

## VILLAGE OF WILMETTE

1200 WILMETTE AVENUE

WILMETTE, ILLINOIS 60091-0040

**CONTRACT No. 5-14-2010-Extension One**  
**For:**  
**2013 to 2014 - PERMIT REVIEW SERVICES**

**With:**

**Christopher B. Burke Engineering Ltd**  
**9575 West Higgins Road**  
**Suite 600**  
**Rosemont, IL 60018**  
**Michael E. Kerr, Exec. VP**  
**847-823-0500**  
**847-823-0520 fax**  
**847-878-4967 cell**  
**mkerr@cbbel.com**

**Description:**

The VILLAGE OF WILMETTE requires outside consultant services to assist in the VILLAGE'S Permit Review Process. These services will include:

- 1) Reviewing site and grading plans for commercial and residential developments. This work will be paid for on a "Per Permit" basis.
- 2) Supplementing VILLAGE staff during peak Permit seasonal activity and vacation periods. This work will be paid for on an hourly basis rate.

The VILLAGE is entering into a sixteen month contract extension for these services with the firm **Christopher B. Burke Engineering Ltd.**

**PROFESSIONAL SERVICES AGREEMENT  
PERMIT REVIEW SERVICES**

**CONTRACT No. 5-14-2010-Extension One**

**THIS AGREEMENT** (the "Agreement") is made and entered into this **10<sup>th</sup> day of September, 2013**, by and between **Christopher B. Burke Engineering Ltd.**, as located at 9575 W. Higgins Rd, Rosemont, IL 60018 (hereinafter referred to as the "Consultant"), and the **Village of Wilmette**, an Illinois home rule municipal corporation whose mailing address is 1200 Wilmette Avenue, Wilmette, Illinois, 60091, (hereinafter referred to as the "Village")(collectively the "Parties").

**WHEREAS**, the Village sought proposals from various vendors to provide inspectional services and plan reviews;

**WHEREAS**, the Consultant submitted a proposal, dated **May 13, 2010 and revised on June 28, 2010 (Attachment One)**, to perform such inspectional services and plan reviews for the Village;

**WHEREAS**, the Consultant submitted a request to extend the existing **Contract No. 5-14-2010**, as dated **August 1, 2013 (Attachment Two)**, to continue to perform such inspectional services and plan reviews for the Village;

**WHEREAS**, based upon the apparent competence and experience of Consultant as presented, the Village selected the Consultant to perform the services sought; and,

**NOW THEREFORE**, in consideration of the recitals, mutual covenants and representations set forth in this Agreement, the Parties do mutually agree that Consultant shall perform the Services described herein, and the Village shall pay Consultant for said performance, under the following terms and conditions:

**SECTION 1. DEFINITIONS.**

Whenever used in this Agreement, the following terms shall have the meanings indicated and the singular shall be read to include the plural and vice versa, and pronouns stated herein shall be construed to include all genders.

**A.** The term "Agreement" shall include the recitals set forth above and shall mean the entire integrated agreement between the Consultant and the Village setting forth the terms and conditions governing the Services.

**B.** The term "Confidential Information" shall mean information in the possession or under the control of the Village relating to the technical, business, or corporate affairs of the Village, Village property, and user information, including, without limitation, any information pertaining to usage of the Village's computer system, any information obtained from server logs or other records of electronic or machine readable form; and the existence of, and terms and conditions of, this Agreement. Village Confidential Information shall not include information that can be demonstrated: (1) to have been rightfully in the possession of the Consultant from a source other than the Village prior to the time of disclosure of such information to the Consultant pursuant to this Agreement ("Time of Disclosure"); (2) to have been in the public domain prior to the Time of Disclosure; (3) to have become part of the public domain after the Time of Disclosure by a publication or by any other means except an unauthorized act or omission or breach of this Agreement on the part of the Consultant or the Village; or (4) to have been supplied to the Consultant without restriction after the Time of Disclosure by a third party who is under no obligation to the Village to maintain such information in confidence.

**C.** The term "Consultant" shall mean **Christopher B. Burke Engineering Ltd, or CBBEL**, an Illinois corporation, its employees, agents, subcontractors, duly authorized representatives or others performing work on its behalf or at its direction.

**D.** The term "Subcontractor" means the person, partnership, corporation, joint venture or other business entity (including its employees, agents or others performing or supplying on its behalf, or at its direction) having a contract with the Consultant for the performance of any portion of the Services.

E. The term "Proposal" shall mean the proposal dated **May 13, 2010 and revised on June 28, 2010** to provide inspectional services and plan reviews submitted by Consultant to the Village (said Proposal is attached hereto as **Attachment One** and incorporated herein by reference as if fully stated).

F. The term "Services" shall mean residential and commercial plan review and inspectional services for site grading and general civil site plans to ensure compliance with the Village Code and standard engineering methods

G. The term "Village" shall mean the **Village of Wilmette**, an Illinois home rule municipal corporation, its officers, directors, trustees, authorized representatives and employees.

