



WILLS BURKE KELSEY ASSOCIATES, LTD.
PROJECT PROPOSAL
Waubonsie Lake Dredging

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August 24, 2015

Mr. Ken Schroth, P.E.
City Engineer
City of Aurora
44 E. Downer Place
Aurora, IL 60505

**Subject: Proposal for Professional Engineering Services
Waubonsie Lake Dredging**

Dear Mr. Schroth:

Wills Burke Kelsey Associates, Ltd. (WBK) is pleased to provide this proposal for Engineering and Environmental services in support of the City's plan for dredging Waubonsie Lake. Included in our proposal is our Understanding of the Assignment, Scope of Services, Estimate of Fee, and General Terms and Conditions.

UNDERSTANDING OF THE ASSIGNMENT

WBK understands that the City of Aurora has an Inter-governmental Agreement with the Fox Valley Park District that requires dredging sediment from Waubonsie Lake as part of the long-term maintenance of stormwater facilities in Park District properties on the east side of Aurora. We further understand that the Fox Valley Park District had a sediment study prepared in 2012 that included sediment bathymetry, potential volume of material to be removed, chemical characterization of sediments and an approach to sediment removal and disposal. We understand that the City of Aurora would like to complete final engineering plans, specifications, permit submittals and have an updated cost estimate based upon the final design. The plans will address site access, diversion of water around the work area, excavation/dredging, grading of laydown areas and restoration of the work area following sediment removal. The permitting will include the US Army Corps of Engineers Section 404 permit for dredging, IDNR-OWR Floodway Construction permit, Kane-DuPage SWCD SESC permit, City of Aurora Stormwater permit (submittal only), and IEPA NPDES Phase 2 Notice of Intent for Construction (ILR 10).

In preparing this proposal, we have attempted to provide you with a complete package of the services anticipated at this point in time. In doing so, we have made some assumptions which will need to be verified during the engineering process. Any findings which are not consistent with our assumptions may impact the engineering budgets for this project. We will thoroughly discuss any such findings with you and negotiate any budget revisions prior to proceeding.

SCOPE OF SERVICES

TASK 1. FINAL ENGINEERING SERVICES

This task will consist of the preparation of the design documents for submittal to and coordination with the City of Aurora.

Preparation of Plan Drawings: The plan drawings will include the final design drawings, technical specifications and other documentation for the final design of on- site engineering improvements. The plans will be in English units of measurement. This work will include plan notes, typical sections, storm sewer outfalls, grading, erosion control, and details.

Construction Specifications: Construction specifications will be shown on the drawings for dredging, dredge material disposal, final grading and restoration of both the lake bottom and dredge disposal site. We will reference the "Standard Specifications for Road and Bridge Construction," latest edition adopted by the Illinois Department of Transportation, and the latest edition of the "Standard Specifications for Water and Sewer Main Construction in Illinois". Wills Burke Kelsey Associates' preparation of the specifications shall not be construed to relieve the Contractor in any way from his sole responsibility for the quality and workmanship of the work and for strict compliance with the permitted plans and specifications.

Opinion of Probable Construction Cost: Based upon the information contained in the final design documents, we shall prepare an opinion of probable construction cost for the site improvements.

Consultation: During the design process, we will attend up to two meetings with the Client or government agencies.

TASK 2. WETLAND PERMITTING

USACE Section 404 Regional Permit Submittal Preparation: WBK will prepare a permit application package for any wetland impacts based on the final engineering plans. We will prepare the documents required for a complete Regional Permit submittal including a Joint Permit Application, narrative with supporting data, wetland assessment & delineation, Wetland Impacts Exhibit, and agency coordination, consultations, and/or authorizations. WBK will meet with the USACE to discuss the application package prior to submitting the permit application. Although WBK will attempt to provide all of the necessary information of sufficient quality to obtain said permits, WBK cannot guarantee their issuance.

