

02-28-2023

Naperville City Council
400 S. Eagle Street
Naperville, IL 60540

Dear Members of the Naperville City Council,

I am writing to request Naperville City Council's approval to provide relief from the city's requirement to install sprinklers at the property located at 19 N. Washington Street. Our interior space, as measured by our architect, is 2,491.7 square feet, while published regulations (Fire Suppression Systems Application Packet) used to determine the need for interior sprinkling exist when a restaurant has a gross square footage exceeding 2,500 square feet. If we cannot receive approval to dismiss the requirement related to this address, we request the Council's approval to provide an extension until December 31, 2029.

It is the intention of the owners of 19 N. Washington Street to develop this property with adjacent properties, into either apartments or condominiums. We currently have a lease in place for 19 N. Washington Street, through 2029. The cost of installing sprinklers at approximately \$237,000 and the estimated time to install sprinklers, creates a significant burden and will cause harm to the businesses and associated jobs located at 19 N. Washington Street.

Thank you for your consideration.



Daniel Imburgia
JDDD Development
rdimburgia@gmail
630-768-1400

Encl. Certification of Interior Area



January 13, 2023

Mr. Dan Imburgia
RDImburgia@gmail.com

Re: Certification of Interior Area for City of Naperville's Sprinkler Consideration
Fiamme' Italian Restaurant
19 N Washington St.
Naperville, IL 60540

Dan,

Per our phone discussion the other day, I have measured the area of the building inside the exterior walls, and certify the fire area to be **2,491.7 s.f.** The exterior walls are primarily constructed of concrete masonry units and are non-combustible. These walls are original to the former gas station.

The initial plans documented the gross area of the building, including the non-combustible exterior walls above the limit of 2,500 s.f.. Working with City staff on other projects in the past, it was determined that the fire area was to be considered as the area INSIDE the exterior walls. For the City Council's consideration, I would ask they work with the certified area stated above, which falls below the required fire area exceeding 2,500 s.f. for a fully sprinklered building.

I have attached the Fiamme floor plan with a dashed line representing the certified area as accurately calculated by CAD.

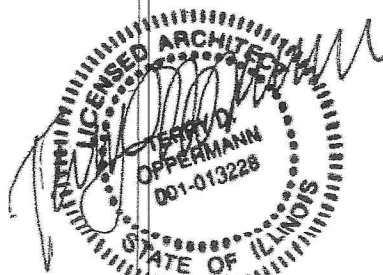
If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

Oppermann Architects, Ltd.

Terry Oppermann

Terry Oppermann
President



EXP. 11-30-2024

January 13, 2023

Mr. Dan Imburgia
RDImburgia@gmail.com

Re: Certification of Interior Area for City of Naperville's Sprinkler Consideration
Fiamme' Italian Restaurant
19 N Washington St.
Naperville, IL 60540