**SECTION 2. TERM OF AGREEMENT.**

The duration of this Agreement shall be **for a period of sixteen months, commencing on September 1, 2013**. Absent any event other than the passage of time or the giving of notice, this Agreement shall remain in full force and effect **through its expiration on December 31, 2014**.

**SECTION 3. SCOPE OF SERVICES**

A. **Services.** Consultant agrees to perform the Services set forth in the Proposal in accordance with the terms and conditions of this Agreement. Consultant shall provide the Services on behalf the Village on an as-requested basis. The Village makes no guarantee as to the number or amount of Services that Consultant may be requested to perform during the term of this Agreement. Nor does the Village have any obligation under this Agreement to provide Consultant with any specific number, level, or type of Service to be performed.

B. **Consultant's Representative.** Consultant shall designate an individual who must be available and who will serve as the Consultant's authorized representative throughout the term of the Agreement and who shall be readily available to respond to communications from the Village. This representative shall be subject to receive instructions and shall have full authority to execute the directions of the Village, without delay, and promptly supply any necessary labor, equipment, or incidentals to do so. Consultant shall also provide the Village with the name and phone number of the Consultant's representative who, in the case of an off-hours emergency, can be readily accessible and available for quick response. Consultant shall immediately notify the Village in writing of any change in the identity and telephone number of the Consultant's representative.

C. **Reporting.** Throughout the term of this Agreement, the Consultant shall regularly, but no less than twice per month, report to the Director of Engineering Services or their designee regarding the progress of the Services.

D. **Identification.** Consultant's personnel responsible for carrying out the Services shall be issued Villages badges that identify the individual as an CBBEL employee working on behalf of the Village. Consultant's personnel shall wear the Village-issued identification badges at all times they are performing Services within the Village.

E. **Electronic Reporting.** In addition to providing the Village with paper copies of any plan review comments, inspection reports, data, or results; Consultant shall, to the extent possible, submit inspection documentation to the Village electronically. The Parties agree to work together to develop a procedure for electronic communication of data that is effective and efficient for both Parties.

**SECTION 4. COMPENSATION AND METHOD OF PAYMENT**

A. **Agreement Amount.**

1. The Village agrees to pay for any Services rendered by Consultant in accordance with the Fee Schedule attached to this Agreement as **Attachment One** ("Contract Pricing and Documentation") and incorporated fully herein by reference. The Consultant hereby acknowledges and agrees that the amounts set forth in **Attachment One** shall not be increased at any time during the three-year term of this Agreement.

2. The amounts set forth in **Attachment One** include all applicable federal, state, and Village taxes of every kind and nature applicable to the Services, as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or similar benefits, and all costs, royalties, and fees arising from the use on, or the incorporation into, the Services, of patented or copyrighted equipment, materials, supplies, tools, appliances, devices, processes, or inventions. All claims or rights to claim additional compensation by reason of the payment by Consultant of any such tax, contribution, premium, cost, royalty, or fee are hereby waived and released by the Consultant.

**B. Invoices and Payment.**

1. Consultant shall submit invoices to the Village no more than once per month. For each individual who performed Services during the period covered by the invoice, the invoice shall provide a detailed breakdown of the amount billed, including the name, title, hours worked, hourly rate, nature of the services rendered and the relevant site address.

2. The Village agrees to make payments to the Consultant and to pay interest on unpaid balances under the provisions of the Local Government Prompt Payment Act.

**C. Records.** The Consultant shall maintain records consistent with the Schedule of Fees as shown in **Attachment One**, and shall permit the Village to inspect and audit all data and records of the Consultant for work done pursuant to this Agreement. The records shall be made available to the Village at reasonable times during the term of this Agreement, and for one year after the termination of this Agreement.

**D. Claim In Addition To Agreement Amount.**

1. The Consultant shall provide written notice to the Village of any claim for additional compensation as a result of action taken by the Village, within 15 days after the occurrence of such action.

2. The Consultant acknowledges and agrees that written notice pursuant to this Section shall not be deemed or interpreted as entitling the Consultant to any additional compensation; and that any changes in the Agreement Amount shall be valid only upon written amendment signed by both Parties pursuant to Section 12.A. of this Agreement.

3. Regardless of the decision of the Village relative to a claim submitted by the Consultant, the Consultant shall proceed with all of the work required to complete the Services under this Agreement, as determined by the Village, without interruption.

**E. Additional Services.** The Consultant acknowledges and agrees that in no event shall the Village be liable for any fees or costs incurred by the Consultant in connection with any Services provided by the Consultant that are outside of, or exceed, the scope of this Agreement ("Additional Services"), regardless of whether such Additional Services are requested or directed by the Village, except upon the prior written consent of the Village.

**SECTION 5. PERSONNEL; SUBCONTRACTORS.**

**A. Availability of Personnel.** The Consultant shall provide all personnel necessary to complete the Services identified in **Attachment One**. The Consultant shall have no claim for damages and shall not bill the Village for additional time and materials charges as the result of any portion of the Services which must be duplicated or redone due to termination or for any delay or extension of the Time of Performance as a result of any such termination, reassignment, or resignation.