We will prepare a request for review from the Kane-DuPage Soil and Water Conservation District (as required by the U.S. Army Corps of Engineers through their Memorandum of Understanding) of the Soil Erosion and Sediment Control plans prepared by WBK. If a USACE permit is not needed, this task is not required and will not be completed by WBK. This submittal will include a project narrative, description of the potential impacts, plan set, review and inspection fee, and description of the erosion and sediment control measures to be taken as part of the development of the project. WBK will provide one set of revisions to the plans as requested by the SWCD. Three copies of the final plans will be submitted for signature upon approval by the SWCD. One set of plans will remain with the SWCD, one set will be kept by WBK for record keeping, and one set must remain on-site (and kept up-to-date based on the current conditions of the site). Review/Inspection fees are not included in our scope of work.

TASK 3. IDNR-OWR FLOODWAY CONSTRUCTION PERMIT

WBK will assist you in applying for Floodway Construction Permit from the Illinois Department of Natural Resources – Office of Water Resources (IDNR-OWR). Calculations, exhibits, and engineering documents shall be compiled in a manner consistent with the requirements of the Part 3702 and 3708 Rules of the IDNR Permit Program. The permit application will be submitted to the IDNR-OWR for review. We will coordinate with the IDNR-OWR and make revisions to said permit application. For fee estimating purposes, we have estimated one set of revision will be required.

TASK 4. CITY OF AURORA/KANE COUNTY STORMWATER MANAGEMENT PERMIT

WBK will prepare a stormwater management permit submittal for the City of Aurora/Kane County Ordinance. Calculations and engineering documents shall be compiled in a manner consistent with the requirements of the Kane County Stormwater Ordinance and will be submitted for review. The permit application packet will include the plans, all required hydraulic modeling/analysis, the wetland assessment previously completed by others and the hydraulic analysis completed by WBK. Variances are not included in the scope of services. Permit fees are not included in our scope of work. We will coordinate with City staff and will attend meetings and/or make revisions to said permit application. For fee estimating purposes, we have estimated one set of revisions to the documents will be required.

PROJECT ASSUMPTIONS

In addition to site design services, WBK has included a complete package of the engineering services anticipated at this point in time. In doing so, WBK have made some assumptions which will need to be verified during the engineering process. Any findings which are not consistent with our assumptions may increase the engineering budget for this project. WBK will thoroughly discuss any such findings with you and negotiate any budget revisions prior to proceeding. Our assumptions are as follows:

- That the property has been monumented with iron pipes or similar markers that correspond to the Plat of Survey, which will be provided to us by others in pdf and AutoCAD formats, and that a reliable vertical benchmark is within 500 feet of the project site.

ESTIMATE OF FEES

i Due to the nature of the tasks listed in the above Scope of Basic Services, WBK has provided budget amounts for the work. The actual amount invoiced will be based on the level of effort required to accomplish the task, but WBK will not exceed the budget without your prior approval. Our estimated fees are based on the entire Scope of Basic Services being awarded to us. In general, individual tasks cannot be broken out and awarded separately.

Task #	Task Name	Fee
Task 1	Final Engineering	\$31,500
Task 2	Wetland Permitting	\$8,600
Task 3	IDNR-OWR Floodway Construction Permit	\$9,400
Task 4	City of Aurora/Kane County Stormwater Management Permit	\$2,500
	Reimbursable Expenses Budget (Cost Plus 10%)	\$500
	TOTAL	\$52,500

Please note that preparing this proposal requires the exercise of professional knowledge and judgment, and as such, this proposal remains the proprietary instrument of service of the firm Wills Burke Kelsey Associates. No portion of this proposal may be shared with another firm providing similar services without our permission.

WBK proposes to bill you monthly using a Direct Labor Multiplier (DLM) of 2.8. WBK establishes 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. WBK reserve the right to increase our fees by five percent (5%) on December 31st of each calendar year.

If this proposal is acceptable, please sign and return one (1) copy to us for our files to serve as a notice to proceed. Thank You for the opportunity for continuing to provide service to the City of Aurora. If you have any questions, please do not hesitate to call.

Sincerely,



Patrick Kelsey, CPSS/SC
Resource Management Practice Principal

Encl: General Terms and Conditions – City of Aurora (February 18, 2014)

THIS PROPOSAL, SCHEDULE OF CHARGES, AND GENERAL TERMS & CONDITIONS ACCEPTED FOR THE CITY OF AURORA

BY: _____

TITLE: _____

DATE: _____

**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.