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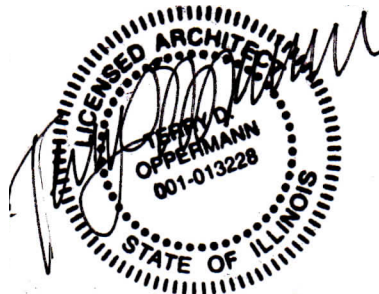
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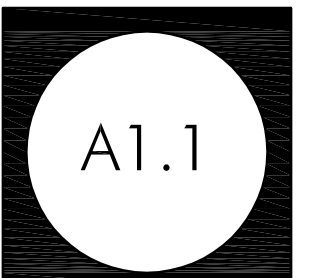
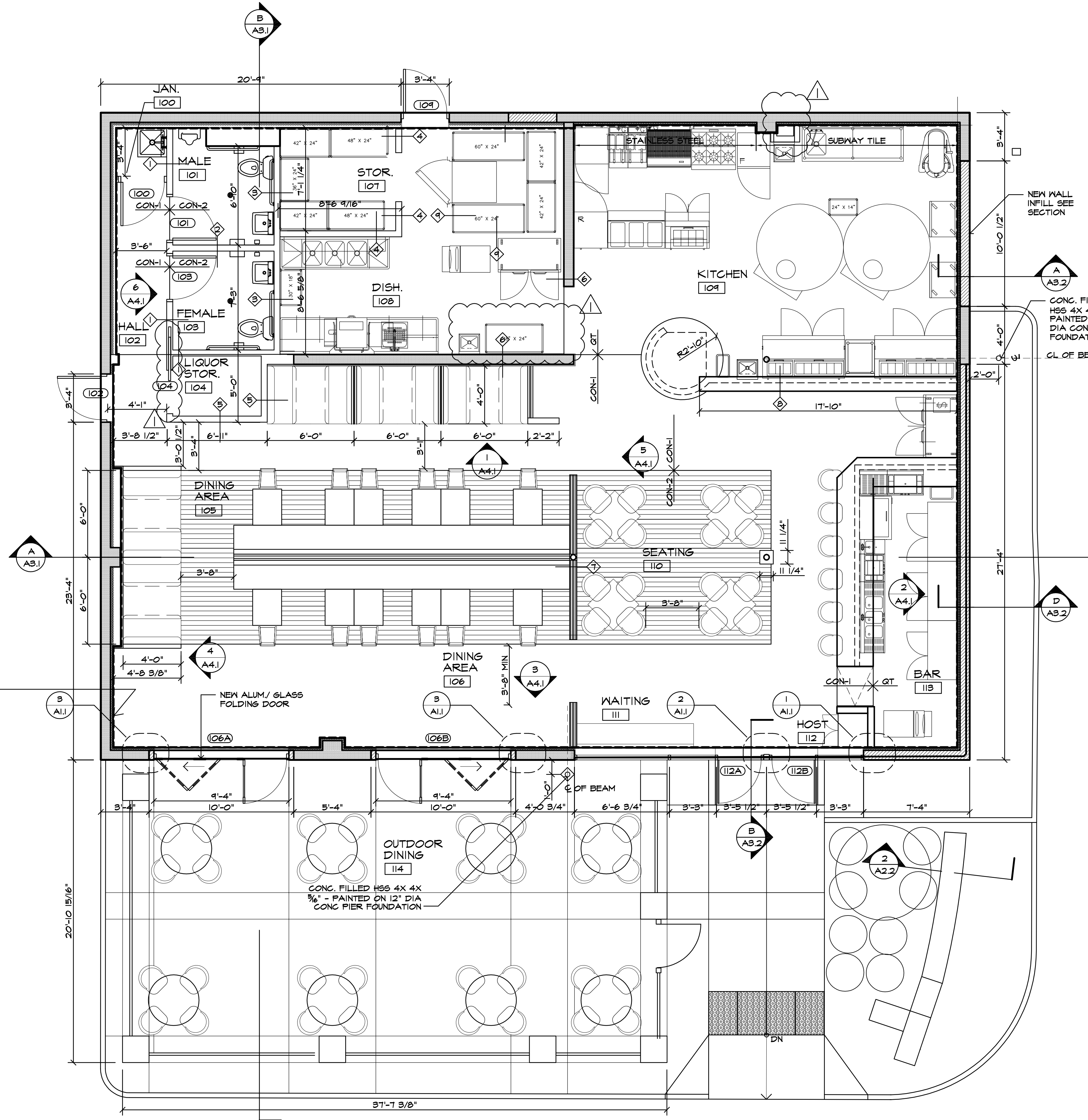
Sincerely,
Oppermann Architects, Ltd.
Terry Oppermann
Terry Oppermann
President



EXP. 11-30-2024



LINE OF CALCULATED AREA
-(SHOWN DASHED) 2,491.7 S.F.



FIRST FLOOR PLAN
SCALE: 1/4"=1'-0"

Terry,

See attached and revised budget now including Architectural Services and Civil Engineering.

Cost Code	Description	02.23.2023 Proposal
2500	Site Utilitites (New 6" Water Service including Pavement Removal and Excavation)	\$ 45,000.00
2750	Ashpalt Pavement Patching	\$ 6,000.00
3000	Concrete Foundation and Slab-on-Grade for Sprinkler Addition	\$ 11,000.00
8000	Door, Frame and Hardware	\$ 2,500.00
9250	Framing, Drywall and Finishing	see below
9250	Exterior Sprinkler Room Additon (Hardie Siding and Pitched Asphalt Shingle Roof)	\$ 9,600.00
9250	Enclosure Over Existing Cooler	\$ 11,000.00
9250	Remove Sound Panels and Reinstall	\$ 2,410.00
9250	Miscellaneous Drywall Patching	\$ 2,000.00
9510	Acoustic Ceiling Tiles (Remove and Replace)	\$ 5,700.00
9910	Paint	\$ 4,000.00
13850	Fire Alarm	\$ 5,500.00
15300	Fire Prtoection	\$ 42,000.00
15400	Plumbing (Domestic Water Revision	\$ 4,000.00
15400	4" Floor Drain with P-Trap (Assumes Tie-In to Existing Mop Closet)	\$ 15,000.00
15400	New Domestic RPZ	\$ 2,500.00
15700	HVAC	not included
16000	Electric	\$ 2,475.00
16000	Electric Unit Heater	in above
16000	No Panel Upgrade included	not included
700	General Conditions	\$ 20,400.00
1050	Supervision	\$ 13,050.00
	Subtotal	\$ 204,135.00
1300	Overhead and Fee (7%)	\$ 14,290.00
600	Insurance (1%)	\$ 2,042.00
950	Architectural Services	\$ 13,000.00
960	Civil Engineering	\$ 4,000.00
	Grand Total	\$ 237,467.00