**B. Approval and Use of Subcontractors.** The Consultant shall perform the Services with its own personnel and under the management, supervision, and control of its own organization unless otherwise approved **in advance by the Village in writing**. All subcontractors and subcontracts used by the Consultant shall be acceptable to, and approved in advance by, the Village. The Village's approval of any subcontractor or subcontract shall not relieve the Consultant of full responsibility and liability for the provision, performance, and completion of the Services as required by this Agreement. All Services performed under any subcontract shall be subject to all of the provisions of this Agreement in the same manner as if performed by employees of the Consultant. For purposes of this Agreement, the term "Consultant" shall be deemed also to refer to all subcontractors of the Consultant, and every subcontract shall include a provision binding the subcontractor to all provisions of this Agreement.

**C. Removal of Personnel and Subcontractors.** If any personnel or subcontractor fails to perform the Services in a manner satisfactory to the Village and consistent with commonly accepted professional practices, the Consultant shall immediately upon notice from the Village remove and replace such personnel or subcontractor. The Consultant shall have no claim for damages, for compensation in excess of the amount contained in this Agreement, or for a delay or extension of the Time of Performance as a result of any such removal or replacement.

**SECTION 6. CONFIDENTIAL INFORMATION; OWNERSHIP OF DOCUMENTS**

**A. No Disclosure of Confidential Information.** The Consultant acknowledges that it shall, in performing these Services for the Village under this Agreement, have access, or be directly or indirectly exposed, to Confidential Information. The Consultant shall hold confidential all Confidential Information and shall not disclose or use such Confidential Information without the express prior written consent of the Village. The Consultant shall use reasonable measures at least as strict as those the Consultant uses to protect its own confidential information. **Such measures shall include, without limitation, requiring employees and subcontractors of the Consultant to execute a non-disclosure agreement before obtaining access to Confidential Information.**

**B. Document Ownership.** The Parties expressly agree that all data, documents, records, studies, or other information generated, created, found or otherwise completed by Consultant in the performance of Consultant's duties under the terms of this Agreement shall at all times remain the proprietary information of and under the ownership of the Village and shall be provided to the Village by Consultant upon request of the Village, or the suspension or termination of this Agreement so long as the Village has paid all amounts due under the terms of this Agreement. Notwithstanding the foregoing, upon request of the Village at any time, or the suspension or termination of this Agreement, Consultant shall promptly return to the Village all documents provided to Consultant by the Village during the performance of the Services.

**C. News Releases.** The Consultant shall not issue any news releases, advertisements, or other public statements regarding the Services without the prior written consent of the Village Manager.

**SECTION 7. STANDARD OF SERVICES AND INDEMNIFICATION.**

**A. Representation and Certification of Services.**

1. The Consultant represents and certifies that the Services shall be performed in accordance with the generally accepted standards of professional practice, care, and diligence practiced by recognized firms in performing services of a similar nature in existence at the time of performance. The representations and certifications expressed shall be in addition to any other representations and certifications expressed in this Agreement, or expressed or implied by law, which are hereby reserved unto the Village.

2. The Consultant represents that its employees, agents and subcontractors currently hold, and shall maintain throughout the term of the Agreement, all required licenses, permits and certificates, and have duly registered and otherwise complied in all respects with any applicable federal, state and local laws, regulations and ordinances applicable to the performance of this Agreement.

**B. Indemnification.**

1. To the fullest extent permitted by law, Consultant shall defend, hold harmless, and indemnify the Village, their corporate authorities, trustees, officers, directors, agents, and employees from and against any and all injury, death, loss, property damage, judgments, liens, claims, suits, liabilities, actions, causes of action, demands, expenses, costs, or other liabilities of any character (including reasonable attorneys fees) arising in whole or in part, relating to or resulting from the performance under this Agreement by Consultant, its Subcontractors, or others performing or furnishing any Work directly or indirectly on Contractor's behalf, including but not limited to (a) failure to comply with, or violation of, any federal, state or local law, statute, regulation, rule, ordinance, order, or governmental directive; (b) acts, omissions or willful misconduct; and, (c) failure to comply with the terms, conditions, representations, or warranties contained in the Agreement. In connection with any such liabilities, the Village, their officers, agents, employees, representatives and their assigns shall have the right to defense counsel of their choice and Consultant shall be solely liable for all costs, fees and expenses of such defense. Any insurance policies required to be maintained pursuant to the Agreement shall in no way limit the extent of Consultant's responsibility to indemnify as herein provided. The terms of this indemnity shall survive the suspension, expiration or termination of this Agreement.

2. **Kotecki Waiver.** Consultant (and any subcontractor into whose subcontract this clause is incorporated) agrees to assume the entire liability for all personal injury claims suffered by its own employees and waives any limitation of liability defense based upon the Worker's Compensation Act and cases decided there under. Consultant agrees to indemnify and defend the Village from and against all such loss, expense, damage or injury, including reasonable attorneys' fees, which the Village may sustain as a result of personal injury claims by Consultant's employees, except to the extent those claims arise as a result of the Village's or own negligence.

**C. No Personal Liability.** No elected or appointed official or employee of the Village shall be personally liable, in law or in contract, to the Consultant as the result of the execution of this Agreement.

