

Acceptance of Proposal and General Terms and Conditions
by and between Client and Pioneer Engineering & Environmental Services, LLC ("Pioneer")

Client, by its authorized representative, hereby acknowledges that the attached proposal and General Terms and Conditions, together constitute the entire agreement ("Agreement") between Client and Pioneer.

The Agreement may not be supplemented, modified, superseded or otherwise altered, by any terms or conditions contained in any purchase order, requisition, notice of authorization to proceed, pre-printed form or other document of Client.

PROPOSAL NO.: 19415

DATED: 03/10/2023

REGARDING SERVICES PROVIDED: Geotechnical Investigations

CLIENT

ARCO Murray National Construction Company, Inc.
3110 Woodcreek Drive
Downers Grove, IL 60515

SITE LOCATION

1000 W. 120th Street
Chicago, Illinois 60643

Proposal Accepted By Client Representative:

Property Owner Identification:

Name: Robert Rose
Title: Project Lead
Signature: 
Date: 03/23/2023

Company: West Pullman Development Partners, LI
Street Address: 77 West Washington St., Suite 405
City/State/Zip: Chicago, IL 60602
Attention: Leon I. Walker, Esq
Phone: 773-721-3400 ext 11
Email: lwalker@dl3realty.com

Invoices for Payment May Be Sent To:

Company: West Pullman Development Partners, LLC
Street Address: 77 West Washington St., Suite 405
City/State/Zip: Chicago, IL 60602
Attention: Accounting
Phone: 773-721-3400 ext 14
Email: accounting@dl3realty.com

Payment Terms: Net Due Upon Receipt
Estimated Total: \$18,949.50
Required Advance Payment: \$0.00

Special Instructions:

DL3 Addendum must be executed as part of this agreement

PIONEER ENGINEERING & ENVIRONMENTAL SERVICES, LLC
GENERAL TERMS AND CONDITIONS

WHEREAS the below-signed client ("Client") wishes to retain the engineering and environmental services of Pioneer Engineering & Environmental Services, LLC ("Pioneer"), the parties hereby set forth in this agreement ("Agreement") the services to be rendered and the general terms and conditions relating to those services:

1. PROPOSAL PROCESS

Pioneer will, as it deems necessary, evaluate the subject property or properties, consult with client, and consult with other third parties, in order to create written proposal setting out the specific work it intends to perform. Client will then review the proposal and sign said proposal if it accepts the same and then return it to Pioneer. Pioneer will not commence any work until it receives a signed and accepted proposal from Client.

2. ESTIMATES OF COST

Pioneer's estimates of probable total costs as set forth in any project proposal provided as part of the services rendered pursuant to this Agreement, are made on the basis of Pioneer's knowledge, experience and judgment as an experienced and qualified professional familiar with the environmental consulting and engineering industry. Costs may vary from cost estimates as established in project proposals, bids or other projected project costs as established by Pioneer, and Client agrees to pay any and all final costs of any project even if those costs are not identical to the estimates contained in a proposal.

3. CHANGES TO THE SERVICES

Client may direct changes to the services to be provided pursuant to a proposal. Upon notification of such direction, Pioneer shall prepare an estimate of the additional or reduced cost and time required, if any, to perform the change. Upon mutual agreement, Pioneer shall perform the change at a schedule and price in accordance with the agreed upon change estimate.

4. INCORPORATION OF TERMS & CONDITIONS

All proposals and estimates submitted by Pioneer to Client following the execution of this Agreement shall incorporate the terms and conditions of this Agreement even if said proposal or estimate makes no specific reference to this Agreement.

5. ACCESS TO PROPERTY

Client shall provide Pioneer and its agents and their equipment access to the project site(s) at such times as may reasonably be required by Pioneer. Client hereby warrants and represents that it has full and absolute right and authority to permit Pioneer on the subject property to perform the services set forth in this Agreement and in any subsequent proposal.

6. INFORMATION ABOUT PROPERTY

Client shall provide Pioneer with all information that may be reasonably available to Client regarding the project site and the services to be performed pursuant to this Agreement, including any and all information regarding hazardous materials and hazardous conditions at the project site.