Timothy M. Clark

Vice President

Office: 630-499-1000 ext. 5

Fax: 630-499-1808

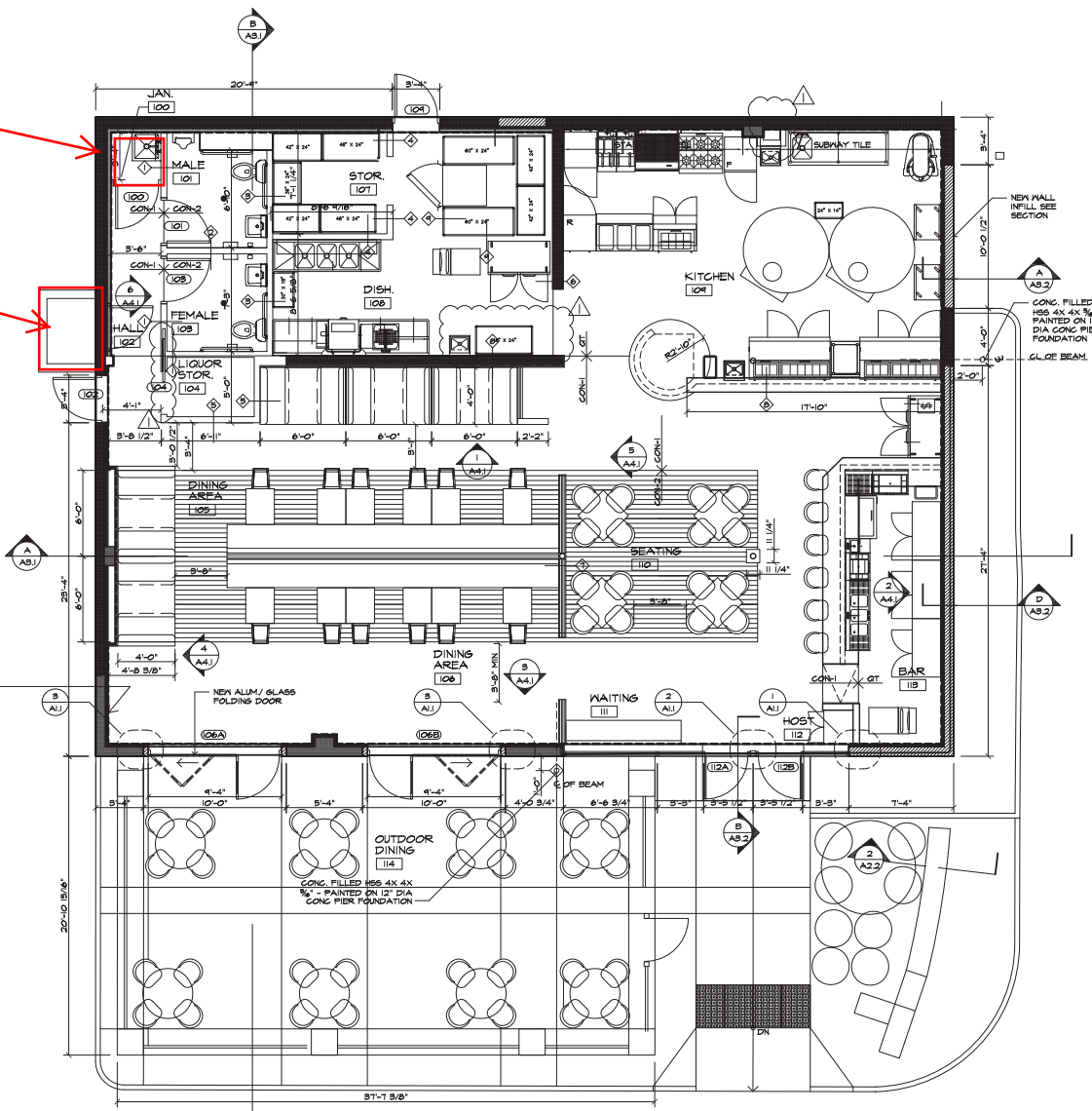
Direct: 630-957-5295

Cell: 312-282-3606

Existing water service entrance-no room for sprinkler riser in janitor cl.

Proposed new sprinkler room addition

LINE OF CALCULATED AREA
-(SHOWN DASHED) 2,491.7 S.F.



FIRST FLOOR PLAN
SCALE: 1/4"=1'-0"