**SECTION 8. CONSULTANT AGREEMENT GENERAL PROVISIONS.**

**A. Relationship of the Parties.** Consultant's role with respect to the Services is solely that of an independent contractor. No right of review; requirement of approval; or other provision of this Agreement or subsequent conduct between the Parties shall be construed to create a relationship between the Parties as that of employer-

employee, principal and agent, partners, or joint ventures. Consultant shall have no authority or right to enter into any contract, or incur any debt or liability of any nature in the name of, or on behalf of, the Village. Nothing herein shall be construed as incurring for the Village any liability for Worker's Compensation, FICA, withholding tax, unemployment compensation, or any other payment, which would be required to be paid by the Village if the Village and the Consultant were standing in an employer/employee relationship.

**B. Conflict of Interest.**

1. The Consultant represents and certifies that, to the best of its knowledge: (1) no Village employee or agent is interested in the business of the Consultant or this Agreement; (2) as of the date of this Agreement, neither the Consultant nor any person employed or associated with the Consultant has any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement; and (3) neither the Consultant nor any person employed by or associated with the Consultant shall at any time during the term of this Agreement obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement.

2. Consultant agrees to perform no professional services during the term of the Agreement for any person, firm or corporation, for any project or work that may be subject to the Village's review/inspection, to occur or occurring within the corporate limits of the Village without notification to the Village prior to rendering services. Consultant agrees to provide the Village with written notification whenever the Services provided under this Agreement shall require Consultant to review or inspect work performed by any other firm or corporation for whom Consultant is or has within the previous twelve (12) months provided professional services, or with any of Consultant's partners or principals have a financial interest.

**C. No Collusion.** The Consultant represents and certifies that the Consultant is not barred from contracting with a unit of state or local government as a result of: (1) a delinquency in the payment of any tax administered by the Illinois Department of Revenue, unless the Consultant is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax, as set forth in Section 11-42.1-1 *et seq.* of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 *et seq.*; or (2) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961, 720 ILCS 5/33E-1 *et seq.* The Consultant represents that the only persons, firms, or corporations interested in this Agreement as principals are those disclosed to the Village prior to the execution of this Agreement, and that this Agreement is made without collusion with any other person, firm, or corporation. If at any time it shall be found that the Consultant has, in procuring this Agreement, colluded with any other person, firm, or corporation, then the Consultant shall be liable to the Village for all loss or damage that the Village may suffer, and this Agreement shall, at the Village's option, be null and void.

**D. No Additional Obligation.** The Parties acknowledge and agree that the Village is under no obligation under this Agreement or otherwise to negotiate or enter into any other or additional contracts or agreements with the Consultant or with any vendor solicited or recommended by the Consultant.

**E. Mutual Cooperation.** The Village agrees to cooperate with the Consultant in the performance of the Services, including meeting with the Consultant and providing the Consultant with such non-confidential information that the Village may have that may be relevant and helpful to the Consultant's performance of the Services. These documents shall be furnished to the Consultant without cost or expense to the Consultant. The Consultant agrees to

cooperate with the Village in the performance and completion of the Services and with any other consultants engaged by the Village.

**SECTION 9. INSURANCE.**

**A.** During the term of this Agreement, or any extended term, Consultant shall procure and maintain insurance against all claims for injury to or death of a person or persons or damage to property, which may arise wholly or in part from the performance of the services hereunder by Consultant. The scope of coverage shall be at least as broad as, and shall be in amounts not less than, the following:

1. Comprehensive General Liability, with the Village as an additional insured, \$1,000,000 combined single limit per occurrence for personal bodily injury and property damage. The general aggregate shall be no less than \$2,000,000.

2. Business Auto Liability, \$1,000,000 combined single limit for bodily injury and property damage;

3. Workers Compensation and Employers' Liability in amounts required by statute (the policy shall include a 'waiver of subrogation'); and,

4. Umbrella Coverage - \$2,000,000 per occurrence.

**B.** Upon execution of this Agreement, Consultant shall furnish to the Village satisfactory proof of coverage of the above insurance requirements. Such proof shall consist of certificates executed by the respective insurance companies together with executed copies of an "Additional Insured Endorsement" in a form acceptable to the Village. Said certificates shall expressly provide that, for the duration of the Agreement, the insurance policy shall not be suspended, cancelled, or reduced in coverage or amount, except after 30 days prior notice by certified mail, return receipt requested, has been provided to the Village. In addition, said certificates shall list the Village and its corporate authorities, officers, agents and employees as an additional insured on all required insurance policies except the policy for professional liability.

1. All insurance required herein of Consultant shall be valid and enforceable policies, insured by insurers licensed and permitted to do business by the State of Illinois or surplus line carriers qualified to do business in the State of Illinois. All insurance carriers and surplus line carriers shall be rated A-, VII or better by A.M. Best Company.

