proceed. It is the further duty of the CONSULTANT to immediately notify the COUNTY if any insurance required under this AGREEMENT has been cancelled, materially changed, or renewal has been refused, and the CONSULTANT shall immediately suspend all work in progress and take the necessary steps to purchase, maintain and provide the required insurance coverage. If a suspension of work should occur due to insurance requirements, upon verification by the COUNTY of the CONSULTANT curing any breach of its required insurance coverage, the COUNTY shall notify the CONSULTANT that the CONSULTANT can

resume work under this AGREEMENT. The CONSULTANT shall accept and bear all costs that may result from the cancellation of this AGREEMENT due to CONSULTANT'S failure to provide and maintain the required insurance.

- 8.3 The coverage limits required under subparagraphs 8.1.c and 8.1.d above may be satisfied through a combination of primary and excess coverage. The insurance required to be purchased and maintained by the CONSULTANT shall be provided by an insurance company acceptable to the COUNTY, and except for the insurance required in subparagraph 8.1.e licensed to do business in the State of Illinois; and shall include at least the specific coverage and be written for not less than the limits of the liability specified herein or required by law or regulation whichever is greater; and shall be so endorsed that the coverage afforded will not be canceled or materially changed until at least sixty (60) days prior written notice has been given to the COUNTY except for cancellation due to non-payment of premium for which at least fifteen (15) days prior written notice (five days allowed for mailing time) has been given to the COUNTY. If the CONSULTANT is satisfying insurance required through a combination of primary and excess coverage, the CONSULTANT shall require that said excess/umbrella liability policy include in the "Who is Insured" pages of the excess/umbrella policy wording such as "Any other person or organization you have agreed in a written contract to provide additional insurance" or wording to that affect. The CONSULTANT shall provide a copy of said section of the excess/umbrella liability policy upon request by the COUNTY.
- 8.4 The insurance required to be purchased and maintained by the CONSULTANT shall be provided by an insurance company acceptable to the COUNTY, and except for the insurance required in subparagraph 8.1.e, CONSULTANT'S insurance providers shall be licensed to do business in the State of Illinois; and shall include at least the specific coverage and be written for not less than the limits of the liability specified herein or required by law or regulation whichever is greater; and shall be so endorsed that the coverage afforded will not be canceled or materially changed until at least sixty (60) days prior written notice has been given to the COUNTY except for cancellation due to non-payment of premium for which at least fifteen (15) days prior written notice (five days allowed for mailing time) has been given to the COUNTY.
- 8.5 CONSULTANT'S insurance required by Paragraphs 8.1.b-d, above, shall name the COUNTY, its officers and employees as additional insured parties. The Certificate of Insurance and endorsements shall state: "The County of

DuPage, its officers and employees are named as additional insureds as defined in the Commercial (Comprehensive) General Liability Insurance policy with respect to claims arising from CONSULTANT'S performance under this AGREEMENT."

- 8.6 The CONSULTANT shall require all approved sub-consultants, anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable under this AGREEMENT to maintain the exact same insurance coverage types, and in the same amounts, as required of the CONSULTANT at all times during which such subconsultants, or other persons, are engaged in PROJECT-related work. The CONSULTANT shall hold, and the COUNTY shall retain the right to obtain at any time, documentation of sub-consultants' insurance coverage.

9.0 INDEMNIFICATION.

- 9.1 The CONSULTANT shall indemnify, hold harmless and defend the COUNTY, its officials, officers, and employees from and against all liability, claims, suits, demands, proceedings and actions, including reasonable costs, fees and expense of defense, arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property to the extent caused by the CONSULTANT'S negligent or willful misconduct, errors or omissions in its performance under this AGREEMENT.
- 9.2 Nothing contained herein shall be construed as prohibiting the COUNTY, its officials, directors, officers, agents and employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them. Pursuant to Illinois law, the attorney representing the COUNTY, under this paragraph or paragraph 9.1, is the State's Attorney, in accord with the applicable law. The COUNTY'S participation in its defense shall not remove CONSULTANT'S duty to indemnify, defend, and hold the COUNTY harmless, as set forth above.
- 9.3 Any indemnity as provided in this AGREEMENT shall not be limited by reason of the enumeration of any insurance coverage herein provided. CONSULTANT'S indemnification of COUNTY shall survive the termination, or expiration, of this AGREEMENT.