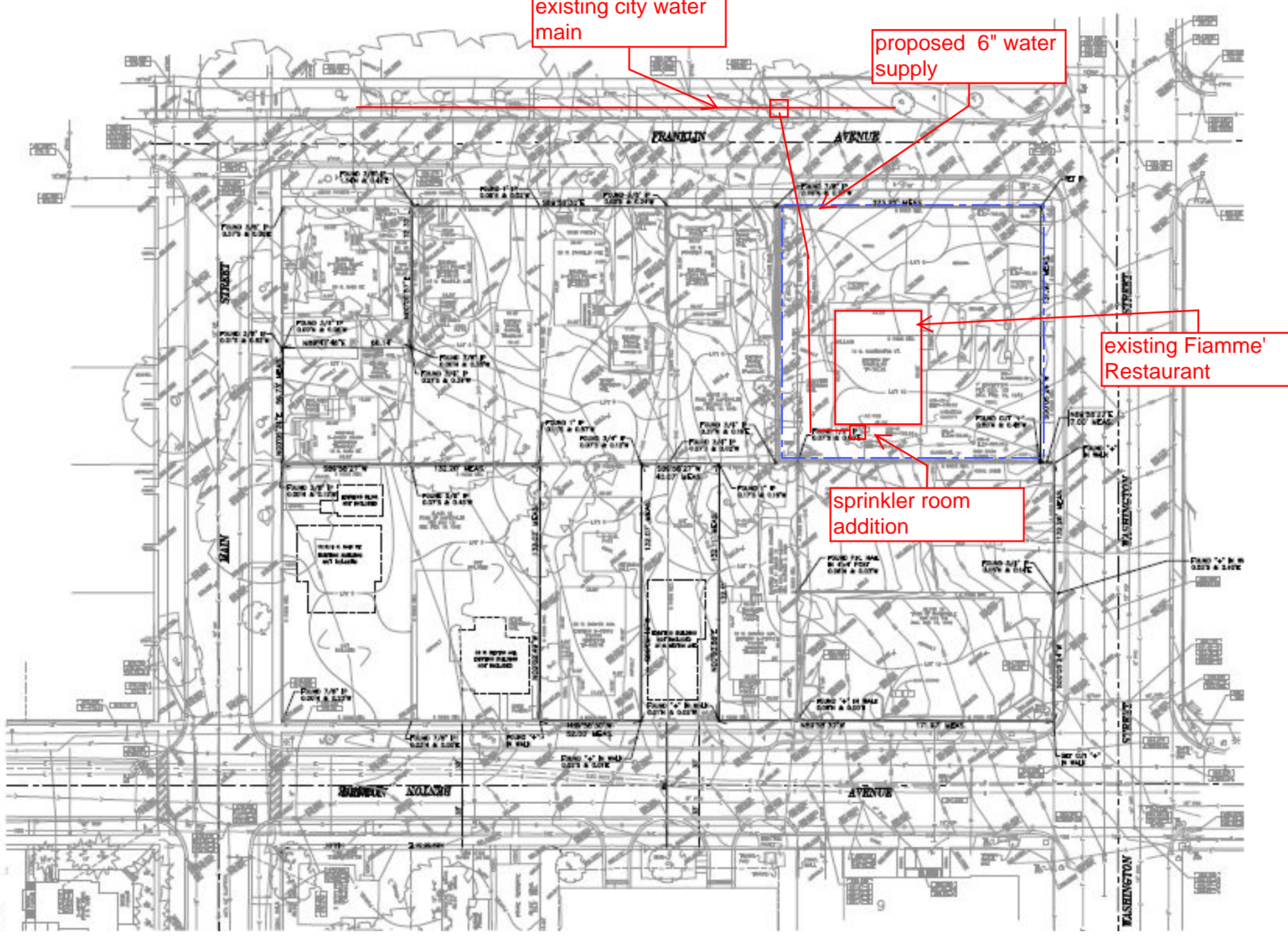


existing city water main

proposed 6" water supply

existing Fiamme' Restaurant

sprinkler room addition





AUTHORIZATION TO PROCEED

Sent via email to oppermannarchitectsLtd@gmail.com

Date: February 20, 2023 **Client:** JDDD DEVELOPMENT LLC

Project Name: 19 N Washington St, Naperville, Fiammé **ERA Project No.:** TBD

The work described in this Authorization to Proceed is the scope of work anticipated for the professional service contract between Engineering Resource Associates, Inc. (ERA) and above Client. ERA will proceed as expeditiously as possible to complete the described services upon written authorization. This work includes the following task(s):

Description of Work:

Watermain Service Improvement:
Topographical Measurement = \$1,800
Water Service Plan = \$2,000

Reason(s) for Services:

As requested.

Type of Billing: Hourly T&M

Estimated Amount for Services: \$3,800.00 + misc. reimbursable expenses

By: Engineering Resource Associates, Inc.

Nick Varchetto, PE Site Development Project Manager  02/20/2023

Name Title Signature Date

By: JDDD DEVELOPMENT LLC Client

Agreement to perform the services is hereby granted under the terms and conditions set forth in the attached Engineering Resource Associates, Inc. General Terms and Conditions dated August 2004 and the attached hourly rates. I acknowledge the above and authorize ERA to proceed with the work as described above.

Authorized Name Title Signature Date
Mailing Address Street Address Email Phone
(for deliveries, if different)

- Receipt of executed proposal will serve as authorization to proceed with the project to the full extent of the contract.
- Revisions (if required or requested) - As required by governmental review &/or client request will be billed on an hourly basis according to actual time spent on the work.
- Direct costs/reimbursables including printing costs, mileage and postage will be charged at the actual rate incurred plus ten percent.
- Fees for services beyond the scope of this proposal, when approved by the Client, will be compensated for on an hourly basis in accordance with the attached schedule of hourly rates (Exhibit 2).
- Invoices will be issued monthly reflecting the percent of the project completed as of the "services through" date on the invoice. Any unpaid ERA invoices over 30 days old must be paid in full prior to our release of the project's final deliverable. Pay at or prior to release of work may apply. Debit or Credit Card payments are accepted over the phone, via email, or in the office with a 3.5% processing fee added.
- Invoice numbers must be included with payments. Payments received will be applied to oldest accounts receivable balances due first unless otherwise specifically noted and agreed.
- If requested, ERA will promptly provide original notarized unconditional waivers via USPS mail or pick up at our Warrenville office upon receipt of funds. Release of any original unconditional lien waivers requires receipt of funds. Original signed and notarized waivers that are "conditional upon receipt of funds" will be released as requested for release of payment. Email contact information for any title company checks must be provided to ERA. Client is responsible for delivery of funds to ERA.

