



August 5, 2015

Mr. Jason Bauer, P.E.
Engineering Department
City of Aurora
44 East Downer Place
Aurora, IL 60507

Subject: Proposal for On-Site Construction Engineering Service
Sperry Court Utility Improvements Project

Dear Mr. Bauer:

Wills Burke Kelsey Associates, Ltd. ("WBK") is pleased to provide this proposal for Construction Engineering Services related to the Sperry Court Utilities Improvement Project. Preparing this proposal requires the exercise of professional engineering judgment, and as such, this proposal remains the proprietary instrument of WBK. Included below is our understanding of the assignment, scope of services, proposed staff, and estimate of fee.

UNDERSTANDING OF THE ASSIGNMENT

Wills Burke Kelsey Associates, Ltd. understands that the City of Aurora (City) plans to construct the underground improvements related to the Sperry Court Utility Improvements Project as outlined in the approved final engineering plans. The project consists of the installation of 157 linear feet of 12" RCP Storm Sewer (open cut), 90 linear feet of 12" PVC Storm Sewer (directional drill), 188 feet of 8" PVC Storm Sewer, 4 Storm Structures, 4 Sanitary Structures and other miscellaneous appurtenances along Sperry Court between South Avenue and Center Avenue. As such, the City is requesting this proposal to work as an extension of City staff and provide construction engineering services for the planned improvements.

PROJECT RESIDENT ENGINEER

To provide the City with the expertise, proximity to the project, and attention to detail that the City requests, we are proposing Mr. Andy Haglund as your primary contact and Resident Engineer for this project. He is currently providing the construction oversight on the City's Lake Street Sewer Project and has completed construction oversight on the City's East Side Rain Gardens and City Hall Vault Projects. He has managed all phases of construction inspection, topographic surveys, construction layout, staking and drafting of plans and preparing documents for public works and street projects.

SCOPE OF SERVICES

The Scope of Services for Construction Engineering involves a comprehensive effort to provide field inspection to assure the project completion is in accordance with the contract documents and plans. For purposes of this proposal, we have outlined below what we anticipate to be a Scope of Services/Responsibilities by our Resident Engineer. Included in this scope will be field inspection and documentation of work and quantities, contractor coordination, preparation and submittal of cost estimates and change orders, and final processing to assist the City. We anticipate the following tasks will be required to ensure successful completion of the proposed improvements.

TASK 1: PRE-CONSTRUCTION ACTIVITIES

Review of Existing Data. Our Resident Engineer will review plans, specifications, contract documents, and implement action items determined to be required.

Project Set-up. The Resident Engineer will create electronic and hard copy file organization which includes, but not limited to pay requests, weekly reports, change orders, material inspection, quantity documentation, and other files and forms required by the City of Aurora.

Contractor Walk Through. The Resident Engineer will schedule a site visit and walk through with the Contractor to assess any changes to site such as demolition completed by the City and utility installations since final design was completed, and review all existing conditions as well as previously assembled photo log with the contractor.

Photo/Video Documentation of Site Conditions. The Resident Engineer / Inspector will create a preconstruction photo log record of the existing site conditions within the project limits with the Contractor present.

Pre-Construction Meeting. Prior to the start of construction, it is assumed that the City of Aurora will arrange a pre-construction meeting. All personnel involved with the project, including all necessary utility representatives, Contractor's personnel, construction supervision personnel, local agency representatives, and City of Aurora staff shall be requested to attend.

TASK 2: RESIDENT ENGINEERING SERVICES

Wills Burke Kelsey Associates will provide Resident Engineering personnel to perform continuous construction observation of the Contractor's operations for compliance with the plans, specifications, and contract documents. The Resident Engineer services will also include, but not be limited to: completing documentation required by the City of Aurora, make the day-to-day decisions in cooperation with City staff, and maintain daily contact with the Contractor's personnel to proficiently provide the engineering services necessary for the Contractor's continued progress.

The Resident Engineer will be responsible for observing the project to ensure that the Contractor is following contractual items of the work and will be maintaining communication with City staff throughout the duration of project. More specifically, we envision our Resident Engineer will perform the following work items.

- Direct client contact on project related issues.
- Observe and document traffic control.
- Observe daily construction work of the contractor for compliance to the plans, permits and specifications.
- Coordinate daily with Contractor on work and schedule.
- Coordinate construction operations to ensure business / residential access in accordance with project plans and specifications.
- Maintain daily record of Contractor's activities.
- Perform field measurements and Quantity verification.
- Work with City staff to prepare and submit all partial and final payment estimates, change orders, records, certifications, documentation, and reports.
- Prepare and submit all partial and final material documentation.
- Field markup of record drawings (penciled redlines).
- Conduct project meetings (as required).
- Evaluate and provide engineering solutions to solve construction conflicts.
- Prepare and coordinate punch list and oversee completion of punch list.
- Prepare final documentation, project closeout with the City of Aurora.
- Conduct consultation with the project staff.
- Conduct quality assurances of construction work in progress and the enforcement of the contract provisions.

