

October 17, 2017

Mr. Vydas Juskelis, PE
Director of Public Works
Village of Villa Park
20 South Ardmore Avenue
Villa Park, Illinois 60181

***Subject: Village of Villa Park – South Michigan Avenue Street Improvement
(West Central Boulevard to West Kenilworth Avenue)
Phase II Engineering Services Proposal***

Dear Mr. Juskelis:

We are excited to be working with you on the South Michigan Avenue improvements. This Proposal's execution allows Baxter & Woodman, Inc. to prepare Phase II Engineering plans, specifications, and estimates for street reconstruction, sanitary sewer repairs and combined sewer separations improvements.

LOCATION

The Village of Villa Park is proposing work on South Michigan Avenue from West Central Boulevard to West Kenilworth Avenue for an approximate length of 1,900 feet.

PROJECT UNDERSTANDING

The work included in Project shall consist of completing Phase II Engineering plans, specifications, and estimates for pavement reconstruction, combined sewer separation and other related work.

The construction of the South Michigan Avenue project will utilize Local funds for street reconstruction and sanitary sewer repairs and an IEPA loan for proposed combined sewer separation.

Audit and Access to Records Clause:

- (1) Books, records, documents and other evidence directly pertinent to performance of WPCLP loan work under this agreement shall be maintained in accordance with generally accepted Accounting Principles. The Agency or any of its authorized representatives shall have access to the books, records, documents and other evidence for the purpose of inspection, audit and copying. Facilities shall be provided for access and inspection.
- (2) Audits conducted pursuant to this provision shall be in accordance with auditing standards generally accepted in the United States of America.
- (3) All information and reports resulting from access to records pursuant to the above shall be disclosed to the Agency. The auditing agency shall afford the engineer an

opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report.

- (4) The final audit report shall include the written comments, if any, of the audited parties.
- (5) Records shall be maintained and made available during performance of project services under this agreement and for three years after the final loan closing. In addition, those records that relate to any dispute pursuant to the loan Rules Section 365.650 (Disputes) or litigation or the settlement of claims arising out of project performance or costs or items to which an audit exception has been taken, shall be maintained and made available for three years after the resolution of the appeal, litigation, claim or exception.

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

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

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

SCOPE OF SERVICES

1. Early Coordination and Data Collection

- *Data Collection: Obtain, review and evaluate the following information provided by the Village for use in design:*
 - Utility Atlases
 - ROW, GIS and property data

- *Field evaluation:* Perform field evaluation of condition of existing pavements, sidewalks, driveways, utility structures, and curb and gutter. Estimate quantities of pavement repair. Observe and photograph project area and immediate surroundings. Utility structure condition shall include completion of a Village of Villa Park Structure Inspection form.
 - *Utilities:* Contact J.U.L.I.E. for potentially impacted utility companies. Initiate utility coordination by contacting utility companies that have facilities along project limits and requesting utility atlas maps. Plot locations and sizes of existing utilities in electronic drawings.
2. Topographic Survey – Perform topographic survey within project limits, at 50-foot intervals including driveways, and cross streets. State plane coordinates and NAVD 88 will be used for horizontal and vertical controls.
3. Environmental Coordination and Permitting
- *DuPage County Stormwater Certification:* The certification will be issued by Villa Park based on information provided by Baxter & Woodman, Inc.
 - *NPDES, SWPPP, and IEPA:* Submittals are required for applicable NPDES permit, SWPPP, and NOI. Permit fees and processing through the stormwater variance procedures are not included in the scope of work.
 - *Clean Construction and Demolition Debris (CCDD):* The Village will conduct CCDD testing during Phase II Engineering and provide the completed LPC 663 to be included in the contract specifications.
 - *Water Pollution Control Loan Program (WPCLP) Loan Application:* Provide project information assistance to others preparing WPCLP loan application.
4. Meetings and Public Involvement
- *Meetings:* The following meetings are anticipated for this Project:
 - Village (3 total) (Kickoff, Pre-final and Pre-bid)
5. Geotechnical Report – *Soil Borings:* Utilize Soil and Material Consultants, Inc. to take soil borings of surface and base material for determining composition of existing pavement material within project limits. Collect seven, 10-foot soil borings on alternating sides of pavement centerline. Provide analysis and recommendations, including subgrade, in a soils report in accordance with IDOT guidelines.
6. Drainage Analysis
- *Drainage Analysis and Technical Memorandum:* Perform a hydrologic analysis of the subject watershed to define runoff rates. Perform a hydraulic analysis to determine capacity of the existing and proposed storm sewer system (sewers, culverts, ditches etc.) for the 5, 10, 25, 50, and 100-year precipitation events. Review, refine, and utilize existing XP-SWMM model to complete analysis in an efficient manner. Develop up to three (3) alternatives to address

the identified drainage problem. Concept plans, which may include a conveyance pipe, inline storage, and/or green infrastructure, will be prepared for each alternative evaluated.