WARRENVILLE

3S701 WEST AVENUE, SUITE 150
WARRENVILLE, IL 60555
P 630.393.3060

CHICAGO

10 SOUTH RIVERSIDE PLAZA, SUITE 875
CHICAGO, IL 60606
P 312.474.7841

CHAMPAIGN

2416 GALEN DRIVE
CHAMPAIGN, IL 61821
P 217.351.6268

Exhibit 2

Engineering Resource Associates, Inc.
2022-2023 STANDARD CHARGES FOR PROFESSIONAL SERVICES
 April 1, 2022 THROUGH March 31, 2023

Staff Category	Hourly Rate
Professional Engineer VI	\$245.00
Professional Engineer V	\$225.00
Professional Engineer IV	\$191.00
Professional Engineer III	\$167.00
Professional Engineer II	\$146.00
Professional Engineer I	\$128.00
Structural Engineer IV	\$210.00
Structural Engineer III	\$250.00
Staff Engineer III	\$135.00
Staff Engineer II	\$110.00
Staff Engineer I	\$102.00
Engineering Technician VI	\$152.00
Engineering Technician V	\$138.00
Engineering Technician IV	\$117.00
Engineering Technician III	\$101.00
Engineering Technician II	\$81.00
Engineering Technician I	\$60.00
Engineering Intern III	\$83.00
Engineering Intern II	\$63.00
Engineering Intern I	\$54.00
Ecological Services Director	\$171.00
Environmental Specialist IV	\$176.00
Environmental Specialist II	\$120.00
Environmental Specialist I	\$92.00
Professional Surveyor II	\$180.00
Professional Surveyor I	\$162.00
Surveyor IV	\$129.00
Surveyor III	\$111.00
Surveyor II	\$90.00
Administrative Director	\$165.00
Administrative Staff IV	\$123.00
Administrative Staff III	\$96.00
Administrative Staff II	\$87.00
Administrative Staff I	\$69.00

Engineering Resource Associates, Inc.

GENERAL TERMS AND CONDITIONS

1. **COMPLIANCE WITH LAWS:** Engineering Resource Associates, Inc. (Engineer) will strive to exercise usual and customary professional care in his efforts to comply with those laws, codes, ordinance and regulations which are in effect as of the date of this Agreement.

With specific respect to prescribed requirements of the Americans with Disabilities Act of 1990 or certified state or local accessibility regulations (ADA), Client understands ADA is a civil rights legislation and that interpretation of ADA is a legal issue and not a design issue and, accordingly, retention of legal counsel (by Client) for purposes of interpretation is advisable. As such and with respect to ADA, Client agrees to waive any action against Engineer, and to indemnify and defend Engineer against any claim arising from Engineer's alleged failure to meet ADA requirements prescribed.

2. **DESIGNATION OF AUTHORIZED REPRESENTATIVE:** Each party (to this Agreement) shall designate one or more persons to act with authority in its behalf in respect to appropriate aspects of the Project. The persons designated shall review and respond promptly to all communications received from the other party.
3. **STANDARD OF PRACTICE:** The Engineer will strive to conduct services under this Agreement in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions as of the date of this Agreement. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, or otherwise.
4. **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with Articles previously set forth by Item 1. of this Agreement, together with the laws of the State of Illinois.
5. **RESPONSIBILITY OF THE ENGINEER:** Notwithstanding anything to the contrary which may be contained in this Agreement or any other material incorporated herein by reference, or in any Agreement between the Client and any other party concerning the Project, the Engineer shall not have control or be in charge of and shall not be responsible for the means, methods, techniques, sequences or procedures of construction, or the safety, safety precautions or programs of the Client, the construction contractor, other contractors or subcontractors performing any of the work or providing any of the services on the Project. Nor shall the Engineer be responsible for the acts or omissions of the Client, or for the failure of the Client, any architect, engineer, consultant, contractor or subcontractor to carry out their respective responsibilities in accordance with the Project documents, this Agreement or any other agreement concerning the Project. Any provision which purports to amend this provision shall be without effect unless it contains a reference that the content of this condition is expressly amended for the purposes described in such amendment and is signed by the Engineer.
6. **CLIENT'S RESPONSIBILITIES:** The Client agrees to require the Contractor, to the fullest extent permitted by law, to indemnify, hold harmless, and defend the Engineer, its consultants, and the employees and agents of any of them from and against any and all claims, suits, demands, liabilities, losses, damages, and costs ("Losses"), including but not limited to costs of defense, to the extent arising in whole or in part out of the negligence of the Contractor, its subcontractors, the officers, employees, agents, and subcontractors of any of them, or anyone for whose acts any of them may be liable, regardless of whether or not such Losses are caused in part by a party indemnified hereunder. Specifically excluded from the foregoing are Losses arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications, and the giving of or failure to give directions by the Engineer, its consultants, and the agents and employees of any of them, provided such giving or failure to give is the primary cause of Loss.