- 9.4** The COUNTY does not waive, by these indemnity requirements, any defenses or protections under the Local Government and Governmental Employees Tort Liability Act (745 ILCS 10/1 et seq.) or otherwise available to it, or the CONSULTANT, under the law.

10.0 SATISFACTORY PERFORMANCE

- 10.1** The COUNTY is engaging this CONSULTANT because the CONSULTANT professes to the COUNTY that it will employ the standard of care within its profession in the performance of the services herein contracted. Accordingly the CONSULTANT'S, and subconsultant(s), standard of performance under the terms of this AGREEMENT shall be that which is to the satisfaction of the COUNTY and meets the quality and standards commonly provided by similar professional firms practicing in DuPage County.
- 10.2** The CONSULTANT'S services shall be performed in a manner consistent with the customary skill and care of its profession.
- 10.3** If any errors, omissions, or acts, intentional or negligent, are made by the CONSULTANT, or its' subconsultant(s), in any phase of the work, the correction of which requires additional field or office work, the CONSULTANT shall be required to perform such additional work as may be necessary to remedy same without undue delay and without charge to the COUNTY. In the event any errors or omissions are detected after the AGREEMENT'S expiration or termination, the CONSULTANT shall have no right to cure under this provision.
- 10.4** Acceptance of the work shall not relieve the CONSULTANT of the responsibility for the quality of its work, nor its liability for loss or damage resulting from any errors, omissions, or negligent or willful misconduct by the CONSULTANT or its subconsultants.

11.0 BREACH OF CONTRACT

- 11.1** Either Party's failure to timely cure any material breach of this AGREEMENT shall relieve the other Party of the requirement to give thirty (30) day notice for termination of this AGREEMENT in accordance with Paragraph 16.1, below. Whenever a Party hereto has failed to timely cure a breach of this AGREEMENT, the other Party may terminate this AGREEMENT by giving ten (10) days written notice thereof to the breaching party. Notwithstanding the above term, the CONSULTANT'S

failure to maintain insurance in accordance with Section 8.0, above, shall be grounds for the COUNTY'S immediate termination of this AGREEMENT.

12.0 OWNERSHIP OF DOCUMENTS.

- 12.1** The CONSULTANT agrees that all survey data, reports, drafting, studies, specifications, estimates, maps, computations and all other deliverables prepared for the COUNTY under the terms of this AGREEMENT shall be properly arranged, indexed and delivered to the COUNTY as provided in paragraph 7.1., and shall include one (1) electronic copy of all documents in a format to be designated by the COUNTY'S representative.
- 12.2** The documents and materials made or maintained under this AGREEMENT shall be and will remain the property of the COUNTY which shall have the right to use same without restriction or limitation and without compensation to the CONSULTANT other than as provided in this AGREEMENT. The CONSULTANT waives any copyright interest in said deliverables.
- 12.3** The COUNTY acknowledges that the use of information that becomes the property of the COUNTY pursuant to Paragraph 12.2, for purposes other than those contemplated in this AGREEMENT, shall be at the COUNTY'S sole risk.
- 12.4** The CONSULTANT may, at its sole expense, reproduce and maintain copies of deliverables provided to COUNTY

13.0 COMPLIANCE WITH THE LAW AND OTHER AUTHORITY.

- 13.1** The CONSULTANT, and subconsultant(s), shall comply with Federal, State and Local statutes, ordinances and regulations and obtain permits, licenses, or other mandated approvals, whenever applicable.
- 13.2** The CONSULTANT, and subconsultant(s), shall not discriminate against any worker, job applicant, employee or any member of the public, because of race, creed, color, sex, sexual orientation, age, handicap, or national origin, or otherwise commit an unfair employment practice. CONSULTANT, and subconsultant(s), shall comply with the provisions of the Illinois Human Rights Act, as amended, 775 ILCS 5/-101, et seq., and with all rules and regulations established by the Department of Human Rights.