TASK 3: AS-BUILT SURVEY AND RECORD DRAWINGS

As-built Survey. WBK will survey and prepare the record drawings to document the utilities constructed as part of this project to include rims and inverts of all new structures placed as part of the planned improvements. In addition, we will pick up new areas of pavement patching and curb resulting from construction. The approved design plans will be utilized as the base sheets for the record plans and a set of Record Drawings will be prepared and provided to the City.

TASK 4: PROJECT ADMINISTRATION AND MANAGEMENT

An individual with extensive engineering design and construction experience will be assigned the dual role of Project Manager / Project Engineer. This individual will be responsible for the following contractual items of work:

- Ongoing consultation with project staff.
- Quality assurances of construction work in progress and the enforcement of the contract provisions.
- Quality assurance of all project reports, pay estimates, change orders, records, documentation, and reports.
- Attend conferences and job site meetings as needed.
- Occasional job site visits.
- Project closeout review and guidance.
- Provide guidance and resolution to construction issues.

ESTIMATE OF FEE

Construction is anticipated to begin in the middle of October 2015 and shall obtain substantial completion within 30 working days and final completion within 45 working days per the contract specifications. If construction begins in the middle of October 2015, final completion of the project is expected near mid-December 2015.

For man-power scheduling and estimating purposes, we are assuming that the Contractor will start work in the middle of October 2015 and generally work a five-day work week (Mon.-Fri.) with 50% of the Saturdays within the time frame of construction (9 hour work days excluding Sunday or holidays). It is assumed that all construction will be complete including punch list items within 45 working days and final documentation and closeout with the City on or before December 15, 2015. It is assumed the entire project duration will be staffed with one (1) full time field personnel consisting of the Resident Engineer. The resident engineer will be on site approximately 45 hours a week during the 30 working days (6 weeks) allowed for substantial completion and approximately 10 hours a week during the 15 working days (3 weeks) allowed for final completion.

We propose to complete the Scope of Services described above for a not to exceed amount of \$43,750 including all labor and reimbursable expenses. A detailed breakdown of estimated man-hours and costs by task is provided in the attached table as Exhibit A.

Based upon our understanding of the project and our prior discussions, we have made the following assumptions in developing the Scope of Services described above.

- Field testing is not included in this scope. Should the City request these services, WBK will provide a separate scope and estimate of cost for review and consideration by the City.
- Construction Layout is not included in this scope. Should the City request these services, WBK will provide a separate scope and estimate of cost for review and consideration by the City.
- It is our understanding that spoil material regulated as Clean Construction or Demolition Debris (CCDD) will be managed by others and is not included as part of this scope.

We propose to bill you monthly using a Direct Labor Multiplier (DLM) of 2.80 per hour for staff classifications anticipated on this project. We establish our contract in accordance with the attached General Terms and Conditions, previously approved by the City of Aurora. These General Terms and Conditions are expressly incorporated into and are made an integral part of this contract for professional services. We reserve the right to increase our fees by five percent (5%) on December 31st of each calendar year.

Additionally, the insurance coverage for this project shall not be less than the amounts provided below:

- General Liability not less than one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) general aggregate.
- Professional Liability Insurance not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate.
- Workmen's Compensation and Employer's Liability Insurance not less than five hundred thousand dollars (\$500,000).
- Automobile Liability Insurance not less than one million dollars (\$1,000,000) with respect to any personal injury, sickness, disease or death of one or more persons and with respect to damage or injury to or destruction of property in any occurrence, covering owned, non-owned, and hired vehicles.

If this proposal is acceptable, please sign both copies and return one (1) to us for our files to serve as a notice to proceed.

Thank you for the opportunity to provide service to the City of Aurora. If you have any questions, please do not hesitate to call.

Sincerely,



Vince R. Di Prima, P.E., CPESC
Construction Services Manager



Greg Chismark, P.E.
Municipal Practice Principal

Encl: Exhibit A: Table of Work Hour Estimate for Construction Services
Exhibit A: Phase III Engineering Services In-House Direct Costs
General Terms and Conditions Modified for City of Aurora (February 18, 2014)

THIS PROPOSAL AND GENERAL TERMS & CONDITIONS ACCEPTED FOR THE CITY OF AURORA:

BY: _____

TITLE: _____

DATE: _____

Route
 Local Agency City of Aurora
 Section
 Project
 Job No.