- Prepare a brief summary memorandum describing the analyses performed, alternatives considered, conclusions, and recommendations. Prepare associated exhibits, including concept plans for each alternative

7. Plan Preparation

- *Estimate of Cost and Time:* Prepare summary of quantities, estimate of time, schedules of materials and an Engineer's Estimate of Cost.
- *Specifications:* Prepare special provisions in accordance with MFT guidelines to specify items not covered by the Standard Specifications for Road and Bridge Construction and include required IEPA specifications and loan documents.
- *Roadway Design:* Prepare plan and profile sheets for roadway design including improvement limits, stations, offset callouts, edge of pavement grades, label construction limit locations, right-of-way breaks, driveway repairs, curb & gutter and sidewalk details for ADA compliance, utility structure adjustments, pavement marking, and note special instructions to Contractor.
- *Drainage and Utilities Design:* Incorporate the storm sewer, existing combined sewer point repairs and water main service repair designs into the Drainage and Utility plan sheets. It is assumed that the project outfalls will be maintained and not modified as part of this Project.
- *Sanitary Sewer Repairs:* Prepare the sanitary sewer design for the proposed improvements. Sewer will be video inspected and reviewed by others to determine the extent of necessary sewer repairs.
- *Contract Plans and Documents:* Complete bidding documents to include the required plan sheets required including: Cover, General Notes, Summary of Quantities, Schedule of Quantities, Typical Sections, Erosion Control, Removals, Plan and Profile. Complete Bid Contract Proposal to include the following forms: Notice to Bidders, Schedule of Prices, Bid Bond Requirements and IEPA loan documents. Pre-final (95%) and Final (100%) submittals are anticipated for this Project. Disposition of review comments will be provided with all resubmittals.
- *Utility Coordination:* Continue utility coordination by contacting utility companies that have facilities along the project limits. Submit pre-final plans to utility companies so conflicts and relocation efforts can be identified. Coordinate utility relocation for conflicts within public right-of-way.
- The following items are not included within the scope of this Project, but can be provided as additional services to the contract:
 - Permit Review fees
 - Plats and Legals
 - Environmental Studies (PESA, PSI, etc.)
 - Water Pollution Control Loan Program (WPCLP) Loan Application

8. QA/QC – Perform in-house peer and milestone reviews by senior staff prior to the Village pre-final submittal.
9. Assist Bidding – Provide design assistance and clarification for bid documents. Assist Village with coordination and scheduling during the bid process and provide recommendation to award letter.
10. Manage Project
 - Plan, schedule, and control activities that must be performed to complete Project including budget, schedule, and scope. Coordinate with Village and project team to confirm goals of the Project are achieved. Prepare and submit monthly invoices, and *provide* regular updates to Village.
 - *Deliverables:* The following is a list of anticipated final deliverables to the Village for this Project:
 - *Electronic DGN, Geopak, Digital Photos, and GIS files used in project development including Plan, Profiles, Cross Sections, Survey, and Exhibits.*
 - *Electronic Record of Design files including agency correspondence, Estimates, Exhibits, and related electronic submittals (pdf or as appropriate).*
 - *Contract Plans and Documents defined in the Scope of Services. Baxter & Woodman utilizes an electronic filing system in lieu of hard copies.*

SCHEDULE OF PROJECT

Notice to Proceed	November 2017
Pre-Final PS&E to Village	February 2018
Final PS&E to Village	May 2018
Bid Letting (Local Letting)	June 2018
Design Completion	December 2018

ENGINEERING FEE

Our engineering fee for the above stated scope of services will be based on our hourly billing rates for actual work time performed plus reimbursement of out-of-pocket expenses including travel, which in total will not exceed \$82,810. See Exhibit A for more detail. Phase II Engineering sewer separation and roadway restoration costs are eligible for IEPA Loan funds up to a maximum 60% of

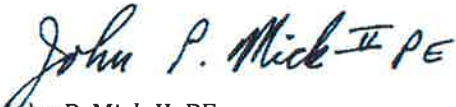
the overall project length based of percentage of separated sewers equating to \$49,686 with the balance, \$33,124, funded locally. Should the Village require additional assistance, we will perform those additional services, upon written authorization, using the same billing rates.