7. SAMPLING OR TEST LOCATION

Unless otherwise stated, the fees in a proposal do not include costs associated with surveying of the site for the accurate horizontal and vertical locations of tests. Field tests or boring locations described in our report or shown on sketches are based upon information furnished by others or estimates made in the field by our representatives. Such dimensions and depths of elevations should be considered as approximations unless otherwise stated. If Client specifies the test or boring location, Pioneer reserves the right to deviate a reasonable distance from the location specified. Pioneer reserves the right to terminate this Agreement if site conditions prevent drilling at or near the designated boring locations and these conditions were not revealed to Pioneer prior to submitting a proposal. If, in order to complete the borings to their designated depths, a re-drilling is necessitated by encountering impenetrable subsurface objects, all work will be charged for at the appropriate rates in the fee schedule.

8. FAILURE TO ENCOUNTER HAZARDOUS MATERIALS

Client understands and acknowledges that failure to discover hazardous materials does not guarantee that hazardous materials do not exist at the site. Furthermore, a non-contaminated site may later become contaminated. Accordingly, Client waives any claim against Pioneer, and agrees to defend, indemnify and save Pioneer harmless from any direct or indirect claims or liability for injury or loss, including

attorney fees and costs, arising from Pioneer's failure to detect the presence of hazardous materials, unless, and only to the extent that, the failure to disclose hazardous materials was due to Pioneer's negligence. Client also agrees to compensate Pioneer for any expenses incurred by Pioneer in defending against any claims relating to the subject matter of this paragraph, including: court costs and filing fees, court reporter and deposition costs and fees, consultant and expert costs and fees, and attorney costs and fees.

9. VARYING ENVIRONMENTAL CONDITIONS

Client recognizes that subsurface conditions, including subsurface contamination, may vary from those encountered at the locations where the borings, monitoring wells, surveys, or explorations are made by Pioneer and that the data interpretations and recommendations of Pioneer's personnel are based solely on the information available to them. Pioneer shall not be responsible for the interpretation by others of the information developed pursuant to a proposal.

10. CHANGED CONDITIONS

During the performance of services pursuant to this Agreement, Pioneer shall advise the Client, as soon as practically possible, about any Changed Conditions (as hereinafter defined). Changed Conditions shall include the discovery of any hazardous waste or substance, underground obstruction, underground utilities or other latent obstruction to the performance of Pioneer's services that were not the subject of the services defined in any project proposal. If practicable, Pioneer shall prepare an estimate of the additional time and cost required to respond to the Changed Condition. If Client is unwilling to accept the terms of this estimate, Pioneer shall have an absolute right to terminate this Agreement and the Client will remunerate Pioneer for services rendered and costs incurred up to the time of termination, as well as those associated with termination. If Pioneer is unable to practically advise Client of the Changed Conditions prior to responding to them, Pioneer may, at its sole option, continue with the services and Client shall be responsible for any additional costs and expenses incurred by Pioneer.

11. AQUIFER CONTAMINATION

Client waives any claim against Pioneer, and agrees to defend, indemnify and save Pioneer harmless from any claim or liability for injury or loss which may arise as a result of cross-contamination caused by drilling and sampling unless due to Pioneer's negligence. Client also agrees to compensate Pioneer for any expenses incurred by Pioneer in defending against any claims relating to the subject matter of this paragraph, including: court costs and filing fees, court reporter and deposition costs and fees, consultant and expert costs and fees, and attorney costs and fees. Client further agrees to compensate Pioneer for costs, time and expenses that may be necessary for remedial action required due to aquifer contamination unless said contamination is due to Pioneer's negligence.

12. SITE WORK

Pioneer will take all reasonable precautions to avoid any damage to the site from the activities of its crews or equipment. However, unavoidable damage caused in the execution of the work such as tire rutting, cutting and splicing of fences, drilling through pavements, etc. will not be restored unless otherwise stated in this Agreement.

13. UTILITIES

In the execution of any subsurface exploration Pioneer will take all reasonable precautions to avoid damage or injury to subterranean structures or utilities. However, Pioneer shall not be responsible for any damage to utilities not identified by Client or the utility identification services (such as 'JULIE'). The Client agrees to indemnify and hold Pioneer harmless for any damages to subterranean structures which are not called to Pioneer's attention or correctly shown on the plans furnished, and Client agrees to compensate Pioneer for any expenses incurred by Pioneer in defending against any claims relating to this matter, including: court costs and filing fees, court reporter and deposition costs and fees, consultant and expert costs and fees, and attorney costs and fees.