The Client further agrees to require the Contractor to name the Engineer, its agents and consultants

as additional insureds on the Contractor's policy or policies of comprehensive or commercial general liability insurance. Such insurance shall include products and completed operations and contractual liability coverages, shall be primary and non-contributing with any insurance maintained by the Engineer or its agents and consultants, and shall provide that the Engineer be given thirty days, unqualified written notice prior to any cancellation thereof.

In the event the foregoing requirements, or any of them, are not established by the Client and met by the Contractor, the Client agrees to indemnify and hold harmless the Engineer, its employees, agents, and consultants from and against any and all Losses which would have been indemnified and insured against by the Contractor, but were not.

When Contract Documents prepared under the Scope of Services of this contract require insurance(s) to be provided, obtained and/or otherwise maintained by the Contractor, the Client agrees to be wholly responsible for setting forth any and all such insurance requirements. Furthermore, any document provided for Client review by the Engineer under this Contract related to such insurance(s) shall be considered as sample insurance requirements and not the recommendation of the Engineer. Client agrees to have their own risk management department review any and all insurance requirements for adequacy and to determine specific types of insurance(s) required for the project. Client further agrees that decisions concerning types and amounts of insurance are specific to the project and shall be the product of the Client. As such, any and all insurance requirements made part of Contract Documents prepared by the Engineer are not to be considered the Engineer's recommendation, and the Client shall make the final decision regarding insurance requirements.

7. **INFORMATION PROVIDED BY OTHERS:** The Engineer shall indicate to the Client the information needed for rendering of the services of this Agreement. The Client shall provide to the Engineer such information as is available to the Client and the Client's consultants and contractors, and the Engineer shall be entitled to rely upon the accuracy and completeness thereof. The Client recognizes that it is impossible for the Engineer to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify or because of errors or omissions which may have occurred in assembling the information the Client is providing. Accordingly, the Client agrees, to the fullest extent permitted by law, to indemnify and hold the Engineer and the Engineer's subconsultants harmless from any claim, liability or cost (including reasonable attorneys' fees and cost of defense) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the Client to the Engineer.
8. **CHANGES:** Client reserves the right by written change order or amendment to make changes in requirements, amount of work, or engineering time schedule adjustments, and Engineer and Client shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes, if commercially possible.
9. **DOCUMENTS DELIVERED TO CLIENT:** Drawings, specifications, and reports prepared by Engineer in connection with any or all of the services furnished hereunder shall be delivered to the Client for the use of the Client. Engineer shall have the right to retain originals of all Project Documents and drawings for its files. Furthermore, it is understood and agreed that the Project Documents such as, but not limited to reports, calculations, drawings, and specifications prepared for the Project, whether in hard copy or machine readable form, are instruments of professional service intended for one-time use in the construction of this Project. These Project Documents are and shall remain the property of the Engineer. The Client may retain copies, including copies stored on magnetic tape or disk, for information and reference in connection with the occupancy and use of the Project.

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



the two.

The Client understands that the automated conversion of information and data from the system and format used by the Engineer to an alternate system or format cannot be accomplished without the introduction of inexactitudes, anomalies, and errors. In the event Project Documentation provided to the Client in machine readable form is so converted, the Client agrees to assume all risks associated therewith and, to the fullest extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising therefrom or in connection therewith.

The Client recognizes that changes or modifications to the Engineer's instruments of professional service introduced by anyone other than the Engineer may result in adverse consequences which the Engineer can neither predict nor control. Therefore, and in consideration of the Engineer's agreement to deliver its instruments of professional service in machine readable form, the Client agrees, to the fullest extent permitted by law, to hold harmless and indemnify the Engineer from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising out of or in any way connected with the modification, misinterpretation, misuse, or reuse by others of the machine readable information and data provided by the Engineer under this Agreement. The foregoing indemnification applies, without limitation, to any use of the Project Documentation on other projects, for additions to this Project, or for completion of this Project by others, excepting only such use as may be authorized, in writing, by the Engineer.