If this Proposal is acceptable to you, **please indicate by signing a copy of this proposal and returning it to our office.** The attached Standard Terms and Conditions, and Standard Hourly Billing Rates apply to this Proposal.

We appreciate the opportunity to work with the Village. If you have any questions, or require additional information, please contact our Project Manager, Tom Slattery at 815-444-3298 or tslattery@baxterwoodman.com.

Sincerely,

BAXTER & WOODMAN, INC.
CONSULTING ENGINEERS



John P. Mick II, PE
Client Manager – Villa Park



Matthew D. Washkowiak, PE
Vice President

Attachments

VILLAGE OF VILLA PARK, ILLINOIS

ACCEPTED BY:



TITLE:



DATE:



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Village of Villa Park						
Plan Number: 161063.40						
Plan Name: VILPK - South Michigan Street Improvements						
Level	Emp	Planned Hrs	Compensation Fee	Consultant Fee	Reimb Allowance	Total Compensation
Overall Project Total		734.00	78,550.00	3,594.00	666.00	82,810.00
1	Early Coordination and Data Collection	56.00	5,880.00	0.00	266.00	6,146.00
	1.1 Data Collection	8.00	760.00	0.00	0.00	760.00
	Jonathan Miller	8.00				
	1.2 Field Evaluation - Street Improvement Program	32.00	3,520.00	0.00	266.00	3,786.00
	Robert Hallock	24.00				
	Jonathan Miller	8.00				
	1.3 Utilites	16.00	1,600.00	0.00	0.00	1,600.00
	Jonathan Miller	8.00				
	Kathleen Roberson	8.00				
10	Assist Bidding	16.00	1,680.00	0.00	0.00	1,680.00
	Jonathan Miller	8.00				
	Thomas Slattery	4.00				
	Barbara Tobin	4.00				
11	Manage Project	8.00	1,200.00	0.00	0.00	1,200.00
	Thomas Slattery	8.00				
2	Topographic Survey	74.00	7,160.00	0.00	200.00	7,360.00
	Jonathan Miller	4.00				
	Kathleen Roberson	8.00				
	Michael Sweeney	60.00				
	Christopher Wellbank	2.00				
3	Environmental Coordination and Permitting	12.00	1,360.00	0.00	0.00	1,360.00
	Jonathan Miller	8.00				
	Thomas Slattery	4.00				
4	Meetings	16.00	1,960.00	0.00	100.00	2,060.00
	Jonathan Miller	8.00				
	Thomas Slattery	8.00				
5	Geotechnical Report	4.00	380.00	3,594.00	0.00	3,974.00
	Jonathan Miller	4.00				
6	IEPA Loan	0.00	0.00	0.00	0.00	0.00
7	Drainage Analysis	160.00	17,890.00	0.00	100.00	17,990.00
	Emily Grimm	74.00				
	Paul Siegfried	52.00				
	Corey Van Dyk	32.00				
	Steven Verseman	2.00				
8	Plan Preparation	376.00	39,120.00	0.00	0.00	39,120.00
	8.1 Estimate of Cost and Time	48.00	5,000.00	0.00	0.00	5,000.00
	Jonathan Miller	40.00				
	Thomas Slattery	8.00				
	8.2 Specifications	40.00	4,120.00	0.00	0.00	4,120.00