2. Consultant shall require all subcontractors not protected under the Engineer's policies to take out and maintain insurance of the same nature, in the same amounts and under the same terms as required herein of Consultant. **Consultant shall confirm subcontractor compliance with the requirements stated herein prior to the performance of any Work by a subcontractor.**

3. Consultant expressly understands and agrees that any insurance policies required to be maintained pursuant to this Agreement shall in no way limit the degree, amount, or extent of Consultant's responsibility to indemnify, keep and save harmless and defend the Village, their officers, agents, employees, representatives and assigns. Consultant's insurance coverage (both primary and excess) shall be primary as respect to any insurance or self-insurance maintained by the Village, which said insurance of the Village shall solely be excess of Consultant's insurance and shall not contribute with Consultant's insurance coverage.



**SECTION 10. COMPLIANCE WITH LAWS AND GRANTS.**

1. **Licenses and Approvals.** The Consultant shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the Services are provided, performed, and completed in accordance with all required governmental permits, licenses, or other approvals and authorizations that may be required in connection with providing, performing, and completing the Services.

2. **Compliance with Laws.** Contractor shall comply with any and all applicable laws, regulations and rules promulgated by any federal, state, local, or other governmental authority or regulatory body pertaining to all aspects of the Services, now in effect, or which may become in effect during the performance of the Services. The scope of the laws, regulations, and rules referred to in this paragraph includes, but is in no way limited to, the Occupational Safety and Health Act (OSHA) standards, the Illinois Human Rights Act, Illinois Equal Pay Act of 2003, Occupational Safety & Health Act along with the standards and regulations promulgated pursuant thereto (including but not limited to those safety requirements involving work on elevated platforms), all forms of traffic regulations, public utility, Interstate and Intrastate Commerce Commission regulations, Workers' Compensation Laws, Substance Abuse Prevention on Public Works Projects Act, Prevailing Wage Laws, Smoke Free Illinois Act; USA Security Act, federal Social Security Act (and any of its titles), and any other law, rule or regulation of the Illinois Department of Labor, Department of Transportation, Illinois Environmental Protection Act, Illinois Department of Human Rights, Human Rights Commission, EEOC, Metropolitan Water Reclamation District of Greater Chicago and the Village of Wilmette.

**Illinois Freedom of Information Act.**

Contractor agrees to furnish all documentation related to this Agreement and any documentation related to the Village required under an Illinois Freedom of Information Act (ILCS 140/1 et. seq.) ("FOIA") request within five (5) days after Village issues notice of such request to Contractor. Contractor agrees to defend, indemnify and hold harmless the Village, and agrees to pay all reasonable costs connected therewith (including, but not limited to reasonable attorney's and witness fees, filing fees and any other expenses) for the Village to defend any and all causes, actions, causes of action, disputes, prosecutions, or conflicts arising from Contractor's, actual or alleged violation of the FOIA or Contractor's failure to furnish all documentation related to a request within five (5) days after Village issues notice of a request.

Furthermore, should Contractor request that Village utilize a lawful exemption under FOIA in relation to any FOIA request thereby denying that request, Contractor agrees to pay all costs connected therewith (such as reasonable attorneys' and witness fees, filing fees and any other expenses) to defend the denial of the request. The defense shall include, but not be limited to, challenged or appealed denials of FOIA requests to either the Illinois Attorney General or a court of competent jurisdiction. Contractor agrees to defend, indemnify and hold harmless the Village, and agrees to pay all costs connected therewith (such as reasonable attorneys' and witness fees, filing fees and any other expenses) to defend any denial of a FOIA request by Contractor's request to utilize a lawful exemption to the Village.

3. **Equal Opportunity Employer.** Contractor shall have a written sexual harassment policy in compliance with Section 2-105 of the Illinois Human Rights Act.. Consultant certifies that it is an "Equal Opportunity Employer" as defined by federal and state laws and regulations, and agrees to comply with the Illinois Department of Human Rights (IDHR) Equal Opportunity clause as required by the IDHR's Regulations (44 Ill. Admin. Code, Part 750, Appendix A). As required by State law and IDHR Regulation, the Equal Opportunity clause is incorporated by reference as though fully set forth herein.

**SECTION 11. DEFAULT AND TERMINATION OF SERVICES.**

**A. Termination.**

1. Notwithstanding any other provision hereof, either Party may terminate this Agreement at any time upon 30 days written notice to the other Party. In the event that this Agreement is so terminated, the Consultant shall be paid for Services actually performed and reimbursable expenses actually incurred, if any, prior to termination, not exceeding the value of the Services completed, which shall be determined on the basis of the rates set forth in the Fee Schedule.

2. Costs incurred by Consultant subsequent to the receipt of any notice of termination and before the termination date will be reimbursed by the Village only if, prior to the effective termination date, the Village receives from Consultant a list of actions that are necessary to perform and the Village agrees in writing that those actions be taken. Consultant shall not be entitled to any claim for lost profits due to the termination of the Work by the Village.