**WORK HOUR ESTIMATE FOR CONSULTING SERVICES
 EXHIBIT A - PHASE III ENGINEERING SERVICES
 Sperry Court Utility Improvements**

Existing Structu

Description		Engineer V	Engineer IV	Engineer III	Engineering Technician III	Engineering Technician II	GIS Analyst	In House Direct Costs	TOTALS
1	Early Coordination and Data Collection								
	1.1 Review Plans and Specifications				4				
	1.2 Pre-construction set-up, File setup, Job Box, Field Book, Electronic Files				4				
	1.3 Contractor Walk Through / Staging Coordination				2				
	1.4 Photo / Video Documentation				4				
	1.5 Pre-Construction Meeting (1 Meeting)				2				
	SUB-TOTAL				16.0			\$ -	\$ 1,615.94
	PERCENT				100%				
2	Resident Engineering Services								
	2.1 Construction Observation & Documentation				330				
	2.2 Final Quantity Determination, Punchlist and Closure				50				
	SUB-TOTAL				380.0			\$ 1,575.00	\$ 39,953.48
	PERCENT				100%				
3	As-Built Survey								
	3.1 Field Survey					8			
	3.2 Record Drawing Preparation						4		
	SUB-TOTAL					8.0	4.0	\$ 407.50	\$ 1,423.90
	PERCENT					67%	33%		
4	Project Administration & Management								
	4.1 Project Administrative Set-up				2				
	4.2 Quality Assurance of Project Tasks			1					
	4.3 Attend Meetings			1					
	4.4 Project Site Visits			1					
	4.5 Contract Administration			1					
	4.6 Coordination, Correspondence and Administration			1					
	SUB-TOTAL				5.0	2.0		\$ -	\$ 768.01
	PERCENT				71%	29%			
	TOTALS				5.0	398.0	8.0	\$ 1,982.50	\$ 43,761.33
	PERCENT				1%	96%	2%	1%	

EXHIBIT A - PHASE III ENGINEERING SERVICES

In-House Direct Costs (IHDC)

Route 0
 Local Agency City of Aurora
 Section 0
 Project 0
 Job No. 0
 Existing Struc 0

Consultant **Wills Burke Kelsey Associates, Ltd.**

			TASK 1		TASK 2		TASK 3		TASK 4		
			Early Coordination and Data Collection		Resident Engineering Services		As-Built Survey		Project Administration & Management		
ITEM	UNITS	UNIT COST	QUANT.	TOTAL COST	QUANT.	TOTAL COST	QUANT.	TOTAL COST	QUANT.	TOTAL COST	
DIRECT COSTS											
Postage & Shipping (UPS, Fed-Ex)	UNIT	\$1.00		\$0.00		\$0.00		\$0.00		\$0.00	
Travel Mileage	DAY	\$35.00		\$0.00	45	\$1,575.00		\$0.00		\$0.00	
Travel Mileage	MILE	\$0.575		\$0.00		\$0.00	100	\$57.50		\$0.00	
24 x 36 BW Bond Sheets	SHEET	\$0.66		\$0.00		\$0.00		\$0.00		\$0.00	
24 x 36 Color Bond Sheets	SHEET	\$21.00		\$0.00		\$0.00		\$0.00		\$0.00	
24 x 36 Mylar Plots	SHEET	\$13.50		\$0.00		\$0.00		\$0.00		\$0.00	
24 x 36 Display Boards	EACH	\$33.00		\$0.00		\$0.00		\$0.00		\$0.00	
11 x 17 BW Photocopies	SHEET	\$0.20		\$0.00		\$0.00		\$0.00		\$0.00	
11 x 17 Color Photocopies	SHEET	\$2.25		\$0.00		\$0.00		\$0.00		\$0.00	
8 ½ x 11 BW Photocopies	SHEET	\$0.15		\$0.00		\$0.00		\$0.00		\$0.00	
8 ½ x 11 Color Photocopies	SHEET	\$1.25		\$0.00		\$0.00		\$0.00		\$0.00	
Small Report Binding	EACH	\$40.00		\$0.00		\$0.00		\$0.00		\$0.00	
Medium Report Binding	EACH	\$75.00		\$0.00		\$0.00		\$0.00		\$0.00	
Large Report Binding	EACH	\$100.00		\$0.00		\$0.00		\$0.00		\$0.00	
Public Notice (News Paper)	UNIT	\$350.00		\$0.00		\$0.00		\$0.00		\$0.00	
Survey Equipment (Per Week)	UNIT	\$700.00		\$0.00		\$0.00	0.50	\$350.00		\$0.00	
Specialty Equipment	UNIT	\$1.00		\$0.00		\$0.00		\$0.00		\$0.00	
Permit Fees	UNIT	\$1.00		\$0.00		\$0.00		\$0.00		\$0.00	
Plan/Inspection Review Fees	UNIT	\$1.00		\$0.00		\$0.00		\$0.00		\$0.00	
Recording Fees	UNIT	\$1.00		\$0.00		\$0.00		\$0.00		\$0.00	
Title Commitments	EACH	\$400.00		\$0.00		\$0.00		\$0.00		\$0.00	
Phase I Archeological Survey	UNIT	\$1.00		\$0.00		\$0.00		\$0.00		\$0.00	
Special Waste Radius Report	UNIT	\$1.00		\$0.00		\$0.00		\$0.00		\$0.00	
Sub-Totals					\$0.00		\$1,575.00		\$407.50		\$0.00
Totals		\$1,982.50									