Village of Villa Park						
Plan Number: 161063.40						
Plan Name: VILPK - South Michigan Street Improvements						
Level	Emp	Planned Hrs	Compensation Fee	Consultant Fee	Reimb Allowance	Total Compensation
	Jonathan Miller	24.00				
	Thomas Slattery	8.00				
	Barbara Tobin	8.00				
8.3	Roadway Design	112.00	11,320.00	0.00	0.00	11,320.00
	Jonathan Miller	80.00				
	Kathleen Roberson	24.00				
	Thomas Slattery	8.00				
8.4	Drainage and Utilities Design	72.00	7,520.00	0.00	0.00	7,520.00
	Jonathan Miller	40.00				
	Kathleen Roberson	24.00				
	Thomas Slattery	8.00				
8.5	Sanitary Sewer Repairs and Water Services	36.00	3,880.00	0.00	0.00	3,880.00
	Alan Phelps	24.00				
	Barbara Tobin	4.00				
	Steven Verseman	8.00				
8.7	Contract Plans and Documents	48.00	5,160.00	0.00	0.00	5,160.00
	Jonathan Miller	24.00				
	Kathleen Roberson	16.00				
	Thomas Slattery	8.00				
8.8	Utility Coordination	20.00	2,120.00	0.00	0.00	2,120.00
	Jonathan Miller	16.00				
	Thomas Slattery	4.00				
9	QC/QA	12.00	1,920.00	0.00	0.00	1,920.00
	Jason Fluhr	4.00				
	Craig Mitchell	4.00				
	Steven Verseman	4.00				

EXHIBIT B



EPA Project Control Number

United States Environmental Protection Agency
Washington, DC 20460

**CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

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

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from coverage by any department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction: violation of Federal, State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated or cause or default.

I understand that a false statement on this certification may be ground for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine up to \$10,000 or imprisonment for up to 5 years, or both.

Louis D. Hausmann, P.E., PTOE, Executive Vice President

Typed Name & Title of Authorized Representative



Signature of Authorized Representative

October 17, 2017

Date



I am unable to certify to the above statements. My explanation is attached.

STANDARD TERMS AND CONDITIONS

Agreement - These Standard Terms and Conditions, together with the letter proposal, constitute the entire integrated agreement between the Owner and Baxter & Woodman, Inc. (BW) and take precedence over any other provisions between the Parties. These terms may be amended, but only if both parties consent in writing.

Owner's Responsibility - Provide BW with all criteria and full information for the Project. BW will rely, without liability, on the accuracy and completeness of all information provided by the Owner including its consultants, contractor, specialty contractors, manufacturers, suppliers and publishers of technical standards without independently verifying that information. The Owner warrants that all known hazardous materials on or beneath the site have been identified to BW. BW and their consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, unidentified or undisclosed hazardous materials unless this service is set forth in the proposal.

Schedule for Rendering Services - The agreed upon services shall be completed within a reasonable amount of time. If BW is hindered, delayed or prevented from performing the services as a result of any act or neglect of the Owner or force majeure, BW's work shall be extended and the rates and amounts of BW's compensation shall be equitably adjusted in writing executed by all Parties.

Invoices and Payments - The fees to perform the proposed scope of services constitute BW's estimate to perform the agreed upon scope of services. Circumstances may dictate a change in scope, and if this occurs, an equitable adjustment in compensation and time shall be made by all parties. No service for which added compensation will be charged will be provided without first obtaining written authorization from the Owner. BW invoices shall be due and owing by Owner in accordance with the terms and provisions of the Local Government Prompt Payment Act.

Opinion of Probable Construction Costs - BW's opinion of probable construction costs represents its reasonable judgment as a professional engineer. Owner acknowledges that BW has no control over construction costs of contractor's methods of determining prices, or over competitive bidding, of market conditions. BW cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from BW's opinion of probable construction costs.

Standards of Performance - (1) The standard of care for all services performed or furnished by BW, will be completed with the same care and skill ordinarily used by professionals practicing under similar circumstances, at the same time and in the same locality on similar projects. BW makes no guarantees or warranties, express or implied, in connection with its services; (2) BW shall be responsible for the technical accuracy of its services and documents; (3) BW shall use reasonable care to comply with all applicable laws and regulations and Owner-mandated standards; (4) BW may employ such sub-consultants as BW deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objection by Owner; (5) BW shall not supervise, direct, control, or have authority over any contractor work, nor have authority over or be responsible for the means, methods, techniques sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety of the site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work; (6) BW neither guarantees the performance of any contractor nor assumes responsibility for contractor's failure to furnish and perform the work in accordance with the contract documents; (7) BW is not responsible for the acts of omissions of any contractor, subcontractor, or supplier, or any of their agents or employees or any other person at the site or otherwise furnishing or performing any work; (8) Shop drawing and submittal review by BW shall apply to only the items in the submissions and only for the purpose of assessing if upon installation or incorporation in the Project work they are generally consistent with the construction documents. Owner agrees that the contractor is solely responsible for the submissions (regardless of the format in which provided, i.e. hard copy or electronic transmission) and for compliance with the construction documents. Owner further agrees that BW's review and action in relation to these submissions shall not constitute the provision of means, methods, techniques, sequencing or procedures of construction or extend to safety programs or precautions. BW's consideration of a component does not constitute acceptance of the assembled item; (9) BW's site observation during construction shall be at the times agreed upon in the Project scope. Through standard, reasonable means, BW will become generally familiar with observable completed work. If BW observes completed work that is inconsistent with the construction documents, that information shall be communicated to the contractor and Owner for them to address.