13.3 The CONSULTANT, by its signature on this AGREEMENT, certifies that it has not been barred from being awarded a contract or subcontract under the Illinois Procurement Code, 30 ILCS 500/1-1, et seq.; and further certifies that it has not been barred from contracting with a unit of State or local government as a result of a violation of Section 33E-3 or 33E-4 of the Illinois Criminal Code (Illinois Compiled Statutes, Chapter 720, paragraph 5/33E-3).

13.4 The CONSULTANT, by its signature on this AGREEMENT, certifies that no payment, gratuity or offer of employment, except as permitted by the Illinois State Gift Ban Act and the County of DuPage Ethics Ordinance, was made by or to the CONSULTANT, or CONSULTANT'S personnel, in relation to this AGREEMENT. The CONSULTANT has also executed the attached Ethics Disclosure Statement that is made a part hereof and agrees to update contribution information on an ongoing basis during the life of the AGREEMENT as required by said Ordinance.

13.5 The CONSULTANT covenants that it has no conflicting public or private interest and shall not acquire directly or indirectly any such interest which would conflict in any manner with the performance of CONSULTANT'S services under this AGREEMENT.

14.0 MODIFICATION OR AMENDMENT.

14.1 The parties may modify or amend terms of this AGREEMENT only by a written document duly approved and executed by both parties.

14.2 The CONSULTANT acknowledges receipt of a copy of the COUNTY'S Purchasing Procedures and Guidelines Ordinance, which is hereby incorporated in this AGREEMENT, and has had an opportunity to review it. CONSULTANT agrees to submit changes for scope of work or compensation in accordance with said Ordinance.

15.0 TERM OF THIS AGREEMENT.

15.1 The term of this AGREEMENT shall begin on the date the AGREEMENT is fully executed, and shall continue in full force and effect until the earlier of the following occurs:

- (a) The termination of this AGREEMENT in accordance with the terms of Section 16.0, or

- (b) December 31, 2025, or to a new date agreed upon by the parties.
- (c) The completion by the CONSULTANT and COUNTY of their respective obligations under this AGREEMENT, in the event such completion occurs before December 31, 2025.

15.2 The CONSULTANT shall not perform any work under this AGREEMENT after the expiration date set forth in Paragraph 15.1(b), above. The COUNTY is not liable and will not pay the CONSULTANT for any work performed after the AGREEMENT'S expiration or termination. However, nothing herein shall be construed so as to relieve the COUNTY of its obligation to pay the CONSULTANT for works satisfactorily performed prior to termination, or expiration, and delivered in accord with Paragraph 7.1, above.

15.3 The term for performing this AGREEMENT may be amended by a change order, or other COUNTY designated form, signed by both parties without formal amendment pursuant to Paragraph 14.1, above.

16.0 TERMINATION

16.1 Except as otherwise set forth in this AGREEMENT, either party shall have the right to terminate this AGREEMENT for any cause or without cause thirty (30) days after having served written notice upon the other party, except in the event of CONSULTANT'S failure to maintain suitable insurance at the requisite coverage amounts, insolvency, bankruptcy or receivership, in which case termination shall be effective immediately upon receipt of notice.

16.2 Upon such termination, the liabilities of the parties to this AGREEMENT shall cease, but they shall not be relieved of the duty to perform their obligations up to the date of termination, or to pay for deliverables tendered prior to termination. There shall be no termination expenses.

16.3 Upon termination of this AGREEMENT, all data, work products, reports and documents produced, because of this AGREEMENT shall become the property of the COUNTY. Further, CONSULTANT shall provide all deliverables within fourteen (14) days of termination in accordance with the other provisions of this AGREEMENT.