**WILLS BURKE KELSEY ASSOCIATES, LTD.
GENERAL TERMS AND CONDITIONS
MODIFIED FOR CITY OF AURORA, IL
FEBRUARY 18, 2014**

1. Relationship Between Engineer and Client: WILLS BURKE KELSEY ASSOCIATES, LTD. (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. Nothing contained in this Agreement shall create a contractual relationship with a cause of action in favor of a third party against either the Client or Engineer.

Furthermore, causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date of substantial completion.

2. Responsibility of the Engineer, Job Site Safety/Supervision & Construction Observation: Engineer will perform services under this Agreement in accordance with generally accepted and currently recognized engineering practices and principles, and 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. 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.

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.

3. 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.
4. 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. . 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.

5. 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. With thirty (30) day written notice, this Agreement may be terminated by Client whenever Client shall determine that termination is in its best interests. . Client shall only be responsible for payment of fees actually incurred up to the date of termination.
6. Documents Delivered to Client: Drawings, specifications, reports, and any other Project Documents prepared by Engineer in connection with any or all of the services furnished hereunder shall be delivered to, and shall be the property of, 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 Client.

When and if record drawings are to be provided by the Engineer, Client understands that information used in the preparation of record drawings is provided by others and Engineer is not responsible for accuracy, completeness, nor sufficiency of such information. Client also understands that the level of detail illustrated by record drawings will generally be the same as the level of detail illustrated by the design drawing used for project construction. If additional detail is requested by the Client to be included on the record drawings, then the Client understands and agrees that the Engineer will be due additional compensation for additional services.

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. Engineer shall take all reasonable precautions to maintain the integrity of said machine readable data and information.

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 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 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 additions to this Project, , excepting only such use as may be authorized, in writing, by the Engineer.

7. Reuse of Documents: All Project Documents including but not limited to reports, opinions of probable costs, drawings and specifications furnished by Engineer pursuant to this Agreement are intended for use on the Project only. 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 arising out of or resulting therefrom.

The Engineer shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Engineer's promotional and professional materials. The Engineer's materials shall not include the Client's confidential and proprietary information.

8. Standard of Practice: The Engineer will 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.
9. Compliance with Laws: The Engineer will exercise the usual and customary professional care in his/her efforts to comply with those laws, codes, ordinances 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.

Further to the law and code compliance, the Client understands that the Engineer will provide designs in accordance with the prevailing Standards of Practice as previously set forth, but that the Engineer does not warrant that any reviewing agency having jurisdiction will not for its own purposes comment, request changes and/or additions to such designs. In the event such design requests are made by a reviewing agency, but which do not exist in the form of a written regulation, ordinance or other similar document as published by the reviewing agency, then

such design changes (at substantial variance from the intended design developed by the Engineer), if effected and incorporated into the project documents by the Engineer, shall be considered as Supplementary Task(s) to the Engineer's Scope of Service and compensated for accordingly.

10. Affirmative Action: The Engineer is committed to the principles of equal employment opportunity. Moreover, as a government contractor bound by Executive Order 11246, Engineer takes its affirmative action obligations very seriously. Engineer states as its Policy of Affirmative Action the following:

It will be the policy of the Engineer to recruit, hire, train and promote persons in all job titles without regard to race, color, religion, sex, age, disability, veteran status, national origin, or any other characteristic protected by applicable law.

All employment decisions shall be consistent with the principle of equal employment opportunity, and only job-related qualifications will be required.