**B. Default.** If it should appear at any time that the Consultant has failed or refused to prosecute, or has delayed in the prosecution of, the Services with diligence at a rate that assures completion of the Services in full compliance with the requirements of this Agreement, or has otherwise failed, refused, or delayed to perform or satisfy the Services or any other requirement of this Agreement ("*Event of Default*"), and fails to cure any such Event of Default within ten business days after the Consultant's receipt of written notice of such Event of Default from the Village, then the Village shall have the right, without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

1. Cure by Consultant. The Village may require the Consultant, within a reasonable time, to complete or correct all or any part of the Services that are the subject of the Event of Default; and to take any or all other action necessary to bring the Consultant and the Services into compliance with this Agreement.

2. Termination of Agreement by Village. The Village may terminate this Agreement without liability for further payment of amounts due or to become due under this Agreement after the effective date of termination.

3. Withholding of Payment by Village. The Village may withhold from any payment, whether or not previously approved, or may recover from the Consultant, any and all costs, including attorneys' fees and administrative expenses, incurred by the Village as the result of any Event of Default by the Consultant or as a result of actions taken by the Village in response to any Event of Default by the Consultant.

**C. Additional Events of Default.** Consultant shall also be deemed in default if the Consultant: 1) is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of creditors or if a trustee or receiver is appointed for the Consultant or for any of the Consultant's property on account of the Consultant's insolvency, and the Consultant or its successor in interest does not provide adequate assurance of future performance in accordance with the Agreement within 10 days of receipt of a request for assurance from the Village; 2) repeatedly fails to supply sufficient appropriately skilled personnel; 3) disregards laws, ordinances, rules, codes, regulations, orders or similar requirements of any public entity having jurisdiction; or 5) otherwise violates any material term of the Agreement.

**SECTION 12. GENERAL PROVISIONS.**

**A. Amendment.** No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed in accordance with all applicable statutory procedures by both the Village and the Consultant and dated on the same date as, or later date than, the date of this Agreement.

**B. Assignment.** Consultant shall not assign this Agreement or any portion thereof without the prior approval of the Village, said approval shall not be unreasonably withheld. The merger, consolidation, or liquidation of Consultant or any change in the ownership of or power to vote 33 and 1/3% or more of Consultant's capital stock, as held as of the date of execution of this Agreement, shall be deemed an assignment; provided however, that the transfer of ownership of shares of capital stock between persons who, on the date of this Agreement, are owners of Consultant's capital stock or who are employees of Consultant, shall not constitute an assignment.

**C. Binding Effect.** The terms of this Agreement shall bind and inure to the benefit of the Village, the Consultant, and their agents, successors, and assigns.

**D. Notice.** All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (1) personally, (2) by a reputable overnight courier, or by (3) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of: (a) actual receipt; (b) one business day after deposit with an overnight courier, as evidenced by a receipt of deposit; or (c) four business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section 8.D, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to the other party, but no notice of a change of addressee or address shall be effective until actually received.

**Notices and Communications to the Village shall be addressed to, and delivered at, the following address:**

Village of Wilmette

1200 Wilmette Avenue

Wilmette, Illinois 60091

Attention: Brigitte Mayerhofer, Engineering Manager

**With a copy to:**

Tressler LLP

233 South Wacker Drive, 22<sup>nd</sup> Floor

Chicago, IL 60606

Attention: Michael F. Zimmerman, Corporation Counsel

**Notices and Communications to the Consultant shall be addressed to, and delivered at, the following address:**

Christopher B. Burke Engineering Ltd  
9575 West Higgins Road  
Suite 600  
Rosemont, IL 60018  
Attention: Michael E. Kerr, Exec. VP

E. **Third Party Beneficiary.** No claim as a third party beneficiary under this Agreement by any person, firm, or corporation shall be made or be valid against the Village.

F. **Provisions Severable.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

G. **Time.** Time is of the essence in the performance of all terms and provisions of this Agreement.

H. **Calendar Days and Time.** Unless otherwise provided in this Agreement, any reference in this Agreement to "day" or "days" shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.

I. **Governing Law.** For any legal action between the Parties concerning the interpretation, construction and enforcement of this Agreement, or subject matter thereof, venue shall be in Cook County, Illinois and the laws of the State of Illinois shall govern the cause of action. In any action involving the interpretation or construction of the terms herein, this Agreement shall not be construed in favor of, or against, either Party.

J. **Authority to Execute.**

1. **The Village.** The Village hereby warrants and represents to the Consultant that the persons executing this Agreement on its behalf have been properly authorized to do so by its corporate authorities.

2. **The Consultant.** The Consultant hereby warrants and represents to the Village that the persons executing this Agreement on its behalf have the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement and that all legal actions needed to authorize the execution, delivery, and performance of this Agreement have been taken.

K. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties to this Agreement and supersedes all prior agreements and negotiations between the Parties, whether written or oral, relating to the subject matter of this Agreement.

L. **Consents.** Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any party to this Agreement, or of any duly authorized officer, employee, agent, or representative of any party to this Agreement, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent shall be in writing.

**M. Headings.** The headings, titles, and captions in this Agreement have been inserted only for convenience of reference and are not intended to define, limit, extend, or describe the scope or intent of this Agreement.

**N. Exhibits.** Exhibits A through B attached to this Agreement are, by this reference, incorporated in and made a part of this Agreement. In the event of a conflict between an Exhibit and the text of this Agreement, the text of this Agreement shall control.