17.0 ENTIRE AGREEMENT.

- 17.1** This AGREEMENT, including matters incorporated herein, contains the entire agreement between the parties.
- 17.2** There are no other covenants, warranties, representations, promises, conditions or understandings; either oral or written, other than those contained herein.
- 17.3** This AGREEMENT may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.
- 17.4** In event of a conflict between the terms or conditions or this AGREEMENT and any term or condition found in any exhibit or attachment, the terms and conditions of this AGREEMENT shall prevail.
- 18.0 ASSIGNMENT.**
- 18.1** Either party may assign this AGREEMENT provided, however, the other party shall first approve such assignment, in writing.
- 19.0 SEVERABILITY.**
- 19.1** In the event, any provision of this AGREEMENT is held to be unenforceable or invalid for any reason, the enforceability thereof shall not affect the remainder of the AGREEMENT. The remainder of this AGREEMENT shall be construed as if not containing the particular provision and shall continue in full force, effect, and enforceability, in accordance with its terms.
- 19.2** In the event of the contingency described in Paragraph 19.1, above, the parties shall make a good faith effort to amend this AGREEMENT pursuant to Paragraph 14.1, above, in order to remedy and, or, replace any provision declared unenforceable or invalid.
- 20.0 GOVERNING LAW.**
- 20.1** The laws of the State of Illinois shall govern this AGREEMENT as to both interpretation and performance.
- 20.2** The venue for resolving any disputes concerning the parties' respective performance, or failure to perform, under this AGREEMENT, shall be the judicial circuit court for DuPage County.

21.0 NOTICES.

21.1 Any required notice shall be sent to the following addresses and parties:

Christopher B. Burke Engineering, Ltd.
9575 W. Higgins Road, Suite 600
Rosemont, IL 60018
ATTN: John P. Caruso, PE

DuPage County Department of Public Works
421 N. County Farm Road
Wheaton, Illinois 60187
ATTN: Nicholas W. Kottmeyer, Superintendent

21.2 All notices required to be given under the terms of this AGREEMENT shall be in writing and either (a) served personally during regular business hours; (8:00a.m.-4:30 p.m. CST or CDT Monday –Friday); (b) served by facsimile transmission during regular business hours (8:00a.m.-4:30 p.m. CST or CDT Monday–Friday); or (c) served by certified or registered mail, return receipt requested, properly addressed with postage prepaid. Notices served personally or by facsimile transmission shall be effective upon receipt, and notices served by mail shall be effective upon receipt as verified by the United States Postal Service. Each party may designate a new location for service of notices by serving notice thereof in accordance with the requirements of this Paragraph, and without compliance to the amendment procedures set forth in Paragraph 14.1, above.

22.0 WAIVER OF/FAILURE TO ENFORCE BREACH.

22.1 The parties agree that the waiver of, or failure to enforce, any breach of this AGREEMENT by the remaining party shall not be construed, or otherwise operate, as a waiver of any future breach of this AGREEMENT. Further the failure to enforce any particular breach shall not bar or prevent the remaining party from enforcing this AGREEMENT with respect to a different breach.

23.0 FORCE MAJEURE.

23.1 Neither party shall be liable for any delay or non-performance of their obligations caused by any contingency beyond their control including but

not limited to Acts of God, war, civil unrest, strikes, walkouts, fires or natural disasters.

24.0 QUALIFICATIONS

24.1 The CONSULTANT shall employ only persons duly licensed or registered in the appropriate category in responsible charge of all elements of the work covered under this AGREEMENT, for which Illinois Statutes require license or registration, and further shall employ only well qualified persons in responsible charge of any elements of the work covered under this AGREEMENT, all subject to COUNTY approval.

24.2 RESERVED.

24.3 Failure by the CONSULTANT to properly staff the PROJECT with qualified personnel shall be sufficient cause for the COUNTY to deny payment for services performed by unqualified personnel and will serve as a basis for cancellation of this AGREEMENT.

24.4 The CONSULTANT shall require any sub-consultant(s) and contractor(s) utilized for the PROJECT to employ qualified persons to the same extent such qualifications are required of the CONSULTANT'S personnel. The COUNTY shall have the same rights under Paragraph 24.3, above, with respect to the CONSULTANT'S sub-consultant(s) and contractor(s) being properly staffed while engaged in the PROJECT.

IN WITNESS OF, the parties set their hands and seals as of the date first written above.

County of DuPage

Christopher B. Burke Engineering, LTD.

Deborah A. Conroy, Chair
DuPage County Board

Michael Kerr, PE
President

Jean Kaczmarek
DuPage County Clerk

Sherry Sporina
Assistant Corporate Secretary