10. **REUSE OF DOCUMENTS:** All Project Documents including but not limited to reports, original boring logs, field data, field notes, laboratory test data, calculations, opinions of probable costs, drawings and specifications furnished by Engineer pursuant to this Agreement are intended for use on the Project only. They cannot be used by Client or others on extensions of the Project or any other project. Any reuse, without specific written verification or adaptation by Engineer, shall be at Client's sole risk, and Client shall indemnify and hold harmless Engineer from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom.
11. **FORCE MAJEURE:** Neither Client nor Engineer shall be liable for any fault or delay caused by any contingency beyond their control including but not limited to acts of God, wars, strikes, walkouts, fires, natural calamities, or demands or requirements of governmental agencies.
12. **RELATIONSHIP BETWEEN ENGINEER AND CLIENT:** Engineer shall serve as Client's professional engineer consultant in those phases of the Project to which this Agreement applies. This relationship is that of a buyer and seller of professional services and as such the Engineer is an independent contractor in the performance of this Agreement and it is understood that the parties have not entered into any joint venture or partnership with the other. The Engineer shall not be considered to be the agent of the Client.
13. **SUSPENSION OF SERVICES:** Client may, at any time, by written order to Engineer (Suspension of Services Order) require Engineer to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order, Engineer shall immediately comply with its terms and take all reasonable steps to minimize the costs associated with the services affected by such order. Client, however, shall pay all costs incurred by the suspension, including all costs necessary to maintain continuity and for the resumption of the services upon expiration of the Suspension of Services Order. Engineer will not be obligated to provide the same personnel employed prior to suspension, when the services are resumed, in the event that the period of suspension is greater than thirty (30) days.
14. **TERMINATION:** This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. Cost of termination, including salaries, overhead and fee, incurred by Engineer either before or after the termination date



shall be reimbursed by Client.

15. **SUCCESSORS AND ASSIGNS:** The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns: provided, however, that neither party shall assign this Agreement in whole or in part without the prior written approval of the other.
16. **ENTIRE UNDERSTANDING OF AGREEMENT:** This Agreement represents and incorporates the entire understanding of the parties hereto, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, matter or description whatsoever, made by either party to the other except as expressly set forth herein. Client and the Engineer hereby agree that any purchase orders, invoices, confirmations, acknowledgments or other similar documents executed or delivered with respect to the subject matter hereof that conflict with the terms of the Agreement shall be null, void and without effect to the extent they conflict with the terms of this Agreement.
17. **AMENDMENT:** This Agreement shall not be subject to amendment unless another instrument is duly executed by duly authorized representatives of each of the parties and entitled "Amendment of Agreement".
18. **PAYMENT:** Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within thirty (30) days of its receipt. The client further agrees to pay interest on all amounts invoiced and not paid or objected to for valid cause within said thirty (30) day period at the rate of eighteen (18) percent per annum (or the maximum interest rate permitted under applicable law, whichever is the lesser) until paid. Client further agrees to pay Engineer's cost of collection of all amounts due and unpaid after sixty (60) days, including court costs and reasonable attorney's fees, as well as costs attributed to suspension of services accordingly. In the event legal action is necessary to enforce the payment provisions of this Agreement, the Engineer shall be entitled to collect from the Client any judgement or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by the Engineer in connection therewith and, in addition, the reasonable value of the Engineer's time and expenses spent in connection with such collection action, computed at the Engineer's prevailing fee schedule and expense policies. If the Client fails to make payments when due or otherwise is in breach of this Agreement, the Engineer may suspend performance of services upon five (5) calendar days' notice to the Client. The Engineer shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Client will reimburse Engineer for all associated costs as previously set forth in Item 13 of this Agreement. Payments due Engineer are not contingent upon project approval or project financing and are the sole responsibility of the Client. If an invoice for work performed by Engineer remains unpaid sixty (60) days from the date of the invoice and, if there is no written resolution of payment from the client during the sixty (60) day period, Engineer will stop all work on the assignment.
19. **INDEMNIFICATION:** Engineer agrees, to the fullest extent permitted by law, to indemnify and hold harmless Client up to the amount of this contract fee (for services) from loss or expense, including reasonable attorney's fees to the extent caused by Engineer's negligent acts, errors or omissions in the performance of professional services under this Agreement. Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Engineer from any damage, liability or cost, including reasonable attorneys' fees and costs of defense, to the extent caused by the Client's negligent acts, errors or omissions and those of his or her contractors, subcontractors or consultants or anyone for whom the Client is legally liable, and arising from the project that is the subject of this Agreement. In the event of joint or concurrent negligence of Engineer and Client, each shall bear that portion of the loss or expense that its share of the joint or concurrent negligence bears to the total negligence (including that of third parties) which caused the personal injury or property damage. Engineer shall not be liable for special, incidental or consequential damages, including, but not limited to loss of profits, revenue, use of capital, claims of customers, cost of purchased or replacement power, or for any other loss of any nature, whether based on contract, tort, negligence, strict liability or otherwise, by reasons of the services rendered under this Agreement.