**O. Rights; Cumulative.** Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law.

**P. Waiver.** The failure of either Party to enforce any term, condition, or covenant (herein referred to as “provision”) of this Agreement shall not be deemed a waiver or limitation of that Party’s right to subsequently enforce and compel strict compliance with such provision and every other provision of this Agreement. No provision of this Agreement shall be deemed to have been waived by either Party unless such waiver is in writing by said Party.

**Q. Survival.** The aforesaid covenants, agreements, representations and warranties shall survive the expiration or termination of the Agreement.

**R. Counterpart Execution.** This Agreement may be executed in two (2) counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**Additional Information:**

**Key VILLAGE contacts for the administration of this contract are listed below:**

Brigitte Mayerhofer, Engineering / 847-853-7628

Stephen Lazarus, Procurement Specialist - Finance / 847-853-7619

Village of Wilmette, 1200 Wilmette Ave, Wilmette, IL 60091

**Contract Execution:**

IN WITNESS WHEREOF, this Contract may be executed in two (2) counterparts, each one of which shall be deemed an original.

**FOR: THE VILLAGE OF WILMETTE**

Accepted this 19<sup>th</sup> day of Sept., 2013

By: Robert T. Bielinski

Robert T. Bielinski, Village President

Attest: Terrence C. Porter

Terrence C. Porter, Village Clerk

**FOR: CHRISTOPHER B. BURKE ENGINEERING, LTD**

Accepted this 12<sup>th</sup> day of September, 2013

Christopher B. Burke Engineering, Ltd. [Corporate Seal]

(Corporation Name) By

Michael E. Kerr

Michael E. Kerr  
(Name of person authorized to sign)

Executive Vice President

(Title)  
Attest Melissa J. Glendon

Assistant (Secretary)

**ATTACHMENT ONE: CONTRACT PRICING & DOCUMENTATION**



**CHRISTOPHER B. BURKE ENGINEERING, LTD.**  
9575 West Higgins Road Suite 600 Rosemont, Illinois 60018 TEL (847) 823-0500 FAX(847) 823-0520

May 13, 2010  
Revised June 28, 2010

Village of Wilmette  
1200 Wilmette Avenue  
Wilmette, Illinois 60091

Attention: Stephen Lazarus, Procurement Specialist

Subject: **Proposal for Professional Engineering Services  
Permit Review Services**

Dear Mr. Lazarus:

Christopher B. Burke Engineering, Ltd. (CBBEL) is pleased to submit this proposal for on call engineering services for permit reviews. It is our understanding that the services are for review and site inspections for new single family homes and significant additions, and for commercial developments. CBBEL is uniquely qualified to provide these engineering review services to the Village of Wilmette. Our staff which would be assigned to work on this has reviewed well over 1,000 single family homes and hundreds of commercial developments. All of the engineering staff are licensed Professional Engineers in Illinois and are also Certified Floodplain Managers. The following is our scope of services and schedule of fees.

#### SCOPE OF SERVICES

Single Family Homes – CBBEL will provide review and inspection of new single family homes, and existing single family homes undergoing substantial expansion. The following tasks will be included in our fee:

- Upon notice from Village staff, CBBEL will pick up permit submittals at the Village.
- Conduct site visit and take digital pictures
- Review site plan and site grading plan for compliance with Village Code and standard engineering methods and provide letter of findings (approval, conditional approval, or comments to be addressed)
- Review revised submittals as necessary
- Review/inspection of top of foundation
- Review of "As Graded" Survey and site inspection prior to sod
- Final inspection of site after placement of sod

It is anticipated that all plan reviews will be completed in five working days or less and in no case would the turn around be greater than ten working days. For foundation and pre-sod inspections we will strive to complete the inspection in two working days and in no case



greater than five days. Final inspections after sod will be targeted for less than five days, and no greater than ten working days. At CBBEL, we understand the sense of urgency to start construction and secure occupancy upon completion for the future homeowner and resident.

Commercial Permit Review – CBBEL will provide plan review services for commercial developments. Review will be for compliance with Village Code and standard engineering methods, including:

- Site Inspection and digital pictures
- Grading and Stormwater
- Sanitary and water service
- Site access and circulation, parking and paving
- Landscaping and Signage
- Sediment and Erosion Control

General Permit Services – CBBEL will provide on call general permit review and inspection services for the following tasks:

- Right-of-way permit review and inspection
- Grading permit review and inspection for small projects including detached garages, landscaping, drainage improvements, and small additions.
- Requested meetings for single family and commercial reviews

#### SCHEDULE OF FEES

We propose the following schedule of fees for the tasks detailed above:

- **Single Family Homes-**
  - Grading Plan (1<sup>st</sup> Submittal including site visit and review) \$150.00\*
  - Grading Plan (Resubmittal) \$100.00
  - Foundation Spot Survey/Inspection \$100.00
  - Review "As Graded" Survey and Pre-Sod Inspection \$150.00
  - Final Inspection (Post Sod) \$100.00
  - Re-Inspection \$100.00
- \*Add \$100.00 for properties with flood plain per FEMA FIRM
- **Commercial Properties-**
  - Initial Plan Review and Site Inspection \$1,200.00
  - Review of Re-Submittals \$600.00 (per submittal)
- **General Permit Services-**
  - Services for this task will be billed on an hourly basis in accordance with the following rates:
    - Engineer V (Department Head, Assistant Department Head) \$130.00
    - Engineer IV (Senior Civil Engineer) \$120.00
    - Engineer III (Project Engineer) \$90.00
    - Administrative Staff \$70.00

**ATTACHMENT TWO: CBBEL Contract Renewal Request Letter**

To:

Village of Wilmette  
1200 Wilmette Ave  
Wilmette, IL 60091  
Attn: Stephen Lazarus

We hereby request a sixteen month contract extension for our mutual Contract No. 5-14-2010 for Permit Review Services.

**1. CONTRACTOR INFORMATION:**

Christopher B. Burke Engineering Ltd  
9575 West Higgins Road  
Suite 600  
Rosemont, IL 60018  
Michael E. Kerr, Exec. VP

**2. CONTRACT DESCRIPTION AND PRICING:**


The contract is for the services of Christopher B. Burke Engineering, Ltd (CBBEL) to provide the VILLAGE OF WILMETTE outside consultant services to assist in the VILLAGE'S Permit Review Process. These services include:

- 1) Reviewing site and grading plans for commercial and residential developments. This work is billed on a "Per Permit" basis.
- 2) Supplementing VILLAGE staff during peak Permit seasonal activity and vacation periods. This work is billed on an hourly rate basis.

CBBEL does hereby hold itself as being ready and able to perform these services as described in the Scope of Work from our existing Contract No. 5-14-2010, for Permit Review Services and is willing to maintain the current contract pricing and services for the duration of this sixteen month contract extension, to cover the period of 9/1/2013 to 12/31/2014.

**CHRISTOPHER BURKE ENGINEERING, LTD.**

Signed and sworn this 1st day of August, 2013, by a duly authorized agent of Christopher Burke Engineering, Ltd.

By:   
\_\_\_\_\_  
(Signature)

Michael E. Kerr

(Print Name)

Executive Vice President

(Title or Position)

Subscribed and sworn to before me

this 1<sup>st</sup> day of August, 2013

Sherry Sporina  
Notary Public





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/12/2013

PRODUCER (708)429-3100 FAX: (708)429-3105  
 Donne Insurance Group, Inc  
 7777 W. 159th Street  
 Suite B  
 Tinley Park IL 60477

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED  
 Christopher B. Burke Engineering Ltd.  
 9575 W. Higgins Road  
 Suite 600  
 Rosemont IL 60018

**INSURERS AFFORDING COVERAGE**

NAIC #

INSURER A: Travelers Prop Cas Ins Co

25674

INSURER B: Travelers Indemnity Company

25658

INSURER C:

INSURER D:

INSURER E:

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS		
A	X	GENERAL LIABILITY	680-6752L902	10/15/2012	10/15/2013	EACH OCCURRENCE	\$ 1,000,000	
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000	
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 10,000	
		<input checked="" type="checkbox"/> Blkt Contract Liab				PERSONAL & ADV INJURY	\$ 1,000,000	
		GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE	\$ 2,000,000	
		<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC				PRODUCTS - COMP/OP AGG	\$ 2,000,000	
A	X	AUTOMOBILE LIABILITY	BA-6760L521	10/15/2012	10/15/2013	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	
		<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$	
		<input checked="" type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$	
		<input checked="" type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$	
		<input checked="" type="checkbox"/> HIRED AUTOS						
<input checked="" type="checkbox"/> NON-OWNED AUTOS								
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$	
		<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC	\$	
						AUTO ONLY: AGG	\$	
B	X	EXCESS / UMBRELLA LIABILITY	CUP-2C769665	10/15/2012	10/15/2013	EACH OCCURRENCE	\$ 9,000,000	
		<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$ 9,000,000	
		<input type="checkbox"/> DEDUCTIBLE					\$	
		<input checked="" type="checkbox"/> RETENTION \$ 10,000					\$	
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	UB-7639Y370	10/15/2012	10/15/2013	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS	<input type="checkbox"/> OTH-ER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in IN)				E.L. EACH ACCIDENT	\$ 1,000,000	
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000	
						E.L. DISEASE - POLICY LIMIT	\$ 1,000,000	
		OTHER						

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**

Project: Permit Review Services-Contract No- 5-14-2010-Extension One. Additional Insured: Village of Wilmette General liability policy includes blanket additional insured status, primary and non-contributory coverage and waiver of subrogation per form CG D3 81 09 07, if required in any contract or agreement. Workers compensation policy includes waiver of subrogation per form WC 00 03 13. Automobile liability policy includes blanket additional insured status and waiver of subrogation.

**CERTIFICATE HOLDER**

Village of Wilmette  
 1200 Wilmette Avenue  
 Wilmette, IL 60091

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

W Donne, CPCU, ARM/GA *William A. Donne*

ACORD 25 (2009/01)  
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**END OF DOCUMENT**