14. PAYMENT TERMS

Invoices shall be submitted to Client either on a lump sum or time and materials basis, whichever is provided for in this Agreement or in any proposal or estimate tendered following this Agreement. If any project proposal provides for a lump sum payment, Pioneer may require a percentage of the lump sum price upon the authorization of any project proposal associated with this Agreement. Pioneer will

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submit invoices to Client monthly and a final bill upon completion of services. Invoices will show charges for different personnel and expense classifications. A more detailed separation of charges and back-up data will be provided at Client's request. Pioneer shall furnish insurance certificates, lien waivers, affidavits or other available documents as reasonably requested by Client, provided all amounts due Pioneer have been paid in full.

Unless otherwise provided for in this Agreement, payment is due within 30 days of the earlier of (i) receipt by Client of the project report(s), or (ii) receipt by Client of Pioneer's invoice. Client shall make timely payments in accordance with the terms of this Agreement. In the event Client objects to a Pioneer invoice, or any portion thereof, Client shall provide Pioneer with a clear written statement setting forth said objection within fifteen (15) days after receipt of the invoice. Failure to provide such a written statement shall constitute a waiver of any such objections and acceptance of the invoice as submitted. Client agrees to pay an interest rate of one and one-half percent (1-1/2%) per month, or the maximum rate allowed by law, on past due accounts. Any and all attorney's fees, collection fees or other costs incurred in collecting any delinquent account shall be paid by the Client. Where applicable, Client agrees to pay Pioneer for its services in accordance with the provisions of this Agreement, regardless of whether or not Client has been paid by its client. Site cleanup costs will be billed as portions of the cleanup are completed. Pioneer's standard policy is to establish an escrow account in the amount of the estimated cleanup cost. Pioneer will draw payments from the account as portions of the project are completed.

15. DELAYS IN WORK

Pioneer will not be responsible for, and Client recognizes that additional charges may result from, conditions and delays in work due to causes beyond Pioneer's control, including but not limited to: fires, strikes, riots, explosions, adverse weather conditions, unavoidable casualties, unavailability of labor or materials or services, process shutdown, acts of God or of the public enemy, court orders, or acts, orders or regulations of any governmental agency. Pioneer will not be responsible for delays in the work caused by Client or its agents, consultants, contractors or subcontractors. Stand-by or non productive time for delays in our work caused by Client will be charged as work time unless provided for as a separate item in any project proposal or other mutually agreed upon document.

16. LIMITATION OF DAMAGES

Client agrees that the damages recoverable from Pioneer (1) for any negligence, error, omission, design defect, breach of contract, or (2) for any cause of action arising out of or relating to the services provided by Pioneer to Client, or (3) for any indemnification provided for under the terms of this contract, shall be limited to the amount of the fee actually paid by Client to Pioneer or \$50,000.00, whichever is greater. In addition, damages shall only be assessed against Pioneer in proportion to its share of fault.

In no event shall Pioneer be liable for any incidental or consequential damages, including, but not limited to, damages due to delay or lost profit or loss of use.

Client agrees that any claim alleging damages arising out of the materials or services provided pursuant to a proposal submitted in connection with this Agreement must be brought within 1 year of the date that Pioneer provided said materials or services. If said claim is not brought within this time frame, then it shall be waived and forever barred.

17. FAILURE TO FOLLOW RECOMMENDATIONS

Client waives any claim against Pioneer, and agrees to defend, indemnify and hold Pioneer harmless from any claim or liability for injury or loss that results from failure to implement Pioneer's recommendations, or from implementation of Pioneer's recommendations in a manner that is not in strict accordance with them. Client also agrees to compensate Pioneer for any expenses incurred by Pioneer in defending against any claims relating to the subject matter of this paragraph, including: court costs and filing fees, court reporter and deposition costs and fees, consultant and expert costs and fees, and attorney costs and fees.

18. EXTENSION OF INDEMNIFICATION

For good and valuable consideration, the receipt of which is hereby acknowledged, and subject to the limitations set forth in this agreement, Pioneer and Client agree to indemnify and to hold each other harmless

against any and all losses, damages and expenses, including attorney's fees court costs and fees, court reporter and deposition costs and fees, expert and consulting costs and fees and exhibit costs, for injuries to property, injuries or death to persons, and any other liability incurred to the extent that, and in proportion for which, any such losses, damages, expenses and costs are due to or result from the negligent acts or omissions of the other in connection with the services provided under this agreement. However, in no event shall Pioneer's indemnification liability exceed the Limitation of Damages set forth in Paragraph 16 of this Agreement.