20. **LIMIT OF LIABILITY:** The Client and the Engineer have discussed the risks, rewards, and benefits of the project and the Engineer's total fee for services. In recognition of the relative risks and benefits of the Project to both the Client and the engineer, the risks have been allocated such that the Client agrees that to the fullest extent permitted by law, the Engineer's total aggregate liability to the Client for any and all injuries, claims, costs, losses, expenses, damages of any nature whatsoever or claim expenses arising out of this Agreement from any cause or causes, including attorney's fees and costs, and expert witness fees and costs, shall not exceed the total Engineer's fee for professional engineering services rendered on this project as made part of this Agreement. Such causes included but not limited to the Engineer's negligence, errors, omissions, strict liability or breach of contract. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.
21. **NOTICES:** Any notice or designation required to be given to either party hereto shall be in writing, and unless receipt of such notice is expressly required by the terms hereof shall be deemed to be effectively served when deposited in the mail with sufficient first class postage affixed, and addressed to the party to whom such notice is directed at such party's place of business or such other address as either party shall hereafter furnish to the other party by written notice as herein provided.
22. **ACCESS AND PERMITS:** Client shall arrange for Engineer to enter upon public and private property and obtain all necessary approvals and permits required from all governmental authorities having jurisdiction over the Project. Client shall pay costs (including Engineer's employee salaries, overhead and fee) incident to any effort by Engineer toward assisting Client in such access, permits or approvals, if Engineer perform such services.
23. **WAIVER OF CONTRACT BREACH:** The waiver of one party of any breach of the Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof, shall be limited to the particular instance, shall not operate or be deemed to waive any future breaches of this Agreement and shall not be construed to be a waiver of any provision, except for the particular instance.
24. **OPINIONS OF PROBABLE COST:** Since Engineer has no control over the cost of labor, materials or equipment, or over the Contractor(s) method of determining process, or over competitive bidding or market conditions, his opinions of probable Project Construction Cost provided for herein are to be made on the basis of his experience and qualifications and represent his best judgement as a design professional familiar with the construction industry, but Engineer cannot and does not guarantee that proposal, bids or the Construction Cost will not vary from opinions of probable construction cost prepared by him. If prior to the Bidding or Negotiating Phase, Client wishes greater accuracy as to the Construction Cost, the Client shall employ an independent cost estimator Consultant for the purpose of obtaining a second construction cost opinion independent from Engineer.
25. **CONSTRUCTION OBSERVATION CLAUSE:** The Owner will include the following clause in the construction contract documents and Owner agrees not to modify or delete it:
- Kotecki Waiver: Contractor (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, including without limitation claims under the Illinois Structural Work Act, asserted by persons allegedly injured on the Project; waives any limitation of liability defense based upon the Workers Compensation Act, court interpretations of said Act or otherwise; and agrees to indemnify and defend Owner and Engineer and their agents, employees and consultants (the "Indemnities") from and against all such loss, expense, damage or injury, including reasonable attorneys' fees, that the indemnities may sustain as a result of such claims, except to the extent that Illinois law prohibits indemnity for the indemnities' own negligence.
26. **SEVERABILITY OF INVALID PROVISIONS:** If any provision of the Agreement shall be held to contravene or to be invalid under the laws of any particular state, county or jurisdiction where used, such



contravention shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provisions held to be invalid in the particular state, country or jurisdiction and the rights or obligations of the parties hereto shall be construed and enforced accordingly.

27. **HAZARDOUS MATERIALS:** It is acknowledged by both parties that Engineer's scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event Engineer or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that such materials may be present at the job site or any adjacent areas that may affect the performance of Engineer's services, Engineer may at his option and without liability for consequential or any other damages, suspend performance of services on the project until Client retains appropriate specialist consultant(s) or contractor(s) to identify, abate and/or remove the asbestos or hazardous or toxic materials, and warrant that the job site is in full compliance with applicable laws and regulations.
28. **RIGHT OF ENTRY:** Client hereby grants Engineer and its subcontractors or agents the right to enter from time to time property owned by Client and/or other(s) in order for Engineer to fulfill the scope of services included hereunder. Client understands that use of exploration equipment may cause some damage, the correction of which is not part of this Agreement. Client also understands that the discovery of certain hazardous conditions and/or taking preventive measures relative to these conditions may result in a reduction of the Property's value. Accordingly, Client waives any claim against Engineer and its subcontractors or agents, and agrees to defend, indemnify and hold Engineer harmless from any claim or liability for injury or loss allegedly arising from procedures associated with subsurface exploration activities or discovery of hazardous materials or suspected hazardous materials. In addition, Client agrees to compensate Engineer for any time spent or expenses incurred by Engineer in defense of any such claim with compensation to be based upon Engineer's prevailing fee schedule and expense reimbursement policy. Engineer shall not be liable for damage or injury from damage to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to Engineer's attention in writing and correctly shown on the diagram(s) furnished by Client to Engineer.
29. **SAMPLES:** Soil, rock, water and/or other samples obtained from the Project site are the property of Client. Engineer shall preserve such samples for no longer than sixty (60) calendar days after the issuance of any document that includes the data obtained from them, unless other arrangements are mutually agreed upon in writing. Should any of these samples be contaminated by hazardous substances or suspected hazardous substances, it is Client's responsibility to select and arrange for lawful disposal procedures, that is, procedures which encompass removing the contaminated samples from Engineer's custody and transporting them to a disposal site. Client is advised that, in all cases, prudence and good judgment should be applied in selecting and arranging for lawful disposal procedures. Due to the risks to which Engineer is exposed, Client agrees to waive any claim against Engineer, and to defend, indemnify and hold Engineer harmless from any claim or liability for injury or loss arising from containing, labeling, transporting, testing, storing, or other handling of contaminated samples. Client also agrees to compensate Engineer for any time spent and expenses incurred by Engineer in defense of any such claim, with such compensation to be based upon Engineer's prevailing fee schedule and expense reimbursement policy.

END OF GENERAL TERMS AND CONDITIONS