All personnel actions, such as compensation, benefits, transfers, tuition assistance, social and recreational programs, etc. will be administered without regard to race, color, religion, sex, age, disability, veteran status, national origin, or any other characteristic protected by applicable law.

11. Insurance and Indemnification: Engineer shall procure and maintain at its sole cost, during the terms of this agreement, the types and amounts of insurance coverage required by the client as shown in the proposal and contract for this work. The Engineer shall require any and all subcontractors to this agreement to provide and maintain, at the subcontractor's sole cost, the types and amounts of insurance coverage required by the client as shown in the contract documents. Engineer to endorse and name Owner and to require all subcontractors to endorse and name Owner as a primary, non-contributory additional insured on the above referenced insurance policies for this project.

The Engineer also agrees to provide Owner with a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect. Said Certificate(s) of Insurance shall include a minimum thirty (30) day Notice to Owner of cancellation or non-renewal of coverage except for ten (10) day notice for non-payment. The Certificate Holder address shall read: City of Aurora, ATTN: Risk Manager, 44 E. Downer Place, Aurora, IL 60507.

Engineer shall indemnify and hold harmless Client from loss or expense for claims for personal injury (including death) or property damage to the extent caused by the sole negligent act, error or omission of Engineer.

Client shall indemnify and hold harmless Engineer under this Agreement, from loss or expense for claims for personal injuries (including death) or property damage arising out of the sole negligent act, error or omission of Client.

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.

12. 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/her opinions of probable Project Construction Cost provided for herein are to be made on the basis of his/her experience and qualifications and represent his/her judgment 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/her. 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.
13. Governing Law & Dispute Resolutions: This Agreement shall be governed by and construed in accordance with Articles previously set forth by (Item 9 of) this Agreement, together with the laws of the **State of Illinois**.
14. 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.
15. Waiver of Contract Breach: The waiver of one party of any breach of this 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.
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. 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.

19. 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.
20. Subcontracts: Engineer may subcontract portions of the work, but each subcontractor must be approved by Client in writing.
21. 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) incident to any effort by Engineer toward assisting Client in such access, permits or approvals, if Engineer performs such services.
22. 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.
23. 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.
24. Client's Responsibilities: The Client agrees to provide full information regarding requirements for and about the Project, including a program which shall set forth the Client's objectives, schedule, constraints, criteria, special equipment, systems and site requirements.

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, 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 also agrees to require the Contractor to provide to the Engineer the required certificate of insurance.

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 noncontributing 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 Agreement 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.

25. 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 for injury or loss arising from errors, omissions or inaccuracies in documents or other information provided by the Client to the Engineer.
26. Payment: Client shall be invoiced once each month for work performed during the preceding period. Client agrees to pay each invoice within forty-five (45) 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 forty-five (45) day period at the maximum interest rate permitted under applicable law as set forth in 50 ILCS 505/1, *et seq.* When construction observation tasks are part of the service to be performed

by the Engineer under this Agreement, the Client will include the following clause in the construction contract documents and Client 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 Worker's Compensation Act, court interpretations of said Act or otherwise; and to the fullest extent permitted by law, agrees to indemnify and hold harmless and defend Owner and Engineer and their agents, employees and consultants (the "Indemnitees") from and against all such loss, expense, damage or injury, including reasonable attorneys' fees, that the Indemnitees may sustain as a result of such claims, except to the extent that **Illinois** law prohibits indemnity for the Indemnitees' own negligence. The Owner and Engineer are designated and recognized as explicit third-party beneficiaries of the Kotecki Waiver within the general contract and all subcontracts entered into in furtherance of the general contract.

27. Contractor Insurance and Indemnification: The Engineer and the Client understand and agree that the Client will contractually require the Contractor to defend and indemnify the Engineer and/or any subconsultants from any claims arising from the Work. The Engineer and the Client further understand and agree that the Client will contractually require the Contractor to procure commercial general liability insurance naming the Engineer as an additional named insured with respect to the work. The Contractor shall provide to the Client certificates of insurance evidencing that the contractually required insurance coverage has been procured. However, the Contractor's failure to provide the Client with the requisite certificates of insurance shall not constitute a waiver of this provision by the Engineer.
28. Hazardous Materials/Pollutants: Unless otherwise provided by this Agreement, the Engineer and Engineer's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials/pollutants in any form at the Project site, including but not limited to mold/mildew, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic/hazardous/pollutant type substances.

Furthermore, Client understands that the presence of mold/mildew and the like are results of prolonged or repeated exposure to moisture and the lack of corrective action. Client also understands that corrective action is an operation, maintenance and repair activity for which the Engineer is not responsible.