The obligation to so indemnify is expressly contingent upon the party seeking indemnification to notify the other party, in writing, within thirty (30) calendar days after they knew or reasonably should have known, of any claim, complaint, potential cause of action or proceeding. Failure to provide timely notification shall relieve the other of its obligation to so indemnify.

The parties agree not to settle or compromise any claim or cause of action for which indemnification is sought without the written permission of the other, which permission shall not be unreasonably withheld.

This indemnity obligation shall terminate one (1) year following the completion or expiration of this Agreement.

19. INSURANCE & GENERAL LIABILITY

Pioneer represents and warrants that it and its agents, staff and consultants employed by it are protected by worker's compensation insurance and that Pioneer has such coverage under public liability and property damage insurance policies which Pioneer deems to be adequate. Certificates for all such policies of insurance shall be provided to Client upon request in writing. Additional insurance, if requested by Client, will be obtained by Pioneer (if procurable) and charged to the Client at cost plus 15%. Pioneer shall not be responsible for any loss, damage or liability arising from acts by Client, its agents, staff and other consultants employed by it.

20. NO WARRANTY

PIONEER WILL PERFORM SERVICES IN A GOOD AND WORKMANLIKE MANNER IN ACCORDANCE WITH PREVAILING STANDARDS AND PRACTICES APPLICABLE TO THE SERVICES. NO OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AT COMMON LAW OR CREATED BY STATUTE, IS EXTENDED, MADE, OR INTENDED BY THE RENDITION OF CONSULTING OR ENGINEERING SERVICES OR BY THE FURNISHING OF ORAL OR WRITTEN REPORTS.

21. OWNERSHIP OF DOCUMENTS

All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates and other documents prepared by Pioneer, as instruments of services, shall remain the property of Pioneer. Client agrees that all reports and other work furnished to Client or its agents, which are not paid for, will be returned upon demand and will not be used by Client for any purposes whatsoever.

22. INDEPENDENT CONTRACTOR STATUS

Pioneer is an independent contractor and shall not be deemed to be an employee or agent of Client.

23. ASSIGNMENT

This Agreement may not be assigned by either party without the prior written consent of the other party.

24. COMPLETE AGREEMENT

This Agreement supersedes all prior agreements, written and oral, relating to the subject matter hereof. This Agreement contains each and every agreement and understanding between the parties relating to its subject matter. It may not be altered or amended except in writing and signed by both the Client and Pioneer. Client agrees that is has not relied on any oral or written representations or understandings not explicitly contained in these Terms and Conditions or the underlying agreement in contracting with Pioneer.

25. TERMINATION

This Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms herein. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, Pioneer shall be paid for services performed prior to the

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termination date plus reasonable expenses to demobilize. In the event of termination, or suspension for more than three (3) months, prior to completion of all reports contemplated by any project proposal prepared pursuant to this Agreement, Pioneer may complete such analyses and records as are necessary to complete its files and may also complete a report on the services performed to date of notice of termination or suspension. The expenses of termination or suspension shall include all direct costs of Pioneer in completing such analyses, records and reports.

26. SURVIVAL

All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between Client and Pioneer shall survive the completion of services and the termination of this Agreement.

27. ENFORCEABILITY AND SEVERABILITY

Should any element of any project proposal prepared in connection with this Agreement be deemed in conflict with any element of this Agreement, unless this Agreement clearly voids the conflicting element in the project proposal, the wording of the project proposal shall govern. Any element of this contract later held to violate a law or regulation, or is otherwise deemed invalid or unenforceable, shall be deemed void, but all remaining provisions hereof shall remain in full force and effect, and binding upon the parties hereto.

28. HEADINGS

The headings used in this Agreement are intended for purposes of convenience only and do not constitute actual terms of the Agreement.

29. CHOICE OF LAW

This Agreement shall be governed by the law of the State of Illinois. The circuit court of Cook County in Chicago Illinois shall have sole and exclusive jurisdiction over all disputes arising out of or relating to this Agreement.

30. ATTORNEY FEES

The successful party in any lawsuit (or other legal proceeding, including mediation or arbitration), arising out of or related to the terms of this Agreement, may recover all litigation costs and expenses from the unsuccessful party, including but not limited to: court costs and filing fees, court reporter and deposition costs and fees, consultant and expert costs and fees, and attorney costs and fees.