Insurance - BW will maintain insurance coverage with the following limits and Certificates of Insurance will be provided to the Owner upon written request:

Worker's Compensation: Statutory Limits	Excess Umbrella Liability:	\$5 million per claim and aggregate
General Liability: \$1 million per claim	Professional Liability:	\$5 million per claim
\$2 million aggregate		\$5 million aggregate
Automobile Liability: \$1 million combined single limit		

~~BW's liability under this Agreement, based on any theory of liability or for any cause of action, shall not exceed the total amount of BW's contract amount for the project. Any claim against BW arising out of this Agreement may be asserted by the Owner, but only against the entity and not against BW's directors, officers, shareholders or employees, none of whom shall bear any liability and may not be subject to any claim.~~

Indemnification and Mutual Waiver - (1) To the fullest extent permitted by law, BW shall indemnify and hold harmless the Owner and its officers and employees from claims, costs, losses, and damages arising out of or relating to the Project, provided that such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of BW or its officers, directors, employees, agents, or consultants; (2) Owner shall indemnify and hold harmless BW and its officers, directors, employees, agents and consultants from and against any all claims, costs, loses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death of to injury or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or its officers, directors, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project; (3) To the fullest extent permitted by law, Owner and BW waive against each other, and the other's employees, officers, directors, insurers, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project; (4) In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of the ENGINEER and OWNER, they shall be borne by each party in proportion to its negligence; (5) The Owner acknowledges that the BW is a business corporation and not a professional service corporation, and further acknowledges that the corporate entity, as the party to this contract, expressly avoids contracting for individual responsibility of its officers, directors, or employees. The Owner and BW agree that any claim made by either party arising out of any act of the other party, or any officer, director, or employee of the other party in the execution or performance of the Agreement, shall be made solely against the other party and not individually or jointly against such officer, director, or employees.

Termination - Either party may terminate this Agreement upon ten (10) business days' written notice to the other party in the event of failure by the other party to perform with the terms of the Agreement through no fault of the terminating party. A condition precedent to termination shall be an opportunity for the Parties to meet. If this Agreement is terminated, Owner shall receive reproducible copies of drawings, developed applications and other completed documents. Owner shall be liable for, and promptly pay for all services and reimbursable expenses rendered to the date of suspension/termination of services.

Use of Documents - BW documents are instruments of service and BW retains ownership and property interest (including copyright and right of reuse). Client shall not rely on such documents unless in printed form, signed or sealed by BW or its consultant. Electronic format of BW's design documents may differ from the printed version and BW bears no liability for errors, omissions or discrepancies. Reuse of BW's design documents is prohibited and Client shall defend and indemnify BW from all claims, damages, losses and expenses, including attorney's fees, consultant/expert fees, and costs arising out of or resulting from said reuse. BW's document retention policy will be followed upon Project closeout, and project documents will be kept for a period of 14 years after Project closeout.

Successors, Assigns, and Beneficiaries - Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Client or BW to any third party, including any lender, Contractor, Contractor's subcontractor, supplier, manufacturer, other individual, entity or public body, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement are for the sole and exclusive benefit of the Client and BW and not for the benefit (intended, unintended, direct or indirect) of any other entity or person.

Dispute Resolution - All disputes between the Parties shall first be negotiated between them for a period of thirty (30) days. ~~If unresolved, disputes shall be then submitted to mediation as a condition precedent to litigation.~~ If mediation is unsuccessful, litigation in the county where the Project is pending shall be pursued.

Miscellaneous Provisions - (1) This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located. (2) All notices must be in writing and shall be deemed effectively served upon the other party when sent by certified mail, return receipt requested; (3) All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason; (4) Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Owner and BW, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close to expressing the intention of the stricken provision; (5) A party's non-enforcement of any provision shall not constitute a waiver of the provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement; (6) To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of substantial completion, which is the point where the Project can be utilized for the purposes for which it was intended.